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U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

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DEPUTY

YAKAMA

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NOV 7 1994

U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
YAKAMA

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF WASHINGTON

HARRIS TEO, et al.,

Plaintiffs,

vs.

MERLE STEFFENSON, et al.,

Defendants.

NO. CY-93-3050-AAM

CONSENT DECREE

The parties consent to entry of this Consent Decree in full settlement of all issues arising in the case, as follows:

I. RECITALS

1.1 The parties have conferred and engaged in mediated negotiations pursuant to the Court's Order Setting Settlement Conference dated September 8, 1993. This Consent Decree is the result of each party's good faith effort to resolve this case.

1.2 Each government party to this Consent Decree respects the sovereignty of the other and desires to work within the framework of a government-to-government relationship.

1.3 The parties acknowledge that both the State of Washington, here represented by the defendants, and the Yakama Indian Nation now impose certain taxes respecting fuel used in

1 motor vehicles, and that each government expends the revenue from
2 such taxes for governmental services. The State expends all such
3 revenues it receives for highway purposes. The Tribe expends
4 revenues from its fuel taxes for essential governmental purposes,
5 including highway purposes.

6 1.4 The parties mutually acknowledge the need to maintain
7 the integrity and quality of public roads on the Reservation.

8 **II. PURPOSE OF THIS CONSENT DECREE**

9 2.1 The parties agree that this Consent Decree constitutes
10 a fair resolution and compromise of this matter and its underlying
11 competing contentions. The parties intend that this Consent
12 Decree completely resolve, as among them, all issues raised in
13 this case, or that could properly have been raised in this case,
14 and that this Consent Decree be binding upon the parties and upon
15 persons subject to regulation by the parties.

16 2.2 Though intended to resolve all issues in this case, this
17 Consent Decree primarily addresses the establishment of a
18 cooperative framework for the taxation and regulation, by both the
19 Yakama Indian Nation and by the State of Washington, respecting
20 the distribution, sale, transfer, use or possession of "motor
21 vehicle fuel" and "special fuel" as defined by chapters 82.36 RCW
22 and 82.38 RCW, respectively, when such fuel is distributed, sold,
23 used, or possessed on the Yakama Indian Reservation.

24 2.3 In general, the parties intend that the State of
25 Washington's statutory and regulatory law for taxation with
26 respect to such fuel remain in full force and effect under this

1 Consent Decree except with respect to fuel distributed or sold to
2 the Yakama Indian Nation that is:

3 a. Used by the Tribe for its essential governmental
4 functions; or

5 b. Distributed or sold by the Tribe to Tribally-licensed
6 Yakama businesses that operate filling stations on the
7 Yakama Reservation, to the extent such fuel is
8 (i) resold by those businesses through their filling
9 station pumps to Tribal members or Yakama businesses,
10 and (ii) used exclusively by those Tribal members or
11 Yakama businesses and transferred to no other person or
12 entity; or

13 c. Distributed or sold by the Tribe to Tribal members or
14 Yakama businesses Tribally-licensed to purchase bulk
15 fuel, and used exclusively by those Tribal members or
16 Yakama businesses and transferred to no other person or
17 entity.

18 **III. DEFINITIONS**

19 3.1 "Bulk fuel" means motor vehicle fuel or special fuel
20 that is deposited in quantities exceeding 100 gallons into a
21 storage tank on the Reservation, where the storage tank is not
22 permanently located on the premises of a Tribally-licensed filling
23 station on the Reservation, and where the storage tank is not the
24 fuel tank of a motor vehicle used for its propulsion.

25 3.2 "Department" means the Washington State Department of
26 Licensing, or any successor agency, and its officials, employees,

1 and agents acting in their official capacity.

2 3.3 "Essential governmental function" has the meaning given
3 in 26 C.F.R. § 305.7871-1(d) (1993).

4 3.4 "Filling station" means a place of business operated for
5 the purpose of delivering to the general public motor vehicle fuel
6 or special fuel into the fuel tanks of motor vehicles.

7 3.5 "Motor vehicle" means every self-propelled vehicle
8 designed for operation upon land utilizing motor vehicle fuel or
9 special fuel as the means of propulsion.

10 3.6 "Motor vehicle fuel" means that fuel included within the
11 definition of motor vehicle fuel in chapter 82.36 RCW, as it now
12 exists or as it may hereafter be amended.

