



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

OCT 19 2015

The Honorable JoDe Goudy  
Chairman, Confederated Tribes  
and Bands of the Yakama Nation  
P.O. Box 151, Fort Road  
Toppenish, Washington 98948

Dear Chairman Goudy:

I am pleased to notify you of our acceptance of retrocession to the United States of partial civil and criminal jurisdiction over the Yakama Nation (Nation).<sup>1</sup> The Department of the Interior (Department) congratulates the State of Washington (State) and the Nation on the careful and deliberative process used to reach agreement on retrocession.<sup>2</sup> We have attempted to be equally deliberative in our process. We explain below the process of our decisionmaking, the reasons for our decision, and the effective date of complete implementation.

It is important to understand what retrocession means. Some correspondence and media reports reflect confusion about the meaning of retrocession. Retrocession does not affect the Nation's formal legal authority or jurisdiction in any way. Indeed, the Nation's authority neither contracts nor expands in light of retrocession. The Nation's jurisdiction simply will no longer be concurrent with the State's; rather, the Nation's jurisdiction will be exclusive for certain purposes. In its retrocession request, the State wishes to give up a portion of the authority that had been delegated to it by Congress under Public Law 280. The sole legal effect of retrocession is to restore Federal authority to the Federal Government over certain categories of offenses within the Yakama Reservation. In short, the primary effect of retrocession is that the State will transfer back to the Federal Government Federal authority that the State had been delegated under Public Law 280. As a result, under retrocession, the State has chosen to retract state authority, Federal authority will resume, and the Nation's authority will remain the same as it has always been.

The road to retrocession has been a long one for the Nation. We commend the State for establishing a formal procedure on retrocession of state criminal and civil jurisdiction to address this issue proactively and thoughtfully. Engrossed Substitute House Bill 2233, enacted in 2012,

---

<sup>1</sup> Jurisdiction was previously acquired by the State of Washington pursuant to Public Law 83-280, 67 Stat. 588, codified as amended at 18 U.S.C. 1162, 28 U.S.C. 1360, and as provided in Revised Code of Washington 37.12.010, 37.12.021, 37.12.030, 37.12.040, and 37.12.060 (1963), and 37.12.050 (1957).

<sup>2</sup> The intended acceptance is pursuant to 25 U.S.C. § 1323 and authority vested in the Secretary of the Interior by Executive Order No. 11435 of November 21, 1968, 33 Fed. Reg. 17339, and delegated to the Assistant Secretary – Indian Affairs. It is also pursuant to the request by the State of Washington reflected in the Proclamation of the Governor 14-01, signed on January 17, 2014, and transmitted to the Assistant Secretary – Indian Affairs in accordance with the process set forth in RCW 37.12.160 (2012).

provided a path for the State and tribal nations to follow in addressing retrocession. After filing the retrocession petition with the Governor in July of 2012, the Nation engaged in government-to-governments meetings with the State. The Nation also entered into a 2013 Memorandum of Understanding with Yakima County regarding the procedures to serve state court arrest warrants on tribal members on trust land within the Yakama Reservation. After following the procedures set forth in House Bill 2233, including a 6-month extension by the State, the Governor submitted the Proclamation for our approval in January of 2014.

From the time the Proclamation was submitted, the Office of Justice Services (OJS) within the Bureau of Indian Affairs (BIA) has engaged with the Yakama Nation Tribal Police Department and Corrections to determine the capacity of the Nation's law enforcement services. In preparation for retrocession, the Nation committed additional resources to their law enforcement services. The Nation has nearly doubled the size of the police department by funding 10 new police officer positions. In September of 2014, OJS finalized an assessment of the Nation's Police Department, which found the Nation has the capacity to respond to an increased number of emergency calls for service and would be prepared to handle increased responsibilities as a result of retrocession.

One of the critical elements of success in preparing for exclusive criminal jurisdiction over some offenses committed by Native Americans is an effective tribal court. In December of 2014, OJS began an assessment of the Yakama Nation Tribal Court. This assessment provided recommendations for improving tribal court operational activities and assisted in developing a strategic 3-5 year plan for the court. On May 6, 2015, OJS issued the tribal court assessment and strategic plan, including findings and recommendations. As a result of these findings, \$149,000 in one-time Federal funding was provided to address the following issues: 1) assistance in acquiring necessary equipment, including computers, scanners, and other items, related to the infrastructure of the court; 2) increased salary of law-trained judges; 3) hiring a legal assistant to assist civil pro-se litigants; 4) hiring a court administrator; 5) providing training to tribal judges and tribal prosecutors and defenders on issues involving domestic violence, child abuse, and neglect; and 6) providing relevant training to the court administrator. Discussions have also occurred regarding Fiscal Year 2016 funding for a court management system. Together these efforts will help the Nation further the pursuit of justice and ensure that individuals' rights are protected.

