

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CONFEDERATED TRIBES AND
BANDS OF THE YAKAMA
NATION, a sovereign federally
recognized Native Nation,

Plaintiff,

v.

KLICKITAT COUNTY, a political
subdivision of the State of
Washington; KLICKITAT COUNTY
SHERIFF'S OFFICE, an agency of
Klickitat County; BOB SONGER, in
his official capacity; KLICKITAT
COUNTY DEPARTMENT OF THE
PROSECUTING ATTORNEY, an
agency of Klickitat County; and
DAVID QUESNEL, in his official
capacity,

Defendants.

NO. 1:18-CV-3110-TOR

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT is Plaintiff's Motion for Summary Judgment (ECF
No. 21). This matter was heard without oral argument. The Court has reviewed

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT ~ 1

1 the record and files therein, and is fully informed. For the reasons discussed
2 below, Plaintiff's Motion for Summary Judgment is **GRANTED**.

3 **BACKGROUND**

4 This is an action for declaratory and injunctive relief by Plaintiff
5 Confederated Tribes and Bands of the Yakama Nation against several Klickitat
6 County entities and officials, including Klickitat County, Klickitat County
7 Sheriff's Office, Klickitat County Sheriff Bob Singer, Klickitat County
8 Department of the Prosecuting Attorney, and Prosecuting Attorney David Quesnel
9 (collectively "Defendants"). ECF No. 1. On June 27, 2018, Plaintiff filed a
10 Complaint against Defendants, alleging a violation of the Treaty of 1855 arising
11 from "Defendants' *ultra vires* attempts to (a) regulate the sale of fireworks by
12 Yakama Tribal Members on Yakama trust property under [RCW] 70.77 *et seq.*,
13 and (b) enforce such regulations by threatening to take enforcement and
14 prosecutorial action against Yakama Members who were lawfully selling fireworks
15 on Yakama trust property pursuant to Yakama Nation-issued firework permits."
16 *Id.* at ¶¶ 1.1, 6. The dispute between the parties concerns the jurisdiction of
17 Defendants to enforce Washington's fireworks laws, RCW 70.77 *et seq.*, on tribal
18 lands.

19 On June 27, 2018, Plaintiff filed a motion for a temporary restraining order
20 ("TRO") and preliminary injunction. ECF No. 3. On June 28, 2018, Defendant

1 David Quesnel filed a Notice of Appearance on behalf of all Defendants and an
2 opposition to the TRO. ECF Nos. 5, 8. On June 28, 2018, after a telephonic
3 hearing, the Court granted Plaintiff's motion for a TRO but denied the motion for a
4 preliminary injunction. ECF No. 10. Pursuant to this Court's Order, Defendants
5 were temporarily enjoined from:

6 taking any action to enforce Chapter 70.77 of the Revised Code of
7 Washington against Members of the Yakama Nation within the
8 boundaries of the Yakama Reservation, upon Tribal Trust Property,
9 and upon Tribal Trust Allotments whether or not they are located
10 within the Reservation, including arresting, detaining, or prosecuting
any Member of the Yakama Nation for the possession or sale of
fireworks or seizing or confiscating any fireworks or other
possessions of any Member of the Yakama Nation conducting the sale
of fireworks.

11 *Id.* at 14.

12 On March 5, 2019, Plaintiff filed the instant motion for summary judgment,
13 seeking declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201-2202.
14 ECF No. 21. Specifically, Plaintiff seeks (1) a declaratory judgment that
15 Defendants do not have civil/regulatory jurisdiction to enforce RCW 70.77 *et seq.*
16 against enrolled Yakama Members on trust allotments outside the Yakama
17 Reservation, and (2) a permanent injunction enjoining Defendants from exercising
18 civil/regulatory jurisdiction over enrolled Yakama Members selling fireworks on
19 trust allotments outside the Yakama Reservation. *Id.* at 4. Defendants responded
20

1 to Plaintiff's motion on March 25, 2019. ECF No. 23. Defendants seek summary
2 judgment in their favor. *See id.* at 13-14.