13 3.7 "Reservation" means the Yakama Indian Reservation and
14 currently existing tribal trust lands located outside the
15 boundaries of the Yakama Indian Reservation over which the Tribe
16 exercises governmental powers.

17 3.8 "Special fuel" means fuel included within the definition
18 of special fuel in chapter 82.38 RCW, as it now exists or as it
19 may hereafter be amended.

20 3.9 "State" means the State of Washington.

21 3.10 "Tribe" means the Yakama Indian Nation including its
22 tribal government and is used herein interchangeably with the term
23 "Yakama Indian Nation."

24 3.11 "Tribal member" means a person who is an enrolled member
25 of the Yakama Indian Nation whose primary place of residence is on
26 the Reservation.

1 3.12 "Yakama business" means a business that is
2 (1) incorporated under the laws of the Yakama Indian Nation or
3 possesses a Tribal Business License, (2) conducted in conformity
4 with the Tribe's T.E.R.O. ordinance, and (3) wholly-owned by an
5 enrolled member or members of the Yakama Indian Nation. For
6 purposes of this Consent Decree, a person or entity shall not be
7 deemed to be an owner of a Yakama business if that person or
8 entity, together with any officer, director, owner, employee,
9 agent or other representative of such entity meets all of the
10 following criteria:

- 11 a. is only furnishing financing to the Yakama business, not
12 exceeding 49 percent interest in the Yakama business;
13 b. takes no part in the management or operation of the
14 Yakama business;
15 c. does not share in the operating profits or losses of the
16 Yakama business; and
17 d. does not share in the increase or decrease in the value
18 of the Yakama business.

19 IV. ORDER

20 The Court, having reviewed the parties' agreement and the
21 record in this case, now HEREBY ORDERS:

22 Proceedings in this Litigation

23 4.1. Plaintiffs shall voluntarily dismiss their Complaint in
24 this action, with prejudice, contemporaneously with entry of this
25 Consent Decree. The Court shall, however, retain jurisdiction
26 over this case for a period of one year for the limited purpose of

1 ensuring compliance with this Consent Decree.

2 4.2. Subject to ¶¶ 4.6 and 4.7, either the Yakama Indian
3 Nation or the State of Washington may initiate an action in this
4 Court at any time for the limited purpose of requesting the Court
5 to enforce the terms of this Consent Decree. If the action is
6 initiated within one year from the date of entry of this Consent
7 Decree, either party may file a petition seeking enforcement of
8 the terms of this Consent Decree under the cause number assigned
9 to this case without paying an additional filing fee. Any action
10 brought under this Consent Decree after that one-year period
11 expires must be filed as a new and separate action requesting the
12 Court to enforce the Consent Decree. The parties consent to such
13 an action being brought for the limited purpose of enforcing this
14 Consent Decree, including an action to recover monies alleged to
15 be owed either party under ¶ 4.11.

16 Government-To-Government Cooperation

17 4.3. The State of Washington and the Yakama Indian Nation
18 shall cooperate to the extent legally permitted to ensure the
19 enforcement of:

- 20 a. The Tribe's laws with respect to the taxation and
21 regulation of Tribal members and Yakama businesses who
22 sell or deliver motor vehicle or special fuel on the
23 Reservation to other Tribal members or Yakama
24 businesses; and
25 b. The State's laws and rules respecting the imposition and
26 collection of its fuel taxes from all persons except as

1 provided under this Consent Decree; and

2 c. The terms of this Consent Decree.

3 4.4. The Yakama Indian Nation shall continuously inform the
4 Department : (1) which contractors with the Tribe, and/or which
5 tribal employees or agents, are authorized to transport motor
6 vehicle fuel or special fuel to the Yakama Indian Nation for sale
7 to the Tribe for (a) use in tribal governmental vehicles for
8 essential governmental functions or for (b) distribution by the
9 Tribe as contemplated by this Consent Decree for use by Tribal
10 members and Yakama businesses; and (2) which Tribal members and
11 Yakama businesses are Tribally-licensed to purchase bulk fuel.
12 The Tribe and the Department shall inform one another of any other
13 persons or entities they know to be engaged in the transport of
14 untaxed motor vehicle fuel or special fuel to the Reservation.