The OJS has also actively engaged in developing partnerships and opening lines of communication between the Nation's police, local law enforcement, county prosecutor's office, the Federal Bureau of Investigation (FBI), and the U.S. Attorney's Office. This has created a more cooperative relationship between law enforcement agencies. As a result, crimes are now less likely to go uninvestigated or unprosecuted.

As is our practice when reviewing retrocession requests, the Department worked closely with the Department of Justice (DOJ) in evaluating the request. In March of 2014, the Department participated in meetings with the DOJ Office of Tribal Justice and the U.S. Attorney's Office in the Eastern District of Washington. On June 16, 2014, the Department formally requested, as set forth in Executive Order No. 11435, the consultation and opinion of the Attorney General with respect to retrocession of criminal jurisdiction. We must work closely with the DOJ in making

this decision because, while the decision is vested with the Department, DOJ has significant equities in light of the additional investigative and prosecution work that is likely to be required of FBI and the United States Attorney's Office in the Eastern District of Washington.

United States Attorney Michael C. Ormsby has been key to our consideration of retrocession. In a letter dated April 3, 2015, to the Acting Deputy Attorney General, the U.S. Attorney expressed caution and stressed the need for careful implementation, but he also noted that the relevant Federal and tribal partners have worked hard in recent years to improve communication and have developed what he described as a "strong, collaborative working relationship[.]" He also noted that the Nation has developed a "symbiotic working relationship with FBI and the USAO" in particular.

The U.S. Attorney vowed to make retrocession successful if it occurs. In his letter, the U.S. Attorney identified with great specificity what needs to happen if retrocession is approved, as well as what has not yet occurred. His guidance has been very helpful. Since law enforcement agencies tend to address matters by priority, it is sometimes difficult to prioritize matters that remain hypothetical. This letter provides the concrete decision that will enable the interested jurisdictions to prioritize plans for implementation.

The U.S. Attorney proposed an implementation period of 6-12 months for law enforcement agencies to develop transition plans. As the chief Federal law enforcement officer in the Eastern District of Washington, his leadership will be crucial in ensuring successful implementation. Accordingly, we have worked his proposal into our decision.

On January 26, 2015, the Department held a formal tribal consultation with the Nation, DOJ, and the United States Attorney's Office to discuss the proposed retrocession. On that occasion, we heard from the Nation the importance of retrocession. We also toured some of the Nation's police training and criminal justice facilities. Since long before statehood for the State of Washington, the Nation and the United States Government have had a government-to-government relationship, evidenced most clearly by the Nation's Treaty with the United States of 1855. The consultation continued that relationship.

During our meetings on the Yakama Reservation, Councilmember Virgil Lewis, who chairs the Tribal Council's Law and Order Committee, advised us of the steps that the Nation has taken to prepare for implementation. He assured us that the Nation has the staff and the employees to undertake law enforcement for the Nation. He was frank and transparent about the opportunities as well as the challenges that retrocession would create. While the Nation's detention center, for example, is a state-of-the-art facility, the tribal court and the police department have certain needs. Following retrocession, the State will no longer have jurisdiction over tribal members as to the offenses for which retrocession has been granted. Thus, the entire responsibility for policing such offenses will rest on the shoulders of the Nation and the United States. As noted above, the Nation's authority has not expanded, but the weight of its responsibility has indeed increased. Accordingly, tribal leadership and the U.S. Attorney, rather than State, county or municipal leadership, will now bear the responsibility and the accountability to tribal members for public safety on the Yakama Reservation. Following our meetings on the reservation, I am confident that the Nation is committed to carrying the weight of this responsibility.

In March of 2015, FBI finalized a report on the implications of retrocession. This report was written at the request of the Office of Tribal Justice. The report concluded that the impact of retrocession was unknown but indicated similarly sized tribes have experienced positive impacts from retrocession. We note that, as a result of retrocession, FBI and U.S. Attorney's Office will undertake the same role that their sister offices play on dozens of reservations throughout the western United States, including Arizona, Montana, New Mexico, and South Dakota.

On April 30, 2015, I met with the Governor's General Counsel to discuss retrocession. An issue that has been highlighted in several meetings is related to reservation boundaries. We have assured anyone who has asked that this process is not a mechanism for redrawing reservation boundaries. The scope of the Yakama Nation's territorial jurisdiction will be governed by Federal law. The decision before my Office is nothing more than an acceptance of the State's request for retrocession. As explained to the Governor's office, this decision is not intended to affect the boundaries of the reservation in any way. As noted above, this decision does not expand tribal jurisdiction; it merely eliminates State authority over certain offenses on the reservation.