3 **FACTS**

4 The following facts are drawn from Plaintiff's Complaint (ECF No. 1) and
5 Statement of Material Facts (ECF No. 22), and are accepted as true for purposes of
6 the instant motion.¹ The Yakama Nation is a federally recognized Indian Tribe
7 with inherent sovereign and Treaty-reserved rights pursuant to the Treaty of 1855,
8 12 Stat. 951 (1859). ECF No. 1 at ¶ 5.1. Under the Treaty of 1855, the Yakama
9 Nation reserved its inherent sovereign jurisdiction over its enrolled Members and
10 its land both within and beyond the exterior boundaries of the Yakama
11 Reservation, including off-Reservation trust allotments ("Yakama Trust
12 Allotments") held by the United States on behalf of Yakama Nation and Yakama
13 Members. *Id.* at ¶¶ 5.1-5.2. The Yakama Nation exercises civil regulatory
14 jurisdiction over its Members' actions and over actions taken on Yakama Trust
15 Allotments. *Id.* at ¶ 5.3.

16 In regards to fireworks, Yakama Nation has adopted and enforces Yakama
17 laws, regulations, and a permitting regime to regulate Yakama Members' retail sale
18

19 ¹ Defendants concede that there are no material facts in dispute in this case.
20 *See* ECF No. 23-1.

1 of fireworks within the Yakama Reservation and on Yakama Trust Allotments. *Id.*
2 at ¶ 5.4. In the instant case, Yakama Nation issued firework permits to five
3 Yakama Members—Bernice Jim, Emily Charpentier, Selina Beard, Victoria Jim,
4 and Nora Kahclamat—authorizing the retail sale of fireworks on specified Yakama
5 Trust Allotments outside the exterior boundaries of the Yakama Reservation. ECF
6 No. 22 at 4, ¶ 3. The permits were valid from June 11, 2018 through July 5, 2018.
7 *Id.*

8 On June 26, 2018, Defendant Sheriff Bob Songer issued “cease and desist”
9 notices to the five Yakama Members selling fireworks on Yakama Trust
10 Allotments, citing RCW 70.77 *et seq.* ECF No. 1 at ¶ 5.6. The “cease and desist”
11 notices stated, in part, that “[i]t has come to my attention that the sale and transfer
12 of fireworks in violation of state law, RCW 70.77 *et al.*, may be occurring at this
13 site.” ECF No. 22 at 2-4, ¶¶ 4-8.

14 On the morning of June 27, 2018, Yakama Nation’s legal counsel
15 unsuccessfully attempted to contact Defendant Songer by calling the Klickitat
16 County Sheriff’s Office to request that he not take improper *ultra vires* regulatory
17 or enforcement action against Yakama Members selling fireworks on Yakama
18 Trust Allotments. ECF No. 1 at ¶ 5.9. Yakama Nation then received a phone call
19 from Defendant Prosecuting Attorney David Quesnel who refused Yakama Nation
20 legal counsel’s request for an immediate in person meeting in Goldendale,

1 Washington. *Id.* at ¶ 5.10. Plaintiff alleges that Defendant Quesnel stated that the
2 County intends to continue its regulatory and enforcement efforts against Yakama
3 Members selling fireworks on Yakama Trust Allotments despite the Yakama
4 Nation’s objections. *Id.*

5 On June 27, 2018, Yakama Nation’s legal counsel transmitted a letter to
6 Defendant Quesnel demanding that he immediately work with Defendant Songer
7 to stop any and all harassment of Yakama Members engaged in the lawful sale of
8 fireworks on Yakama Trust Allotments. *Id.* at ¶ 5.11.

9 Plaintiff asserts that Washington’s Fireworks Regulations include an express
10 statement of legislative intent that the regulations are intended to be “regulatory
11 only, and not prohibitory.” ECF No. 1 at ¶ 5.7; RCW § 70.77.111. Plaintiff argues
12 that the United States has not authorized Defendants to exercise civil regulatory
13 jurisdiction over Yakama Members on Yakama Trust Allotments. ECF No. 1 at ¶
14 5.8. Plaintiff alleges that Defendants threaten to arrest Yakama Members and seize
15 Yakama Member-owned personal property in violation of the Yakama Nation’s
16 inherent sovereign and Treaty-reserved rights and jurisdiction, posing an imminent
17 threat of harm to the Yakama Nation and its Members. *Id.* at ¶ 5.12.