15 4.5. The Yakama Indian Nation shall have the initial
16 responsibility to enforce the terms of this Consent Decree as to
17 Tribal members and Yakama businesses through its Tribal laws.
18 With respect to such members and businesses, the Tribe shall have
19 a reasonable time, not to exceed 60 days from the date the Tribe
20 is aware of a violation, to have the first opportunity to commence
21 action to comply with this Consent Decree before the State takes
22 action under its own laws unless the State reasonably believes the
23 delay may result in a loss of taxes due the State.

24 Dispute Resolution

25 4.6. Neither the Yakama Indian Nation, nor the State of
26 Washington, nor officers acting on either government's behalf, may

1 petition the Court to enforce this Consent Decree unless (a) the
2 dispute resolution process described in § 4.7 has been followed in
3 good faith to completion without successful resolution, or unless
4 (b) the other party fails to enter into the dispute resolution
5 process or terminates the process before its completion.

6 4.7. Should a dispute arise between the Yakama Indian Nation
7 and the State of Washington upon an issue of compliance with the
8 Consent Decree by either government, or by their officers,
9 employees or agents, the Tribe and State shall attempt to resolve
10 the dispute through the following dispute resolution process:

11 a. Either party may invoke the dispute resolution process
12 by notifying the other, in writing, of its intent to do
13 so. The notice shall set out the issue(s) in dispute
14 and the position of the party giving notice as to each
15 such issue.

16 b. The first stage of the process shall include a face-to-
17 face meeting between representatives of the two
18 governments to attempt to resolve the dispute by
19 negotiation. The meeting shall be convened within
20 thirty (30) days of the date of the written notice
21 described in § 4.7.a. The representatives of each
22 government shall come to the meeting with the authority
23 to settle the dispute.

24 c. If the parties are unable to resolve the dispute within
25 sixty (60) days of the date of the written notice
26 described in § 4.7.a., the parties shall engage the

1 services of a mutually-agreed-upon qualified mediator to
2 assist them in attempting to negotiate the dispute. If
3 the parties cannot agree who the mediator should be, the
4 mediator shall be a person or persons selected by the
5 Court pursuant to Local Rule 39.1(d)(1). Cost for the
6 mediator shall be borne equally between the two
7 governments.

8 d. Both parties shall pursue the mediation process in good
9 faith until the dispute is resolved or until the
10 mediator determines that the parties are not able to
11 resolve the dispute. If the parties cannot agree on a
12 format for the mediation process, the format shall be
13 that directed by the mediator. If the dispute is
14 resolved, that resolution shall be memorialized by the
15 mediator and shall bind the parties.

16 e. Except as provided in ¶ 4.15.3, if either party
17 terminates the process before completion, or if the
18 mediator determines that the dispute can not be resolved
19 in the mediation process, or if the dispute is not
20 resolved within thirty (30) days of the date the
21 mediator is selected, the other party may petition the
22 Court for enforcement of the Consent Decree as to the
23 disputed and unresolved issue or issues.

24 Framework For Taxation and Regulation

25 4.8. The Yakama Indian Nation, a federally-recognized Indian
26 tribe providing essential governmental services on the Yakama

1 Indian Reservation, shall act as the sole distributor of motor
2 vehicle fuel and special fuel to Yakama businesses that operate
3 filling stations on the Reservation. The Yakama Indian Nation
4 shall not sell, distribute, or otherwise transfer motor vehicle or
5 special fuel to any person or entity except to (a) Yakama
6 businesses operating filling stations on the Reservation under
7 license by the Tribe, for resale through the filling stations'
8 pumps, or to (b) Tribal members or Yakama businesses Tribally-
9 licensed to purchase bulk fuel. The Tribe shall purchase fuel for
10 distribution, sale, or transfer only from businesses that are
11 properly licensed in accordance with Chapter 82.36 RCW and Chapter
12 82.38 RCW, whether the business is located within or without the
13 State of Washington.

14 4.9. When a motor vehicle fuel distributor, special fuel
15 supplier or dealer, or refiner of such fuels sells or distributes
16 fuel to the Yakama Indian Nation, the State of Washington shall
17 refrain from collecting its motor vehicle fuel or special fuel
18 taxes as to seventy (70) percent of the gallons of gasoline and
19 one hundred (100) percent of the gallons of special fuel involved
20 in each such transaction, so long as the Tribe causes all of the
21 fuel to be delivered into the Tribe's bulk fuel storage facilities
22 on the Reservation, to tribally-licensed Yakama businesses
23 operating filling stations on the Reservation, or to the bulk fuel
24 tank of a Tribal member or Yakama business Tribally-licensed to
25 purchase bulk fuel. This percentage is the parties' best current
26 estimate, based upon current experience, of the percentage of such

