

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

THE CONFEDERATED TRIBES
AND BANDS OF THE YAKAMA
NATION,

Plaintiff,

v.

Klickitat County; Klickitat
County Sheriff's Office, Bob
Songer, in his official capacity, et.
al.

Defendants.

No. 1:17-cv-03192-TOR

DEFENDANT'S MOTION TO
DISMISS FOR FAILURE TO STATE
A CLAIM PURSUANT TO FRCP
12(b)(6) AND FOR FAILURE TO
JOIN INDISPENSABLE PARTIES
PURSUANT TO FRCP 12(b)(7)

MOTION NOTED FOR May 24, 2018

ORAL ARGUMENT NOT
REQUESTED

I. MOTION TO DISMISS

Pursuant to Rule 12(b)(7), the Defendants move for dismissal of this proceeding in its entirety because plaintiff fails to join numerous county and state officials who are necessary and indispensable parties pursuant to Rule 19. Pursuant to Rule 12(b)(6), Klickitat County, Klickitat County Sheriff's Office and Klickitat County Department of the Prosecuting Attorney move for dismissal from the lawsuit for failure to state a claim upon which relief can be granted.

II. INTRODUCTION

Plaintiff Confederated Tribes and Bands of the Yakama Nation (alternatively "Tribe" or "Yakama") filed this suit on November 3, 2017, seeking injunctive relief against five Defendants for alleged violation with treaty rights under the Treaty with the Yakamas, 12 Stat. 951 (1859) ("Treaty"). Plaintiff also seeks declaratory relief that

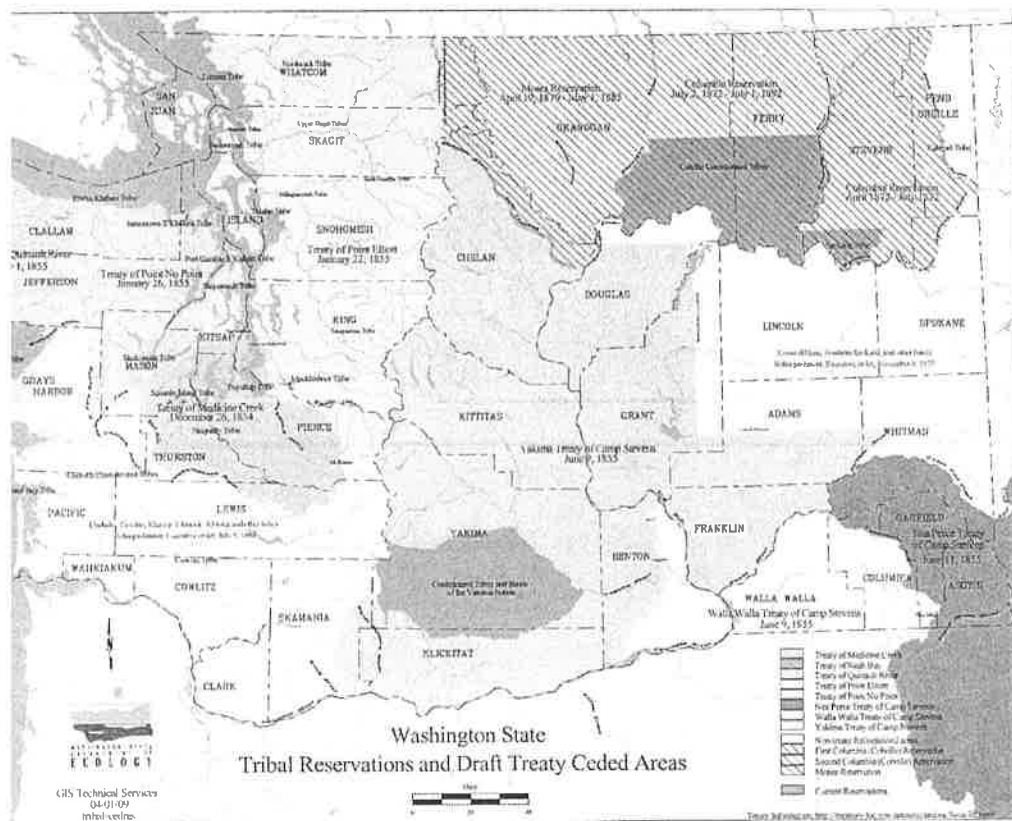
Defendants do not have criminal jurisdiction over enrolled Yakama Members for actions arising within the Yakama Reservation, including but not limited to the jurisdiction to arrest, detain, prosecute, adjudicate, convict, and sentence, such enrolled Yakama Members within the exterior boundaries of the Yakama Reservation, including Tract D.