18 DISCUSSION

19 Summary judgment may be granted to a moving party who demonstrates
20 that “there is no genuine dispute as to any material fact and the movant is entitled

1 to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The moving party bears the
2 initial burden of demonstrating the absence of any genuine issues of material fact.
3 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The burden then shifts to the
4 non-moving party to identify specific facts showing there is a genuine issue of
5 material fact. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986).
6 “The mere existence of a scintilla of evidence in support of the plaintiff’s position
7 will be insufficient; there must be evidence on which the [trier-of-fact] could
8 reasonably find for the plaintiff.” *Id.* at 252.

9 For purposes of summary judgment, a fact is “material” if it might affect the
10 outcome of the suit under the governing law. *Id.* at 248. A dispute concerning any
11 such fact is “genuine” only where the evidence is such that the trier-of-fact could
12 find in favor of the non-moving party. *Id.* “[A] party opposing a properly
13 supported motion for summary judgment may not rest upon the mere allegations or
14 denials of his pleading, but must set forth specific facts showing that there is a
15 genuine issue for trial.” *Id.* (internal quotation marks omitted); *see also First Nat’l*
16 *Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 288-89 (1968) (holding that a party
17 is only entitled to proceed to trial if it presents sufficient, probative evidence
18 supporting the claimed factual dispute, rather than resting on mere allegations).
19 Moreover, “[c]onclusory, speculative testimony in affidavits and moving papers is
20 insufficient to raise genuine issues of fact and defeat summary judgment.”

1 *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). In ruling
2 upon a summary judgment motion, a court must construe the facts, as well as all
3 rational inferences therefrom, in the light most favorable to the non-moving party,
4 *Scott v. Harris*, 550 U.S. 372, 378 (2007), and only evidence which would be
5 admissible at trial may be considered, *Orr v. Bank of Am., NT & SA*, 285 F.3d 764,
6 773 (9th Cir. 2002).

7 **A. Enforcement of Washington's Fireworks Laws in Indian Country**

8 The primary issue in this case is whether Defendants may enforce
9 Washington's fireworks laws, RCW 70.77 *et seq.*, against Yakama Members on
10 the Yakama Reservation and Yakama Trust Allotments. Defendants contend they
11 have jurisdiction to enforce Washington's fireworks laws against enrolled Yakama
12 Members on tribal lands under (1) Public Law 280 or, alternatively, (2) the State's
13 inherent authority to regulate tribal members' activities within Indian Country
14 when those activities have significant impacts outside Indian Country. ECF No. 23
15 at 2. Plaintiff disagrees, arguing that Defendants lack jurisdiction to enforce
16 Washington's fireworks laws on the Yakama Reservation and Yakama Trust
17 Allotments based on the rights reserved by the Yakama Nation in the Treaty of
18 1855, the limited scope of civil jurisdiction offered to the State of Washington in
19 Public Law 280, and the Washington State Legislature's express designation of
20 state fireworks laws as civil/regulatory in nature. ECF No. 21 at 4.

1 In the Court’s view, resolution of this case hinges on one central question—
2 should Washington’s fireworks laws be classified as criminal/prohibitory or
3 civil/regulatory? For reasons discussed below, the Court concludes that
4 Washington’s fireworks laws are civil/regulatory rather than criminal/prohibitory
5 and, therefore, Defendants are without jurisdiction to enforce them against Yakama
6 Members on the Yakama Reservation and off-reservation trust allotments.

7 **1. Washington State Jurisdiction over Indian Country**

8 “Historically, the power to legislate in both criminal and civil matters
9 concerning Indians and their acts and conduct upon their reservations lay
10 exclusively with the Congress and the tribes themselves.” *Confed. Tribes of the*
11 *Colville Reservation v. Washington*, 938 F.2d 146, 147 (9th Cir. 1991). However,
12 in 1953, Congress enacted Public Law 280 (Pub. L. No. 83-280, 67 Stat. 588
13 (1953)), which required some states and authorized others to assume criminal and
14 civil jurisdiction in Indian Country within a state’s borders. *Washington v. Confed.*
15 *Bands and Tribes of Yakima Indian Nation*, 439 U.S. 463, 471-72 (1979). In 1963,
16 Washington passed legislation allowing the State to assume civil and criminal
17 jurisdiction pursuant to Public Law 280 over “Indians and Indian territory,
18 reservations, country, and lands within this state,” with certain limited exceptions.
19 *Id.* at 475; *see* RCW 37.12.010.