1 fuel sold to the Yakama Indian Nation that will be (a) used
2 directly by the Tribe for its essential governmental functions,
3 (b) distributed by the Tribe to Yakama businesses operating
4 Tribally-licensed filling stations on the Reservation, to be
5 resold at the pump to Tribal members or Yakama businesses, and
6 used exclusively by those Tribal members or Yakama businesses and
7 transferred to no other person or entity, or (c) distributed by
8 the Tribe to Tribal members or Yakama businesses Tribally-licensed
9 to purchase bulk fuel, and used exclusively by those Tribal
10 members or Yakama businesses and transferred to no other person or
11 entity. All gallons of fuel sold or distributed to the Tribe and
12 not used in the manner described in this ¶ 4.9 shall be considered
13 subject to the State's taxes under this Consent Decree.

14 4.10. The State shall continue to collect its motor vehicle
15 fuel and special fuel taxes from the seller or distributor of fuel
16 to the Yakama Indian Nation with respect to thirty (30) percent of
17 the gallons of gasoline and zero (0) percent of the gallons of
18 special fuel sold or distributed in any such transaction. This
19 percentage is the parties' best current estimate of the percentage
20 of such fuel sold or distributed to the Yakama Indian Nation that
21 will not be used as contemplated in ¶ 4.9. All gallons of fuel
22 sold or distributed to the Tribe and not used in the manner
23 described in ¶ 4.9 shall be considered subject to the State's
24 taxes under this Consent Decree.

25 4.11. The parties recognize that the percentage estimates
26 set out in ¶¶ 4.9 and 4.10 above may not reflect the actual

1 gallons of fuel sold or distributed to the Yakama Indian Nation
2 and ultimately used in the manner contemplated in ¶ 4.9 during
3 particular time periods. Not later than March 31 of each year,
4 the parties shall determine the actual number of gallons of fuel
5 falling into the categories described in ¶ 4.9 during the prior
6 calendar year, based upon the records of the Tribe, the State,
7 refiners or other distributors to the Tribe, Tribally-licensed
8 filling stations on the Reservation to which the Tribe has sold or
9 otherwise distributed fuel, Tribally-licensed bulk fuel
10 purchasers, and any other records the parties may agree to
11 consider. The Tribe shall furnish all relevant Tribal and Yakama
12 business records to the State for this purpose. If, in the prior
13 calendar year, the total actual number of gallons of such fuel
14 sold or distributed to the Tribe and used in the manner described
15 in ¶ 4.9 exceeds the number of gallons sold or distributed to the
16 Tribe upon which the State's fuel tax has not been paid, the State
17 shall, by April 30, pay to the Tribe an amount of money equal to:

18 the excess number of gallons

19 multiplied by

20 the State's tax rate applicable to those gallons.

21 If the number of gallons used in the manner described in ¶ 4.9 is
22 less than the number of gallons sold or distributed to the Tribe
23 upon which the State's fuel tax has not been paid, the Tribe

1 | shall, by April 30, pay to the State an amount of money equal to:
2 | all gallons not used as in ¶ 4.9 upon which the State's motor
3 | vehicle fuel or special fuel tax, as applicable, has not been
4 | collected previously,

5 | multiplied by
6 | the State's tax rate applied to those gallons.

7 | 4.12. The Tribe, Tribal members, and Yakama businesses shall
8 | be ineligible to claim fuel tax refunds from the State under
9 | chapter 82.36 RCW or chapter 82.38 RCW with respect to fuel they
10 | obtain under this Consent Decree upon which the State's fuel taxes
11 | have not been paid. The State and the Tribe shall develop
12 | procedures to ensure implementation of this section.

13 | 4.13. At any time, the Tribe and the State may, by written
14 | agreement, modify the percentages set out in ¶¶ 4.9 and 4.10 to
15 | reflect more closely the parties' actual experience.

16 | 4.14. Except as specifically set out in this order,
17 | including ¶¶ 4.9 and 4.11 thereof, the State of Washington may
18 | impose and collect, according to state law and regulation now
19 | existing or as may hereinafter be enacted or amended, the State's
20 | motor vehicle fuel and special fuel taxes with respect to such
21 | fuel sold or distributed to, or used or possessed by, any person
22 | or entity on the Reservation. The State of Washington may impose
23 | and collect, according to state law and regulation now existing or
24 | as may hereinafter be enacted or amended, the State's motor
25 | vehicle fuel and special fuel taxes with respect to such fuel sold
26 | or distributed to, or used or possessed by, any person or entity

1 outside the Reservation, including fuel sold through filling
2 stations located on any lands that the United States may take into
3 trust for the Tribe after the date of this Consent Decree.

