Indian Affairs - Office of Public Affairs

Media Contact: Nedra Darling, OPA-IA Phone: 202-219-4152
For Immediate Release: October 19, 2015
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WASHINGTON, D.C. – Assistant Secretary – Indian Affairs Kevin K. Washburn today announced that the Department of the Interior has accepted from the State of Washington the partial civil and criminal jurisdiction it held over the Confederated Tribes and Bands of the Yakama Nation. The state has held this authority over the Yakama Nation, a federally recognized tribe located in the southwestern portion of Washington, for more than half a century.

"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," Washburn said in a letter conveying the decision to the Yakama Nation. "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."

The Yakama Nation resides on a reservation comprised of over 1.1 million acres, which was established in 1855 by a treaty signed by Washington Territory Governor Isaac Stevens and tribal representatives. The Yakama Reservation is located on the east side of the Cascade Mountains in Yakima and Klickitat counties.

In 2012, the Washington State legislature enacted legislation providing a path for the state and tribal nations to follow in addressing retrocession. In July 2012, the Yakama Nation filed a petition for retrocession with the governor that was followed by government-to-government consultations with the state. In 2013, the Nation entered into a memorandum of understanding with Yakima County regarding the procedures to serve state court arrest warrants on tribal members on trust land within the reservation.

After following the procedures set forth in the state's bill, which included a six-month extension by the state, the governor in January 2014 submitted his proclamation on retrocession to the Secretary of the Interior for approval. Since that time, the Bureau of Indian Affairs' Office of Justice Services (OJS) has been 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 its law enforcement services, nearly doubling the size of its police department by funding 10 new officer positions.

In September 2014, OJS finalized an assessment of the police department which found that it would be prepared to handle increased responsibilities as a result of retrocession.

In addition, OJS began an assessment of the Yakama Nation Tribal Court in December 2014, which provided recommendations for improving tribal court operational activities and assisted in developing a strategic three- to five-year plan for it. In May 2015, OJS issued the assessment and strategic plan, which included findings and recommendations, resulting in one-time federal funding to improve the court that will help the Nation further the pursuit of justice and ensure that the rights of individuals are protected.

Washington is one of 16 states authorized by Congress under Public Law 280 (67 Stat. 588), enacted in 1953 during the period in federal Indian policy known as the Termination Era, to assume criminal jurisdiction over American Indians on federal Indian reservations and to allow civil litigation that had come under tribal or federal court jurisdiction to be handled by state courts.

Among other purposes, Public Law 280 altered criminal jurisdiction on federal Indian lands by transferring it from the federal government to certain states. The law has been widely criticized by tribes and states as creating more harm than good, such as gaps in jurisdiction. Today's decision attempts to remedy some of the jurisdictional problems Public Law 280 created on the Yakama Reservation.

The states required by Public Law 280 to assume civil and criminal jurisdiction over federal Indian lands were Alaska (except the Metlakatla Indian Community of the Annette Island Reserve, which maintains criminal jurisdiction), California, Minnesota (except the Red Lake Reservation), Nebraska, Oregon (except the Warm Springs Reservation), and Wisconsin. In addition, the federal government gave up all special criminal jurisdiction in these states over Indian offenders and victims. The states that elected to assume full or partial jurisdiction include Arizona (1967), Florida (1961), Idaho (1963, subject to tribal consent), Iowa (1967), Montana (1963), Nevada (1955), North Dakota (1963, subject to tribal consent), South Dakota (1957- 1961), Utah (1971) and Washington (1957-1963).

In 1968, a legislative shift occurred when Congress authorized certain of these states to retrocede their civil and criminal jurisdiction back to the United States via the Secretary of the Interior.

The Secretary is authorized to accept retroceded authority from a state after consultation with the U.S. Attorney General, and the federal government has done so for 31 tribes since 1968. The most recent retrocession prior to today's announcement occurred when the State of Nebraska retroceded its civil and criminal authority over the Santee Sioux Nation in 2006.

While there are misconceptions about what "retrocession" actually entails, it does not change the boundaries of a tribe's reservation nor expand or contract a tribe's formal legal authority or jurisdiction. The tribe's jurisdiction will simply no longer be concurrent with the state's; instead, tribal jurisdiction will be exclusive for certain purposes. Retrocession is accepted by the Secretary of the Interior in accordance with terms set forth in a proclamation by the governor of the state retroceding its jurisdiction.

As required by Executive Order, the Interior Department consulted on the retrocession request with the U.S. Department of Justice, which recommended a six-month waiting period between the date of acceptance and the actual transfer of jurisdiction in order to allow for an orderly transfer of authority from the State of Washington to the federal government and to ensure no jurisdictional gaps develop as a result. Accordingly, Interior's decision is that retrocession will be fully implemented as of 12:01 a.m. PST on April 19, 2016.

The Assistant Secretary – Indian Affairs oversees the BIA, which is headed by a director who is responsible for managing day-to-day operations through four offices – Indian Services, Justice Services, Trust Services, and Field Operations. These offices directly administer or fund tribally based infrastructure, economic development, law enforcement and justice, social services (including child welfare), tribal governance, and trust land and natural and energy resources management programs for the nation's federally recognized American Indian and Alaska Native tribes through 12 regional offices and 81 agencies.

The BIA Office of Justice Services' mission is to enhance public safety and protect property in Indian Country by funding or providing law enforcement, corrections and tribal court services to the nation's federally recognized tribes. It also coordinates emergency preparedness support on federal Indian lands by working cooperatively with other federal, state, local and tribal law enforcement agencies throughout Indian Country. It also operates the Indian Police Academy in Artesia, N.M., which provides training and professional development to BIA and tribal law enforcement personnel. Visit www.indianaffairs.gov/bia/ojs for more information about OJS and its work.