1 Significantly, Congress’s grant of criminal and civil jurisdiction in Public
2 Law 280 was not coequal. While Congress delegated to the states broad powers
3 over criminal matters, granting states the right to extend their criminal jurisdiction
4 over offenses committed on tribal lands, Congress’s “grant of civil jurisdiction was
5 more limited.” *California v. Cabazon Band of Indians*, 480 U.S. 202, 207 (1987).
6 While Public Law 280 grants states “jurisdiction over private civil litigation
7 involving reservation Indians in state court,” it does not “grant general civil
8 regulatory authority.” *Id.* at 208; *see* Pub. L. 83-280, § 4, 28 U.S.C. § 1360.
9 Therefore, “when a State seeks to enforce a law within an Indian reservation under
10 the authority of [Public Law 280], it must be determined whether the law is
11 criminal in nature, and thus fully applicable to the reservation . . . , or civil in
12 nature, and applicable only as it may be relevant to private civil litigation in state
13 court.” *Cabazon*, 480 U.S. at 208. If the state law is classified as
14 criminal/prohibitory, the state possesses jurisdiction to enforce the law in Indian
15 Country; however, if the law is deemed civil/regulatory, the law may not be
16 imposed on tribal lands. Doubts concerning the characterization of a law as
17 civil/regulatory or criminal/prohibitory should be resolved in favor of the Indians
18 to “protect[] Indian sovereignty from state interference.” *Colville Reservation*, 938
19 F.2d at 149.

1 In *Cabazon*, the Supreme Court outlined the test courts apply today to
 2 determine whether a particular law is civil/regulatory or criminal/prohibitory. 480
 3 U.S. at 209. Focusing on the intent of the state law and the state's public policy,
 4 the *Cabazon* court described the civil/regulatory and criminal/prohibitory
 5 distinction as follows:

6 [I]f the intent of a state law is generally to prohibit certain conduct, it
 7 falls within [Public Law 280's] grant of criminal jurisdiction, but if
 8 the state law generally permits the conduct at issue, subject to
 9 regulation, it must be classified as civil/regulatory and [Public Law
 280] does not authorize its enforcement on an Indian reservation. The
 shorthand test is whether the conduct at issue violates the State's
 public policy.

10 *Id.* The *Cabazon* court emphasized that a law is not criminal/prohibitory simply
 11 because the law is enforceable by criminal as well as civil means. *Id.* at 211
 12 (“[T]hat an otherwise regulatory law is enforceable by criminal as well as civil
 13 means does not necessarily convert it into a criminal law within the meaning of
 14 Pub. L. 280.”). Thus, to characterize a particular law as either civil/regulatory or
 15 criminal/prohibitory, courts look to the nature of the activity and the overall legal
 16 context governing the activity. *Colville Reservation*, 938 F.2d at 148-49.

17 **2. Washington's Fireworks Laws are Civil/Regulatory**

18 Washington's fireworks laws are codified in Chapter 70.77 of the Revised
 19 Code of Washington. *See* RCW 70.77 *et seq.* Plaintiff contends that the fireworks
 20 laws are civil/regulatory, and therefore not enforceable on Yakama trust

1 allotments, because the Washington Legislature explicitly declared that the State's
2 fireworks are only regulatory in nature. ECF No. 21 at 7; *see* RCW 70.77.111.
3 Moreover, Plaintiff argues that while RCW 70.77 includes some criminal
4 sanctions, that does not automatically make Washington's firework laws
5 criminal/prohibitory within the meaning of Public Law 280. *Id.* at 7-8. In
6 response, Defendants argue that the "regulatory" label in RCW 70.77.111 is
7 insufficient to transform an otherwise prohibitory law into a law that is regulatory
8 in nature. ECF No. 23 at 8. According to Defendants, "the clear focus of the laws
9 that Plaintiff seeks to enjoin is to prohibit the sale of fireworks except in limited
10 circumstances, placing the statutes in the criminal/prohibitory category." *Id.* at 9.

11 Based on the inquiry prescribed in *Cabazon*, the Court agrees with Plaintiff
12 that Washington's fireworks laws are properly characterized as civil/regulatory
13 rather than criminal/prohibitory. The statutory history of Washington's fireworks
14 laws supports Plaintiff's position that Washington law and public policy do not
15 generally condemn the use and sale of fireworks but rather permit fireworks
16 subject to regulation. Although the use and sale of fireworks was originally
17 prohibited in Washington with limited exceptions, RCW 70.77 has since been
18 amended to permit the *legal* sale, purchase, and use of fireworks in Washington
19 State. Perhaps most significantly, in 1995, the Washington Legislature added the
20 following section to the fireworks regulations:

1 The legislature declares that fireworks, when purchased and used in
2 compliance with the laws of the state of Washington, are legal. The
3 legislature intends that this chapter is regulatory only, and not
4 prohibitory.