4 4.15. For purposes of this Consent Decree, the parties have
5 agreed upon specific procedures, designated herein as "financial
6 examination" procedures, for auditing and examining the records of
7 the Tribe, Yakama businesses operating filling stations on the
8 Reservation, and holders of Tribal licenses to purchase bulk fuel,
9 regarding the purchase, sale, distribution, transfer, possession
10 use, or taxation of motor vehicle fuel or special fuel
11 (hereinafter "fuel records"). The financial examination procedure
12 shall consist of three (3) parts:

13 1. Examination by a certified public accounting firm

14 The Tribe shall select a certified public accounting
15 (CPA) firm acceptable to the State. The State's acceptance shall
16 not be unreasonably withheld. The selected CPA firm shall examine
17 all of the original and other fuel records of the Tribe, and of
18 each Yakama business operating a filling station on the
19 Reservation, related to activities during the preceding calendar
20 year. This examination shall be done not less than annually and
21 as soon as possible after December 31. It shall include all of
22 the elements and information, and shall result in the report, as
23 set forth in Exhibit A to this Consent Decree, which is attached
24 hereto and incorporated herein by this reference. A duplicate
25 original of the report shall be furnished to both the Tribe and
26 the Department. The cost for this annual financial examination

1 and report shall be divided equally between the Tribe and the
2 Department and shall be based upon a contract between the selected
3 CPA firm and both the Tribe and the Department. The selected CPA
4 firm shall be licensed to perform certified public accounting
5 services in the State of Washington and shall have an office
6 within the State where the firm's records relating to this
7 examination shall be kept. The CPA firm shall be required to
8 maintain its records relating to any examination for a period of
9 at least three (3) years following completion of the examination
10 and if a dispute or litigation arises to which the records relate,
11 until that dispute or litigation is finally resolved.

12 **2. Record Review**

13 The Tribe shall require under Tribal law that the fuel
14 records of all Yakama businesses operating filling stations on the
15 Reservation and of all holders of Tribal bulk fuel licenses shall
16 be made available to the Tribe at any reasonable time for
17 inspection and review by the Tribe. Such fuel records, and the
18 Tribe's fuel records, shall be made available by the Tribe at any
19 reasonable time, pursuant to this Consent Decree, for inspection
20 and review by the Department, as follows:

21 The Department is required to provide to the Tribe any
22 request for inspection and review of fuel records of (a) the
23 Tribe, (b) any Yakama business operating a filling station on the
24 Reservation, or (c) any Tribally-licensed bulk fuel purchaser.
25 The Tribe shall make the fuel records available within thirty (30)
26 days at the Tribe's government offices on the Reservation. The

1 Department shall inspect and/or review the fuel records in the
2 presence of an employee or agent of the Tribe. At the
3 Department's request, the Tribe shall furnish copies of fuel
4 records to the Department at the Tribe's actual cost for producing
5 such copies.

6 **3. Review at filling station or bulk fuel user facility**

7 If, after an inspection or review of fuel records as set
8 out in part 2, the Department has a question about the records and
9 believes an inspection or review at the site of a Yakama business
10 or the fuel storage facility of a Tribally-licensed bulk fuel
11 purchaser may reasonably facilitate resolution of the question, the
12 Department shall request the Tribe to arrange for such review or
13 inspection at that site. The Tribe's consent shall not be
14 unreasonably withheld. If the Tribe agrees, the Tribe shall
15 arrange a site visit promptly.

16 If the Tribe does not agree, the matter shall be
17 referred to the dispute resolution process set out in ¶ 4.7. If
18 the parties cannot resolve the dispute among themselves in the
19 dispute resolution process, the mediator shall have the authority
20 to resolve the dispute. If the mediator determines that a review
21 of the fuel records, or related discussions with the operator(s)
22 at the site, may reasonably aid the Department in resolving its
23 questions or issues the mediator may determine that the visit
24 shall take place. The mediator's decision shall be binding upon
25 the parties.