Yakama Nation's Complaint for Declaratory and Injunctive Relief, at 10, ¶ 7A(1).

The Defendants' answer, as required by Rule 12(b) asserted specific defenses, including failure to state a claim upon which relief can be granted and failure to join a party under Rule 19. *See Answer* at ¶¶ VIII(1)(1) and (2). The Defendant now files this motion to dismiss erroneously named defendants and to ensure that currently unnamed persons are joined so that full relief can be provided to the current parties.

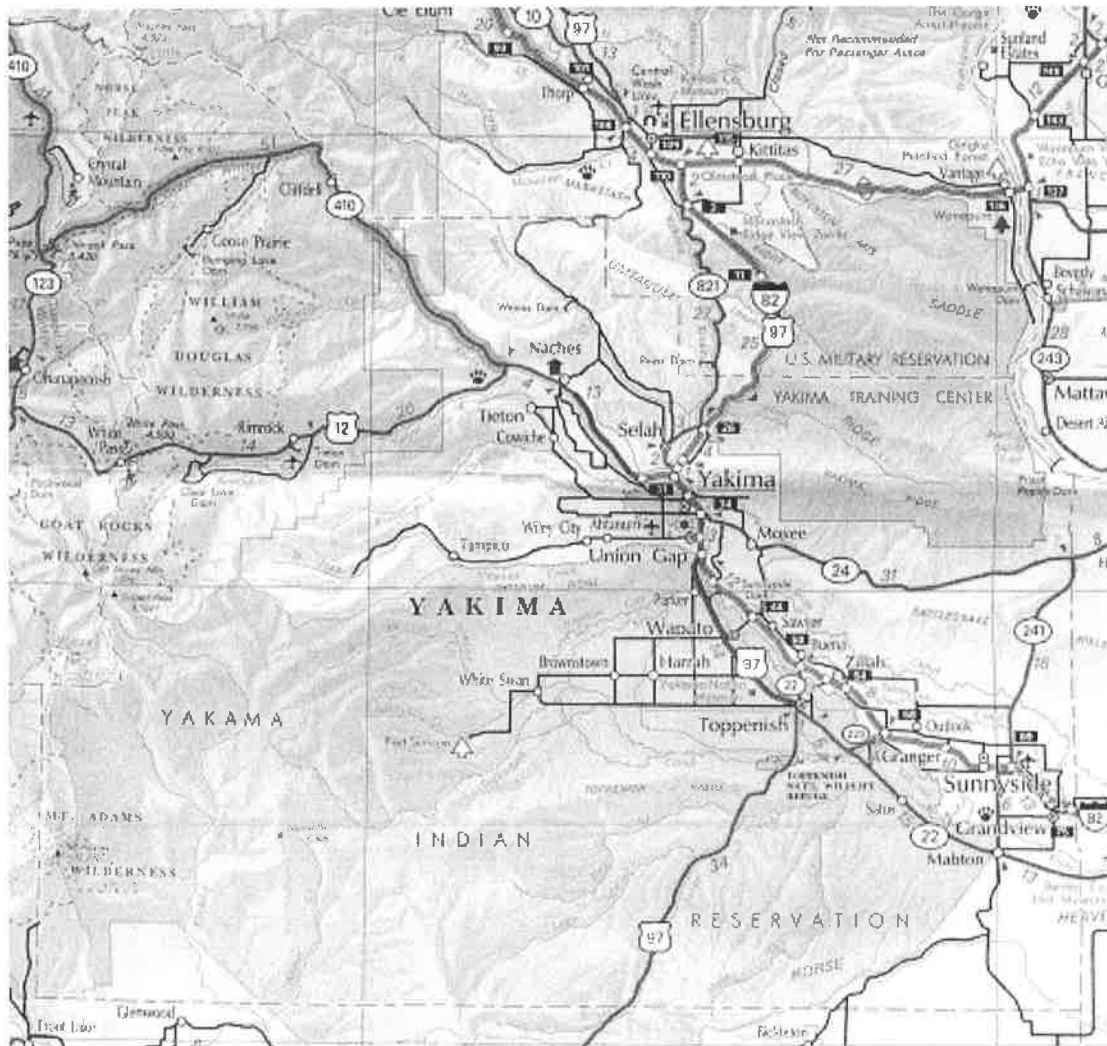
III. FACTS RELEVANT TO MOTION

The Yakama Nation's Reservation, as established by Congress in 33 Stat. 595, as amended by Executive Order 11670, 3 C.F.R. 208 (1971-75 Comp.) (May 20, 1972), lies within both Yakima County and Klickitat County.



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Two cities, Wapato and Toppenish, lie completely within both Yakima County and the Yakama Nation's Reservation, as established by Congress in 33 Stat. 595, as amended by Executive Order 11670, 3 C.F.R. 208 (1971-75 Comp.) (May 20, 1972). A portion of a third city, Union Gap, lies with the Yakama Nation's Reservation as established by Congress in 33 Stat. 595, as amended by Executive Order 11670, 3 C.F.R. 208 (1971-75 Comp.) (May 20, 1972).



Tract D, which lies outside the reservation boundaries established by Congress in 33 Stat. 595, as amended by Executive Order 11670, 3 C.F.R. 208 (1971-75 Comp.) (May 20, 1972), but which the Yakama Nation contends is part of their reservation, lies partially within Klickitat County and partially within Yakima County.



IV. ARGUMENT

A. The Court Should Dismiss All Claims Against Defendants Klickitat County, Klickitat County Sheriff's Office and the Klickitat County Department of the Prosecuting Attorney Pursuant to Rule 12(b)(6) for Failure to State a Claim Upon Which Relief Can Be Granted.

