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UNITED STATES SUPREME COURT UPHOLDS THE YAKAMA TREATY RIGHT TO TRAVEL AND TRADE

YAKAMA NATION AGENCY, YAKAMA RESERVATION – On Tuesday, March 19, 2019, the Supreme Court issued its decision in the matter of *Washington State Department of Licensing v. Cougar Den, Inc.* (No. 16-1498). Treaties with federally recognized Native Nations—like the 1855 Treaty at issue here, constitute federal law that preempts conflicting state law. Today the Court ruled that the 1855 Treaty preempts state laws that burden the Yakamas’ Article III reserved right to travel on the public highways, including the right to travel with goods for the purposes of trade. In the facts before it, the Court held that Article III, paragraph 1 of the 1855 Treaty secures for Cougar Den, a corporation licensed under the laws of the Yakama Nation, the right to import fuel into the Yakama Reservation upon public highways free from any state-imposed burden or encumbrance on that reserved Treaty right.

In his concurring opinion, Justice Neil Gorsuch stated, “[o]ur job in this case is to interpret the treaty as the Yakamas originally understood it in 1855—not in light of new lawyerly glosses conjured up for litigation . . . more than 150 years after the fact.” The Court’s five-justice majority expressly rejected Washington State’s and the United States’ efforts to rewrite the widely accepted history of the Yakama Nation and its people, with Justice Gorsuch writing that “the State and federal governments . . . do not get to rewrite the [1855 Treaty] in this Court.”

The Yakama Nation asserts that any interpretation of the Yakama Treaty must be consistent with well-established historical truths confirmed by oral traditions, the official record of the 1855 Walla Walla Council negotiations, and the Yakamas’ understanding of the terms of the 1855 Treaty. Today the Court applied those factual findings and, in its strongly worded decision, gave full effect to the 1855 Treaty’s terms and the Yakamas’ original understanding of them. “[T]he treaty doesn’t just guarantee tribal members the right to *travel* on the highways free of most restrictions on their movement; it also guarantees tribal members the right to *move goods* freely to and from market using those highways,” wrote Justice Gorsuch.

Today marks a decision that reinforces the Yakama *way of life*, both in historical context as well as modern interpretation. Echoing the Court’s sentiments, Yakama Nation Tribal Council Chairman JoDe Goudy states that, “Yakamas’ conducted trade and commerce long before the formation of the United States, let alone the Washington state’s existence. Our historical Chiefs negotiated for that right to be maintained and it was memorialized within the Articles of the Yakama Treaty of 1855 between the Yakama Nation and the United States.”

Chairman Goudy states, “the United States and the State of Washington have reaped the historical, present, and future benefit to 1/3 of the land mass and resources of present day Washington State and it is this great sacrifice that our Yakama Nation gave up to have our rights memorialized forever.” “Today, the United States Supreme Court has acknowledged and upheld our Treaty rightfully so in the face of present day individuals who sought to renegotiate the terms that were memorialized between our Nations in the year of 1855, and for that we are grateful. The dominating act to eliminate, overregulate, and or restrict our ability to conduct trade and commerce would have continued to dehumanize our Nation. Our Nation will move forward and continue to seek and initiate actions to address the wellbeing of those things that cannot speak for themselves, our resources, as well as our enrolled members young and old for generations to come,” Chairman Goudy noted regarding the significance of today’s decision.

The Yakama Nation wishes to acknowledge and express great appreciation for all the people who collaborated and worked diligently to achieve this hard fought victory. This case serves as a reminder to all Native Nations dealing with similar disputes to maintain a positive attitude, never give up in the face of adversity, and always fight to ensure that truth prevails.

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