5 RCW 70.77.111. In light of the 1995 amendment, the intent of Washington's
6 fireworks law could not be clearer: to permit the use and sale of fireworks, subject
7 to regulation.

8 Defendants seek to sidestep the Washington Legislature's explicit statement
9 of legislative intent, arguing that "the 'regulatory' label in RCW 70.77.111 does
10 not change the fundamental prohibitory nature of the laws at issue here." ECF No.
11 23 at 8. To support their preferred interpretation of Washington's fireworks law as
12 criminal/prohibitory, Defendants note that the fireworks law prohibits the sale of
13 certain fireworks to the public and permits the use of fireworks only during limited
14 time periods, fireworks sold illegally are subject to seizure, and violation of the
15 fireworks law remains a misdemeanor. *Id.* at 4-8. According to Defendants, these
16 restrictive provisions conclusively establish that Washington's fireworks law is "a
17 prohibitory law enforceable under Public Law 280² and RCW 37.12.010 and
18 .030." *Id.* at 6-7.

19 ² Defendants concede, however, that the State has retroceded some Public
20 Law 280 jurisdiction within the Yakama Reservation and cannot enforce these

1 However, Defendants conveniently ignore the less-restrictive and more
2 regulatory aspects of Washington’s fireworks laws. For example, the fireworks
3 law does not broadly prohibit the sale of fireworks except in narrow circumstances,
4 as it did before the 1995 amendments. Instead, the fireworks law generally permits
5 the sale of fireworks, subject to regulation, while only narrowly prohibiting the
6 sale of a few specific types of fireworks to the public. *See* RCW 70.77.401
7 (prohibiting the sale of “sky rockets, or missile-type rockets, firecrackers, salutes,
8 or chasers”). Moreover, the 1995 amendments established civil licensing and
9 revenue generating provisions, demonstrating a state policy to advance “the safe
10 and responsible use of legal fireworks.” *See* RCW 70.77.343(2). While the
11 Legislature did not remove criminal penalties from the fireworks statute, a 1994
12 amendment codified a new policy that “inclusion in [Chapter 70.77] of criminal
13 penalties does not preclude enforcement of this chapter through civil means.” *See*
14 RCW 70.77.548. When viewing the more restrictive provisions cited by
15 Defendants alongside these less restrictive aspects of Washington’s fireworks law,
16 what emerges is a comprehensive regulatory scheme designed to permit the use of
17 fireworks subject to regulation.

18 _____
19 laws there, but contends the State has not retroceded criminal jurisdiction over off-
20 reservation trust allotments. ECF No. 23 at 9.

1 Finally, contrary to Defendants’ contentions, the Ninth Circuit’s treatment of
2 state fireworks laws and their application to Indian Country in *United States v.*
3 *Marcy*, 557 F.2d 1361 (9th Cir. 1977) does not support the conclusion that
4 Washington’s current fireworks laws are criminal/prohibitory rather than
5 civil/regulatory. In finding Washington’s fireworks law to be criminal/prohibitory,
6 the court in *Marcy* noted the State’s “intent [wa]s to prohibit the general
7 possession and/or sale of dangerous fireworks” because the purpose of the statute
8 was not to generate income by requiring licenses but rather to prohibit the general
9 use of fireworks “in a legitimate effort to promote the safety and health of all
10 citizens.” 557 F.2d at 1364. However, as Defendants acknowledge, the *Marcy*
11 decision predates the 1995 amendment to Washington’s fireworks laws, which
12 conclusively declared the sale and use of fireworks a legal activity; thus,
13 Washington’s current regulatory framework governing fireworks is fundamentally
14 different than the fireworks laws at issue in *Marcy*. For this reason, the analysis
15 and holding in *Marcy* has little bearing on this case.