The Yakama Nation requests that this Court issue an injunction against Klickitat County, the Klickitat County Sheriff's Office and the Klickitat County Department of the Prosecuting Attorney. The injunctive relief requested is

Both a preliminary and permanent injunction pursuant to 28 U.S.C. 2202 enjoining Defendants from exercising criminal jurisdiction over enrolled Yakama Members for actions arising within the Yakama Reservation, including but not limited to the jurisdiction to arrest, detain, prosecute, adjudicate, convict, sentence, or incarcerate such enrolled Yakama Members, within the exterior boundaries of the Yakama Reservation.

Yakama Nation's Complaint for Declaratory and Injunctive Relief, at 10, ¶ 7B.

Two of the defendants, the Klickitat County Sheriff's Office¹ and the Klickitat

¹The Klickitat County Sheriff, Bob Songer, has the legal capacity to sue and to be sued. An injunction that curtails the authority of the sheriff will also curtail the authority of the sheriff's deputies. *See* RCW 36.28.020 ("Every deputy sheriff shall possess all the power, and may perform any of the duties, prescribed by law to be

County Department of the Prosecuting Attorney² must be dismissed from the law suit³ because they lack the capacity to be sued apart from Klickitat County.⁴ Klickitat County must be dismissed from the law suit as it has no power to limit or control who is arrested, detained, prosecuted, adjudicated, convicted, sentenced, or incarcerated for a crime committed anywhere within the borders of Klickitat County, including on

performed by the sheriff, and shall serve or execute, according to law, all process, writs, precepts, and orders, issued by lawful authority.”).

