

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

CONFEDERATED TRIBES AND BANDS OF
THE YAKAMA NATION, a federally
recognized Indian Tribe,

and

YAKAMA FOREST PRODUCTS, an
instrumentality of the CONFEDERATED
TRIBES AND BANDS OF THE YAKAMA
NATION.

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

No. 19-1966 L

COMPLAINT

Plaintiffs, by and through their undersigned attorney, for their Complaint against the United States, hereby allege as follows:

NATURE OF ACTION

1. This is an action by Plaintiffs, the Confederated Tribes and Bands of the Yakama Nation (the “Yakama Nation” or the “Nation”) and Yakama Forest Products (“YFP”), collectively “Plaintiffs,” seeking money damages against Defendant United States of America (“Defendant” or “United States”) for breaches of fiduciary duties by the United States from June 18, 2013, to present, acting by and through the United States Department of the Interior, Bureau of Indian Affairs (“BIA”), arising out of the BIA’s mismanagement of the Yakama Nation’s forest resources, including the BIA’s failure to ensure that the full sustainable annual allowable cut (“AAC”) of the Nation’s timber was achieved each year.

JURISDICTION

2. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1505 (the Indian Tucker Act) and 28 U.S.C. § 1491(a)(1) (the Tucker Act) because the action involves a claim against the United States for money damages brought by an Indian Tribe residing within the territorial limits of the United States. The action arises under the United States Constitution, treaties, laws, statutes, and regulations of the United States, Executive Orders of the President, and federal common law, all of which govern the administration and management of property held by the United States in trust for Indian tribes as described herein.

PARTIES

3. Plaintiff Yakama Nation is a federally-recognized Native Nation and party to the Treaty with the Yakamas, dated June 9, 1855, 12 Stat. 951 (“Treaty of 1855” or “Treaty”). Pursuant to the Treaty, the Yakama Nation reserved roughly 1,400,000 acres of land in what is now the State of Washington (“Yakama Reservation” or “Reservation”), while ceding certain rights to over ten million acres of land to the United States. In making cessions to the United States, the Yakama Nation’s ancestors reserved for themselves an area of principal importance to their lifestyle and heritage.

4. Plaintiff YFP is wholly-owned by the Yakama Nation. The Yakama Nation created YFP in 1994 to promote the development and utilization of the Reservation’s timber resources on a sustained yield basis, while growing the Yakama Nation’s timber business and providing jobs and business opportunities for the Yakama Nation’s citizens. YFP’s continued existence and success is essential to the Yakama Nation’s cultural, political, and economic

vitality. YFP operates a commercial log sort yard and sawmill on the Reservation. YFP's principal log supply comes from the Yakama Nation's forest lands.

5. Defendant is trustee and a fiduciary to the Yakama Nation. The United States is charged by the United States Constitution, the Treaty of 1855, federal statutes, Executive Orders, and other federal law with carrying out its trust responsibility in connection with the management and administration of the Yakama Nation's forest lands that Defendant holds in trust for the use and benefit of the Yakama Nation.

BACKGROUND

6. The Yakama Reservation includes approximately 650,000 acres of forest lands ("Yakama Forest" or "Forest"). The United States holds legal title to substantially all of the Yakama Forest in trust for the benefit of the Yakama Nation and its more than 11,000 members.

7. Pursuant to the Treaty of 1855, the United States agreed to erect a sawmill on the Yakama Reservation. The United States further agreed to keep the mill in "repair and furnished with the necessary tools and fixtures." The United States' promise of a sawmill naturally includes an assurance that there will be an adequate timber supply to run the mill.

8. At all material times, including since June 18, 2013, the United States has managed the Yakama Forest pursuant to a Forest Management Plan approved by the BIA in 2005 for the Yakama Reservation ("2005 FMP"). The stated purpose and need for the 2005 FMP is to "provide direction and guidance for forest management activities conducted by the [BIA] and the Yakama Nation." The 2005 FMP expressly notes that the trust responsibility for the management of the Yakama Reservation forest resources has been delegated to the BIA,

and the FMP “defines how trust responsibilities and [Yakama Nation] forest management goals and objectives will be fulfilled.”

9. The 2005 FMP states that the AAC for the prior ten-year planning period was 143 million board feet and that an AAC will be reported in a future forest inventory analysis. The 2005 FMP remains in effect until amended, revised, or replaced. In 2010, the BIA produced a forest inventory analysis, which estimated an AAC of 106 million board feet for the period from 2005 to 2015. In 2015, the BIA produced an addendum to the 2005 FMP, which sought to revise the AAC for the period 2016 to 2035 to 93.4 million board feet. The Yakama Nation has not approved the proposed 2015 revision to the AAC. At all times since June 18, 2013, the BIA has failed to authorize sufficient timber sales that would achieve either the AAC contained in the 2005 FMP or the 2015 proposed revision to the AAC.

CLAIM FOR RELIEF

(Breach of Trust)

10. Plaintiffs re-allege paragraphs 1 – 9.

11. The United States has historically exercised, and continues to exercise, comprehensive statutory and regulatory control over the management of the Nation’s forest resources held in trust for the benefit of the Nation. *See, e.g.*, 25 U.S.C. §§ 406-407, 5109, and 3101-3120. Pursuant to the Treaty of 1855 and longstanding Constitutional, statutory, and federal common law, the United States owes trust duties to the Yakama Nation and YFP with respect to the management of Yakama Forest resources.

12. The United States has obligated itself to obtain the greatest revenue for the Yakama Nation consistent with the proper protection and improvement of the Yakama Forest. The United States must also undertake land management activities designed to achieve “the

development of Indian forest lands and associated value-added industries . . . to promote self-sustaining communities, so that Indians may receive from their Indian forest lands not only stumpage value, but also the benefit of all the labor and profit that the Indian forest land is capable of yielding.” 25 U.S.C. § 3104(b)(4).

13. Since June 18, 2013, the United States has breached its fiduciary duties to Plaintiffs in one or more of the following ways:

- a. By failing to prepare and approve sufficient timber sales to achieve the maximum AAC authorized by applicable law;
- b. By failing to provide an adequate log supply for YFP; and/or
- c. By failing to otherwise manage the Yakama forestry program in a manner that allowed the Nation to receive not only the stumpage value from its forest lands, but also the benefit of all labor and profit that the Yakama Forest is capable of yielding.

14. The United States’ breaches of its fiduciary duties have caused damage to Plaintiffs in an amount not less than \$10,000,000 to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for a judgment in each of their favor and against Defendant as follows:

1. For judgment in Plaintiffs’ favor and against Defendant in an amount not less than \$10,000,000 to be determined at trial;
2. To grant Plaintiff prejudgment interest, costs, and attorneys’ fees in this litigation as may be provided by law; and
3. For any other relief the Court may deem equitable and just.

DATED this 27th day of December, 2019.

s/ Ethan Jones

Ethan Jones, Attorney of Record

Marcus Shirzad, Of Counsel

YAKAMA NATION OFFICE OF LEGAL COUNSEL

401 Fort Road

Toppenish, WA 98948

(509) 865-7268

ethan@yakamanation-olc.org

marcus@yakamanation-olc.org

Attorneys for Plaintiffs