Tribal Law

1
2 4.16. The Yakama Indian Nation shall establish and implement
3 a procedure for licensure by the Tribe of Yakama businesses that
4 operate filling stations on the Reservation or that purchase bulk
5 fuel from the Tribe or from such filling stations. The Tribe
6 shall require, at minimum:

7 a. That Tribal licensure, and compliance with the Tribe's
8 laws in connection therewith, including but not limited
9 to Resolution T-144-88, as now existing or hereafter
10 amended, shall be made conditions for the operation of
11 a filling station by a Yakama business on the
12 Reservation;

13 b. That a Yakama business operating a filling station on
14 the Reservation shall conduct its business consistent
15 with all terms of this Consent Decree, and that failure
16 to do so shall result in license revocation by the
17 Tribe;

18 c. That Tribal licensure, and compliance with the Tribe's
19 laws in connection therewith, shall be made conditions
20 for the purchase of bulk fuel from the Tribe or from a
21 filling station operated by a Yakama business on the
22 Reservation;

23 d. That any person or entity who obtains bulk fuel from the
24 Tribe or from a filling station operated by a Yakama
25 business on the Reservation shall conform in all
26 respects to the terms of this Consent Decree, and that

1 failure to do so shall result in license revocation by
2 the Tribe;

3 e. That no Tribal member or Yakama business that purchases
4 fuel under a Tribal bulk fuel license shall resell or
5 transfer the fuel to any other person or entity;

6 f. That the Tribe will be the sole distributor of motor
7 vehicle fuel and special fuel to Yakama businesses for
8 resale or delivery to others, that no Tribal member or
9 Yakama business shall obtain such fuels for this purpose
10 from any other source, and that a Tribal member or
11 Yakama business who fails to comply with this provision
12 shall be subject to criminal and civil penalties;

13 g. That Yakama businesses that operate filling stations on
14 the Reservation shall collect at the pump and pay to the
15 Tribe, in addition to the price for the fuel, an amount
16 equal to the State's motor vehicle fuel tax or special
17 fuel tax, as applicable, upon each gallon of such fuel
18 sold or delivered by those filling stations to any
19 person or entity except upon gallons sold to the Tribe,
20 to Tribal members, or to Yakama businesses and delivered
21 for their exclusive use;

22 h. That Yakama businesses operating such filling stations
23 shall require all Tribal members and Yakama businesses
24 who purchase fuel to display a tribal enrollment card,
25 the tribal bulk fuel license described in ¶ 4.16.c., or
26 other document identifying the purchaser as a Tribal

1 member, a Yakama business, or a person authorized to
2 purchase bulk fuel;

3 i. That no Tribal member or Yakama business that purchases
4 fuels from such filling stations shall resell or
5 transfer the fuel to any other person or entity;

6 j. That Yakama businesses operating such filling stations
7 shall maintain records as described in ¶ 4.17.b and
8 ¶ 4.17.d.

9 4.17. The Tribe agrees to and shall maintain fuel records as
10 set forth in this section. As described in ¶ 4.16, each Tribally-
11 licensed filling station shall be required to maintain records as
12 set forth in this section.

13 a. The Tribe shall maintain invoices or similar records
14 indicating:

15 (1) The date the Tribe receives or acquires motor
16 vehicle fuel and special fuel, by load;

17 (2) The name and address of the person or entity from
18 whom the Tribe purchases or acquires motor vehicle fuel
19 or special fuel, by load;

20 (3) The name of the carrier that transports the motor
21 vehicle fuel or special fuel to the Reservation for the
22 Tribe, by load;

23 (4) The price the Tribe pays for the motor vehicle or
24 special fuel, by load;

25 (5) The amount of the State's motor vehicle fuel tax or
26 special fuel tax paid, by load;

1 (6) The number of gallons of motor vehicle fuel and
2 special fuel the Tribe receives at any place of storage
3 under its control, by load;

4 (7) The actual physical inventories of special fuel and
5 motor vehicle fuel on hand at any place of storage under
6 the Tribe's control at the end of each month;

7 (8) The number of gallons of special fuel and motor
8 vehicle fuel that the Tribe uses directly each month,
9 identified by program; and

10 (9) The number of gallons of special fuel and motor
11 vehicle fuel that the Tribe distributes, sells,
12 delivers, or transfers each month to:

13 (i) each Tribally-licensed filling station on the
14 Reservation, identified by name and license number, and

15 (ii) each Tribally-licensed bulk fuel purchaser,
16 identified by name and license number.