The Department also received correspondence from local government representatives about the retrocession request from the State. For example, a letter from Yakima County, signed by Prosecuting Attorney Joseph A. Brusic, Sheriff Brian Winter, and all three County Commissioners, expressed a strong desire to see the retrocession process succeed. They asked for an opportunity to have discussions with the Nation and the Federal Government in an effort to reach agreement on protocols. We will be happy to convene meetings to help facilitate implementation of retrocession. We note, however, that it would constitute extreme hubris for a Federal official more than 2,500 miles away in Washington, D.C., to attempt to resolve disputes between neighbors in the Yakima Valley. That said, the County's request is consistent with the request of the U.S. Attorney and DOJ, and we certainly are willing to create time and space for such discussions.

We appreciate the unanimous expression of support from Yakima County officials. We expect cooperation to be forthcoming. It is our experience that law enforcement officers tend to share a strong esprit de corps and a mutual respect that crosses jurisdictional and even sovereign lines. It comes from the common experience of performing a very difficult job every day as well as a common commitment to protecting the public. Whatever the views of political leadership, when the chips are down and danger is afoot, officers on the beat tend to support one another. We are confident that, police officers working on the ground will be able to develop agreements on mutual aid, cross-deputation, and other needed mechanisms for cooperation. Indeed, in light of increasing fiscal constraints, cooperation in stretching resources is more important than ever. Moreover, in this age of tremendous scrutiny of law enforcement, it is entirely appropriate that police officers arresting Native Americans on the Yakama Reservation be more responsive to tribal officials. It is also appropriate for tribal suspects to answer to tribal institutions, such as tribal courts and tribal juries. This will increase the legitimacy of criminal justice decisions. We hope that this is one of the many positive outcomes of retrocession.

While Congress assigned the decision on retrocession to officials in Washington, DC, it will require careful cooperation between the Nation and the local subdivisions of state government, such as the counties and municipalities, to make it work well.

In early August of 2015, the Department received the DOJ's response to our letter requesting the Attorney General's views on retrocession. The DOJ declined to state a position in favor of or against retrocession. It did, however, recommend that the Department consider a 6-month waiting period between the date of acceptance and actual transfer of jurisdiction in order to allow for an orderly transfer of authority from the State to the Federal Government.

In deference to the counsel of DOJ, a specific period to allow the relevant agencies to coordinate their actions going forward is granted. I am confident that the Nation, working with the U.S. Attorney's Office and BIA OJS can accomplish all of the tasks needed for actual implementation in six months. Accordingly, our decision is that retrocession will be implemented completely as of 12:01 a.m. PST on April 19, 2016.

It is worth noting one final issue has been raised regarding the extent of retrocession. Washington law clearly sets forth the process for retrocession of civil or criminal jurisdiction in Washington State.<sup>3</sup> The process requires the Governor to convene a government-to-government meeting, within 90 days of receiving a retrocession resolution, for the purpose of considering the Nation's resolution.<sup>4</sup> Within one year of receipt of the resolution the Governor must issue a proclamation, approving the request either in whole or in part, and formally submit the proclamation to the Federal Government.<sup>5</sup> We understand the Proclamation to be the final product resulting from the formal government-to-government meetings. We also believe that the Proclamation is plain on its face and unambiguous. We worry that unnecessary interpretation might simply cause confusion. If a disagreement develops as to the scope of the retrocession, we are confident that courts will provide a definitive interpretation of the plain language of the Proclamation. In sum, it is the content of the Proclamation that we hereby accept in approving retrocession.

The Nation has long awaited retrocession and will soon take the next step towards greater control over its tribal justice system. While tribal self-governance has long been the Federal Government's guiding principle for Federal Indian policy, it has been slow in coming in the area of criminal justice. Tribal self-governance is more important in this area of public policy and government service than perhaps any other. It would be difficult for this office to reject an agreement reached between the State of Washington and the Yakama Nation, especially one that seeks to facilitate greater tribal self-governance over a matter as important as law enforcement and public safety. We believe that this step will advance tribal self-governance and tribal sovereignty for the Nation. More importantly, we believe that it will produce improved public safety for the Nation and its people.

---

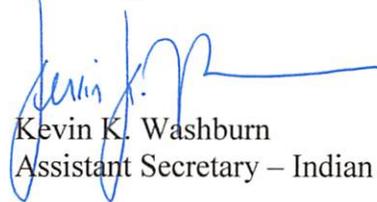
<sup>3</sup> RCW 37.12.160.

<sup>4</sup> See RCW 37.12.160(3).

<sup>5</sup> See RCW 37.12.160(4).

If you have questions, please contact Mr. Darren Cruzan, Director, Bureau of Indian Affairs, Office of Justice Services, 1849 C Street, NW, Mailstop 2615, Washington, DC 20240, or by telephone (202) 208-5787.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kevin K. Washburn", with a long horizontal flourish extending to the right.

Kevin K. Washburn  
Assistant Secretary – Indian Affairs

cc: Governor, State of Washington  
Director, Office of Tribal Justice, U.S. Department of Justice  
United States Attorney, Eastern District of Washington