²The Klickitat County Prosecuting Attorney, David Quesnel, has the legal capacity to sue and be sued. An injunction that curtails the authority of the prosecuting attorney will also curtail the authority of the prosecuting attorney’s deputies. See RCW 36.27.040 (“The prosecuting attorney may appoint one or more deputies who shall have the same power in all respects as their principal.”).

³See, e.g., *Focaccia & Cucina Italiana, LLC v. 700 Valencia St. LLC*, 2015 U.S. Dist. LEXIS 109076, 2015 WL 4932640, at *5 (N.D. Cal. Aug. 18, 2015) (“a claim made by or against a party that lacks the capacity to sue or be sued should be dismissed under Rule 12(b)(6) for failure to state a claim”).

⁴See *Bradford v. City of Seattle*, 557 F. Supp. 2d 1189 (W.D. Wash. 2008) (citing *Nolan v. Snohomish County*, 59 Wn. App. 876, 883, 802 P.2d 792 (1990), and holding that “the Seattle Police Department is not a legal entity capable of being sued” separately from the city, itself); *Worthington v. WestNET*, 182 Wn.2d 500, 515, 341 P.3d 995 (2015) (Justice Yu, dissenting) (noting that courts in Washington have concluded that “boards of county commissioners, the Snohomish County Council, the Pierce County Prosecuting Attorney’s Office, the Pierce County Department of Assigned Counsel, the Mason County Jail, and the Seattle Public Library, lack the legal capacity to be sued separate and distinct from the county itself); *Tahraoui v. Brown*, COA No. 44829-7-II, 2015 Wash. App. Lexis 265 (Feb. 10, 2015) (unpublished, cited pursuant to Washington General Rule 14.1(a), available at <http://www.courts.wa.gov/opinions/pdf/D2%2044829-7-II%20%20Unpublished%20Opinion.pdf> (last visited Feb. 14, 2018)) (the office of the county sheriff as a legal entity, separate and distinct from the county itself, lacks the capacity to sue and be sued); *Nolan v. Snohomish County*, 59 Wn. App. 876, 802 P.2d 792 (1990) (in a legal action involving a county, the county itself is the only legal entity capable of suing and being sued; the county council is not a legal entity that may be sued separate and apart from the county itself).

1 non-reservation land.

2 Washington state's form of government differs markedly from that established
3 by the United States Constitution for the federal government or the structure
4 established by the Yakama Nation. The Washington Constitution unbundles
5 governmental power at both the state and county level.

6 At the state government level, the Washington Constitution⁵ created three
7 branches of government: the judicial, the legislative, and the executive.⁶ The powers
8 of the executive branch were further subdivided through the direct election of the
9 attorney general, the state treasurer, the state auditor, the secretary of state, the
10 attorney general, the superintendent of public instruction, and the commissioner of
11 public lands,⁷ rather than allowing the governor to appoint these individuals.⁸

12 At the county level, the Washington Constitution divides county government
13 between a number of offices – county commissioners, sheriffs, county clerks,
14 treasurers, prosecuting attorneys and other officers. Each of these officials are
15

16
17 ⁵The Washington State Legislature makes the Washington State Constitution
18 available at this URL: [http://leg.wa.gov/LawsAndAgencyRules/Pages/constitution](http://leg.wa.gov/LawsAndAgencyRules/Pages/constitution.aspx)
19 .aspx (last visited Feb. 7, 2018).

20 ⁶*See, e.g., Freedom Foundation v. Gregoire*, 178 Wn.2d 686, 696, 310 P.3d
21 1252 (2013).

22 ⁷*See* Const. art. III, §§ 17, 19, 20, 21, 22, 23. *See* William P. Marshall, *THE*
23 *MOST DANGEROUS BRANCH? MAYORS, GOVERNORS, PRESIDENTS, AND THE*
24 *RULE OF LAW: A SYMPOSIUM ON EXECUTIVE POWER: ESSAY: Break Up the*
25 *Presidency? Governors, State Attorneys General, and Lessons from the Divided*
26 *Executive*, 115 Yale L.J. 2446, 2551-52 (2006) (discussing the trend among the states
to weaken the power of a central executive and create intrabranh systems of checks
and balances).