16 Instead, the Court finds the Ninth Circuit’s holding in *Confederated Tribes*
17 *of Colville Reservation v. State of Washington*, 938 F.2d 146 (9th Cir. 1991) to be
18 instructive. In *Colville Reservation*, the Ninth Circuit distinguished *Marcy* and
19 found speeding was decriminalized in Washington, making it regulatory and not
20 subject to enforcement by the state on roads within the reservation. 938 F.2d at

1 149. Similar to *Colville Reservation*, this Court determines that Washington
2 explicitly declared that its fireworks laws are only regulatory, not prohibitory.
3 While the law may carry some criminal sanctions, this does not necessarily convert
4 a regulatory law into a criminal law within the meaning of Public Law 280. *See*
5 *Cabazon*, 480 U.S. at 211.

6 In short, considering the intent of Washington’s fireworks laws and
7 Washington’s public policy, the Court finds that the fireworks laws are
8 civil/regulatory in nature; therefore, the fireworks laws are unenforceable against
9 tribal members in Indian Country. For this reason, the Court holds that Defendants
10 may not enforce Washington’s fireworks laws against Yakama Members on the
11 Yakama Reservation and Yakama Trust Allotments through its criminal Public
12 Law 280 jurisdiction.

13 **3. Washington’s Inherent Authority to Regulate Fireworks**

14 Alternatively, assuming Washington’s fireworks laws are civil/regulatory,
15 Defendants argue that the State may nonetheless “regulate the sale of fireworks
16 under its inherent authority” to regulate certain on-reservation activities of tribal
17 members. ECF No. 23 at 9-10. According to Defendants, “[r]egardless of whether
18 Public Law 280 applies, when ‘state interests outside the reservation are
19 implicated, States may regulate the activities even of tribe members on tribal
20 land.’” ECF No. 23 (quoting *Nevada v. Hicks*, 533 U.S. 353, 362 (2001)).

1 Defendants assert that the sale of illegal fireworks, such as those sold to non-
2 Indians from Yakama Trust Allotments, have a significant public safety impact
3 outside Indian Country; therefore, the state’s interest in public safety justifies the
4 imposition of Washington’s fireworks laws against Yakama Members on off-
5 reservation trust allotments. *Id.* at 11-13.

6 The Court finds Defendants’ “inherent authority” argument unconvincing.
7 True, in certain ““exceptional circumstances”” a state may assert jurisdiction over
8 the on-reservation activities of tribal members absent express congressional
9 permission. *Cabazon*, 480 U.S. at 215 (quoting *New Mexico v. Mescalero Apache*
10 *Tribe*, 462 U.S. 324, 331-32 (1993)). However, in determining whether state
11 jurisdiction is justified in a particular case, the Court must weigh the state’s
12 interests in enforcing the law against “traditional notions of Indian sovereignty and
13 the congressional goal of Indian self-government, including its ‘overriding goal’ of
14 encouraging tribal self-sufficiency and economic development.” *Id.* at 216
15 (quoting *Mescalero*, 334-35).

16 Here, Defendants fail to establish such exceptional circumstances justifying
17 the imposition of state jurisdiction. While Defendants’ interests—preventing the
18 sale and use of illegal fireworks—are important, Plaintiff’s regulations governing
19 the use and sale of fireworks provide adequate safeguards against such
20 contingencies. Accordingly, Defendants’ interests are not as compelling as they

1 might be if the sale of fireworks on the Yakama Reservation and Yakama Trust
2 Allotments were left entirely unregulated. Additionally, the sale of fireworks on
3 the Yakama Reservation and Yakama Trust Allotments presumably generates
4 revenue and creates jobs, which furthers the congressional goal of Indian self-
5 government and economic self-sufficiency. Therefore, the Court concludes that
6 Defendants' interests here do not justify the imposition of state civil/regulatory
7 laws absent an express congressional grant of authority.

8 In short, Defendants have raised no genuine issue of material fact and
9 Plaintiff is entitled to judgment as a matter of law. Accordingly, Plaintiff's Motion
10 for Summary Judgment (ECF No. 21) is granted.

11 **B. Declaratory Judgment and Injunction**

12 Under the Declaratory Judgment Act, this Court has authority to "declare the
13 rights and other legal relations of any interested party seeking such declaration."
14 28 U.S.C. § 2201(a); *Gov't Employees Ins. Co. v. Dizol*, 133 F.3d 1220, 1222 (9th
15 Cir. 1998). In order to fall within the Declaratory Judgment Act, a plaintiff must
16 raise "a case of actual controversy within [the court's] jurisdiction." 28 U.S.C. §
17 2201(a). "The controversy must be definite and concrete, touch the legal relations
18 of parties having adverse legal interests. It must be a real and substantial
19 controversy admitting of specific relief through a decree of a conclusive character,
20 as distinguished from an opinion advising what the law would be upon a

1 hypothetical state of facts.” *Aetna Life Ins. Co. of Hartford, Conn. v. Haworth*,
2 300 U.S. 227, 240-41 (1937) (citations omitted).