17 b. Each Tribally-licensed filling station shall maintain
18 transaction records indicating:

19 (1) The date the filling station receives or acquires
20 each load of motor vehicle fuel and special fuel;

21 (2) The number of gallons of motor vehicle fuel and
22 special fuel the filling station receives, by load;

23 (3) The actual physical inventories of special fuel and
24 motor vehicle fuel on hand at the filling station at the
25 end of each month;

26 (4) The number of gallons of special fuel and motor

1 vehicle fuel that the filling station distributes each
2 month, sells, or transfers to:

3 (i) Tribal members, identified by name and Tribal
4 enrollment number,

5 (ii) each Tribally-licensed bulk fuel purchaser,
6 identified by name and license number,

7 (iii) Tribal governmental vehicles; and

8 (iv) Any other person or entity.

9 c. The Tribe, each Tribally-licensed filling station, and
10 each Tribally-licensed bulk fuel purchaser shall
11 maintain the records described in this paragraph for at
12 least three (3) years from the date of transaction to
13 which the record relates, and if a dispute or litigation
14 arises to which the records relate, until that dispute
15 or litigation is finally resolved.

16 4.18. The Yakama Indian Nation shall continue to budget and
17 expend in each of its fiscal years (October 1 to September 30),
18 for traffic law enforcement on highways, streets or roads on the
19 Reservation open to the general public, or for the design,
20 construction and maintenance of such highways, streets or roads,
21 at least an amount equal to the number of gallons of fuel sold or
22 distributed to the Tribe upon which the State's motor vehicle fuel
23 or special fuel tax has not been paid in the preceding year under
24 this Consent Decree, multiplied by the state's tax rate applicable
25 to such gallons at the time of such distribution or sale. In the
26 first year that this Consent Decree is in effect, the amount shall

1 be based on the estimated percentages set out in ¶¶ 4.9 and 4.10.
2 For all other years, the amount shall be based upon the actual
3 gallons of fuel sold or distributed to the Tribe in the preceding
4 year and upon which the State's fuel taxes were not paid.

5 Implementation

6 4.19. The State and the Tribe, not less than one year after
7 entry of this Consent Decree, shall confer, on a government-to-
8 government basis, to evaluate the effectiveness of the Consent
9 Decree and to attempt to mutually agree upon solutions to any
10 problems that may have arisen.

11 4.20. Each party shall bear its respective costs and
12 attorneys fees incurred in this case.

13 4.21. Upon entry of this Consent Decree, plaintiffs'
14 Injunction Bond, executed in connection with this litigation,
15 shall be exonerated.

16 4.22. Plaintiffs Harris Teo, Jr., Cougar Den, and all other
17 similarly-situated Tribal members and Indian-owned businesses
18 shall comply with the terms of this Consent Decree and with the
19 Tribal laws implementing ¶ 4.16.


20 4.23. Should any third party, in an action brought against
21 the State or against any of its agencies, officials, employees, or
22 agents, allege that the Tribe lacks authority to enter into this
23 Consent Decree or to adopt or enforce the laws described in
24 ¶ 4.16, the Tribe shall appear in the action and defend its
25 authority.

26 4.24. This order, and any order which may incorporate its

1 terms, in whole or in part, shall not be construed as an admission
2 or agreement by any party, whether plaintiff or defendant, as to
3 the validity or legitimacy of any or all of any party's factual or
4 legal contentions made in this case, including but not limited to
5 any party's contentions regarding Yakama Treaty rights. This
6 Consent Decree and order addresses only the taxation and
7 regulation of motor vehicle fuel and special fuel and shall not be
8 construed as affecting any other area of Tribal or State taxation
9 or regulation.


10 4.25. The Tribe and the State shall implement this Consent
11 Decree beginning January 1, 1995.

12
13 DATED this 2nd day of Nov., 1994.

14
15 
16 ALAN A. MCDONALD
UNITED STATES DISTRICT COURT JUDGE

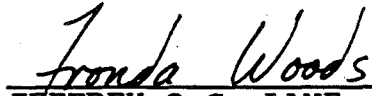
1 Stipulated to and approved for
entry:

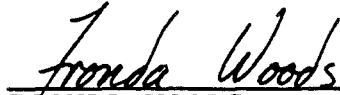
2 YAKAMA INDIAN NATION
3 OFFICE OF LEGAL COUNSEL
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6 JACK W. FIANDER
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