27 ⁸The United States Constitution grants the president the power to appoint all
28 other officers of the United States, whose appointments are not otherwise provided
for in the constitution. *See* U.S. Const. Art. II, sec. 2.

1 directly elected by the people .⁹

2 The core duties of each separately elected county official are those assigned to
3 the office at the time the Washington Constitution was adopted.¹⁰ The core duties of
4 one separately elected official may not be transferred to another elected official or to
5 a private person.¹¹

6 A quorum of the county commissioners, referred to as the “Board” or the
7 “Legislative Authority,” is assigned a wide variety of duties.¹² The Board is
8 responsible for setting the budgets for each of the other elected county officials,¹³ for
9 determining the number of deputies and employees the other elected county officials
10 may employ,¹⁴ for filling vacancies in other elected county offices,¹⁵ and is the only
11

12
13 ⁹See Washington Constitution Article XI, Section 5 (“The legislature, by
14 general and uniform laws, shall provide for the election in the several counties of
15 boards of county commissioners, sheriffs, county clerks, treasurers, prosecuting
16 attorneys and other county, township or precinct and district officers . . .”).

17 ¹⁰*State ex rel. Johnston v. Melton*, 192 Wash. 379, 388, 73 P.2d 1334 (1937).

18 ¹¹See, e.g. *State ex rel. Banks v. Drummond*, 187 Wn.2d 157, 181-83, 385 P.3d
19 769 (2016) (county commissioners cannot contract with a private attorney to perform
20 the duties of an able and willing prosecuting attorney); *State ex rel. Johnston v.*
21 *Melton*, *supra* (prosecuting attorney may not appoint someone to perform duties
22 assigned to the sheriff); *Northwestern Improvement Co v McNeil*, 100 Wash. 22, 33,
23 170 Pac.338 (1918) (county commissioners are not allowed to contract with a private
24 individual to perform the functions of the separately elected assessor).

25 ¹²RCW 36.32.010 and 36.32.120. The Revised Code of Washington is
26 available on the Washington State Legislature’s web site at this URL:
27 <http://app.leg.wa.gov/RCW/default.aspx> (last visited Feb. 7, 2018).

28 ¹³RCW 36.40.080.

¹⁴RCW 36.16.070.

¹⁵RCW 36.16.115.

entity that may prosecute and defend all actions for and against the county.¹⁶

As powerful as the Board appears to be, the legislative authority lacks the power to determine how a separately elected official selects his or her employees, what tasks or titles are assigned to the employees of a separately elected official, and the priorities of the separately elected officials.¹⁷ The Board may not remove a separately elected official and may not reduce the core functions of a separately elected official.¹⁸

¹⁶RCW 36.32.120(6); RCW 36.010.010; RCW 36.01.030. *See also Prentice v. Franklin County*, 54 Wash. 587, 590-91, (1909) (although the prosecuting attorney is the legal adviser of the county he is not authorized to prosecute an action in the name of the county in opposition to the orders of the board of county commissioners); *Spokane County v. Bracht*, 23 Wash. 102, 62 P. 446 (1900) (prosecuting attorney has no authority to bring an action in the name of a county against the county commissioners).

¹⁷*See, e.g., In re Recall of Sandhaus*, 134 Wn.2d 662, 670, 953 P.2d 82 (1998) (balancing priorities in a public office with limited funds and personnel is vested within the discretion of the prosecuting attorney); *Osborn v. Grant County*, 130 Wn.2d 615, 624, 926 P.2d 911 (1996) (“the Board has no authority to interfere with an elected county officer’s hiring decisions”); *Herron v. McClanahan*, 28 Wn. App. 552, 625 P.2d 707 (1981) (prosecuting attorney not subject to recall for transferring a deputy from the criminal division to the civil division); AGO 2017 No. 3 (Mar. 20, 2017) (changes to job descriptions in the sheriff’s office do not require the consent of the county commissioners, whether or not such changes might be accompanied by salary adjustments) (available at <http://www.atg.wa.gov/ago-opinions/designation-and-compensation-unclassified-employees-county-sheriff-s-office> (last visited Feb. 14, 2018)).