3 Here, Plaintiff seeks a declaratory judgment under 28 U.S.C. § 2201
4 declaring that:

5 (1) Washington’s Fireworks Regulations, as set forth in RCW 70.11 *et*
6 *seq.*, are properly understood as “regulatory only, and not
prohibitory”;

7 (2) Defendants do not have civil regulatory jurisdiction over enrolled
8 Yakama Members selling fireworks in Indian Country, including
Yakama trust allotments;

9 (3) Defendants violated the Yakama Nation’s inherent sovereign and
10 Treaty-reserved rights by threatening to unlawfully exercise civil
regulatory jurisdiction over enrolled Yakama Members in Indian
11 Country.

12 ECF No. 21 at 9-10. Based on the Court’s ruling above on the enforceability of
13 Washington’s fireworks laws in Indian Country, the Court grants Plaintiff’s request
14 for a declaratory judgment but declines to include provision (3) in the Court’s
15 declaration. While Defendants *threatened* to arrest Yakama Members and seize
16 their personal property in violation of the Yakama Nation’s inherent sovereignty
17 and Treaty-reserved rights and jurisdiction, Defendants never effectuated that
18 threat. This Court issued a TRO preventing Defendants from doing so. As such,
19 the statement contained in provision (3) is inaccurate.

1 Additionally, Plaintiff seeks a preliminary and permanent injunction
2 pursuant to 28 U.S.C. § 2202 enjoining Defendants from exercising civil
3 regulatory jurisdiction over enrolled Yakama Members selling fireworks in Indian
4 Country on Yakama Trust Allotments. *Id.* at 10. “The standard for a preliminary
5 injunction is essentially the same as for a permanent injunction with the exception
6 that the plaintiff must show a likelihood of success on the merits rather than actual
7 success.” *Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 546 n.12 (1987).
8 To obtain a permanent or final injunction, a plaintiff must demonstrate: “(1) actual
9 success on the merits; (2) that it has suffered an irreparable injury; (3) that
10 remedies available at law are inadequate; (4) that the balance of hardships justify a
11 remedy in equity; and (5) that the public interest would not be disserved by a
12 permanent injunction.” *Indep. Training & Apprenticeship Program v. California*
13 *Dep’t of Indus. Relations*, 730 F.3d 1024, 1032 (9th Cir. 2013). Plaintiff must
14 satisfy each element for injunctive relief.

15 At this time, the Court declines to grant Plaintiff’s request for injunctive
16 relief. Pursuant to 28 U.S.C. § 2202, the Court finds that supplemental relief,
17 including injunctive relief, is not necessary to give effect to this Court’s
18 declaratory judgment, an adequate remedy at law. If further relief becomes
19 necessary by future events, however, both the inherent power of the Court to give
20

1 effect to its own judgment and the Declaratory Judgment Act would empower this
2 Court to grant supplemental relief.

3 **ACCORDINGLY, IT IS HEREBY ORDERED:**

4 1. Plaintiff's Motion for Summary Judgment (ECF No. 21) is **GRANTED**.

5 2. A declaratory judgment shall be entered, in favor of Plaintiff against each
6 Defendant, declaring that:

7 a. Washington's Fireworks Regulations, as set forth in RCW 70.11 *et*
8 *seq.*, are properly understood as "regulatory only, and not
prohibitory"; and

9 b. Defendants do not have civil regulatory jurisdiction over enrolled
10 Yakama Members selling fireworks in Indian Country, including
Yakama trust allotments.

11 3. Plaintiff's request for a preliminary and permanent injunction is
12 **DENIED**.


13 4. Defendants' request for Summary Judgment (ECF No. 23 at 13-14) is
14 **DENIED**.

15 5. All pending deadlines, hearings and trial are vacated as moot.

16 The District Court Executive is directed to enter this Order, enter Judgment
17 accordingly, furnish copies to counsel, and close this case.

18 **DATED** April 24, 2019.




THOMAS O. RICE
Chief United States District Judge