¹⁸*See generally State ex rel. Banks v. Drummond*, 187 Wn.2d 157, 177-78, 385 P.3d 769 (2016) (the Board’s dissatisfaction with the prosecuting attorney does not allow the Board to hire an outside replacement); *In re Recall of Sandhaus*, 134 Wn.2d 662, 670, 953 P.2d 82 (1998) (“whether [the prosecuting attorney] is doing a satisfactory job of managing his office is a quintessential political issue which is properly brought before the voters at a regular election.”); *Osborn v. Grant County*, 130 Wn.2d 615, 624, 926 P.2d 911 (1996) (noting that when “an official makes a

1 The legislative authorities ability to influence criminal prosecutions and
 2 enforcement actions is even more limited. In part, this is because criminal
 3 prosecutions in Washington are conducted in the name of the state and by the state's
 4 authority.¹⁹ The separately elected county prosecuting attorney, acting in his dual
 5 roles as a county and state officer,²⁰ is responsible for prosecuting criminal actions
 6 brought in the name of the state.²¹ While the legislative branch may recommend
 7 charging standards to prosecuting attorneys, the recommendations cannot be
 8 mandatory and are not enforceable at law by a party in litigation with the state.²² A

9
 10 poor hiring decision, the official is accountable not to the board of commissioners,
 11 but to the public. If the public dislikes [the decision], the ballot is its recourse").

12 ¹⁹Washington State Constitution Article IV, Section 27 ("The style of all
 13 process shall be, 'The State of Washington,' and all prosecutions shall be conducted
 14 in its name and by its authority.").

15 ²⁰*See generally Whatcom County v. State*, 99 Wn. App. 237, 993 P.2d 273
 16 (2000) (a county prosecuting attorney acts as a state officer when preparing to
 17 prosecute and when prosecuting violations of state law); Laws of 2008, ch. 309, § 1
 18 ("The legislature finds that an elected county prosecuting attorney functions as both
 19 a state officer in pursuing criminal cases on behalf of the state of Washington, and as
 20 a county officer who acts as civil counsel for the county."); RCW 36.17.020(11)
 21 (State of Washington to pay a significant portion of the county prosecuting attorney's
 22 salary); Wash. Const. art. IV, sec. 9 (Washington State Legislature may remove a
 23 county prosecuting attorney from office through impeachment).

24 ²¹*See State v. Rice*, 174 Wn.2d 884, 900, 279 P.3d 869 (2012) ("Under the state
 25 constitution, a prosecuting attorney is a locally elected executive officer who has
 26 inherent authority to decide which available charges to file, if any, against a criminal
 27 defendant."); RCW 36.27.020(4) ("The prosecuting attorney shall: "Prosecute all
 28 criminal ... actions in which the state ... may be a party...").

29 ²²*See generally Rice*, 174 Wn.2d at 906-07 (the legislature cannot interfere with
 30 the fundamental and inherent charging discretion of prosecuting attorneys); *State v.*
 31 *Lee*, 69 Wn. App. 31, 33-35, 847 P.2d 25 (1993) (the legislative charging standards
 32 contained in RCW 9.94A.411 provide no basis for judicial review of a prosecutor's
 33 charging decision); RCW 9.94A.401.

1 prosecuting attorney cannot cede his or her inherent charging discretion to the
2 legislative branch by consent.²³

3 Under the Washington State Constitution, the sheriff is a locally elected
4 executive officer who is the conservator of the peace of the county.²⁴ The sheriff's
5 duties include arresting and committing to prison all persons who break the peace or
6 who are guilty of public offenses, to execute all warrants, and to apprehend or secure
7 any person for felony or breach of the peace.²⁵ The county sheriff cannot be
8 compelled to take or to refrain from taking an action by the prosecuting attorney²⁶ or
9 the county's legislative authority.²⁷

10 The county's legislative authorities inability to control the actions of the
11 prosecuting attorney and the sheriff establishes that the county lacks the power or
12 authority to comply with the injunction sought by the Yakama Nation. Because the
13 county is not responsible for arrests, detentions or prosecutions, this Court should
14 grant the instant Rule 12(b)(6) motion and dismiss the Klickitat County Sheriff's
15 Office, the Klickitat County Department of the Prosecuting Attorney, and Klickitat
16 County from this lawsuit.

17
18
19 ²³Rice, 174 Wn.2d at 906.

20 ²⁴Washington State Constitution Article XI, Section 5; RCW 36.28.010.

21 ²⁵See generally RCW 36.28.010.

22
23 ²⁶1952 AGO No. 322 (May 9, 1952) (available at
24 [http://www.atg.wa.gov/ago-opinions/sheriffs-prosecuting-attorneys-duties-and-po](http://www.atg.wa.gov/ago-opinions/sheriffs-prosecuting-attorneys-duties-and-powers)
25 [wers](http://www.atg.wa.gov/ago-opinions/sheriffs-prosecuting-attorneys-duties-and-powers) (last visited Feb. 14, 2018)).

26 ²⁷The Board possesses only those powers granted to it by the state legislature.
27 See *Drummond*, 187 Wn.2d at 170-71. Both Chapter 36.32 RCW and Chapter 36.28
28 RCW are silent on the ability of the county legislative authority to channel the
sheriff's discretion, to set enforcement priorities, or to grant immunity from arrest to
any class of persons.

B. The Court Should Dismiss This Action With Prejudice For Failure to Join All Required Parties.

Rule 19 requires the joinder of necessary parties if jurisdiction over them can be obtained, and if joinder will not defeat federal jurisdiction of case. This joinder requirement is intended to protect the interests of present defendants, the interests of potential but absent defendant, and society's interest in orderly, expeditious administration of justice. *U-Haul Int'l, Inc. v. Jartran, Inc.*, 793 F.2d 1034, 1039 (9th Cir. 1986). Joinder is appropriate when proceeding with the suit in the absence of the non-parties will leave an existing party to subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations. *Skokomish Indian Tribe v. Goldmark*, 994 F. Supp.2d 1168, 1187 (W. D. Wash. 2014). Joinder is also appropriate to avoid the piecemeal litigation that arises when the resulting judgment in a case would otherwise be inadequate to settle the whole dispute. *Republic of Philippines v. Pimentel*, 553 U.S. 851, 870, 128 S. Ct. 2180, 171 L. Ed. 2d 131 (2008).

In the instant case, joinder of the following individuals²⁸ is necessary to ensure that the Klickitat County Prosecuting Attorney and the Klickitat County Sheriff do not become subject to inconsistent obligations and to avoid multiple litigation: (1) Honorable Joseph Brusic, Yakima County Prosecuting Attorney; (2) Honorable Brian Winter, Yakima County Sheriff; (3) Honorable Bob Ferguson, Washington State Attorney General; (4) Chief Law Enforcement Officer, Washington State Dept. of Fish and Wildlife; (5) Captain Sheri Lopez, Liquor and Cannabis Board; (6) Chief Larry Raedel, Natural Resources Police; (7) Chief John R. Batiste, Washington State Patrol; (8) Mac Pevey, Department of Corrections, Assistant Secretary, Community Corrections Division; (9) Kenneth W. Raber, Toppenish City Prosecutor; (10) Curt Ruggles, Toppenish Police Chief; (11) Tony Swartz, Wapato City Prosecutor; (12)

²⁸The Defendants have, to the extent possible, identified the official by name. When no name is given the position is either currently vacant or the Defendants were unable to identify the incumbent from the agencies' website.

1 Chief of Police, City of Wapato; (13) Greg Cobb, Union Gap Chief of Police; and
 2 (14) Bronson Brown, City of Union Gap Attorney. The Defendants believe that
 3 jurisdiction may be obtained over all of these officials and that joining these officials
 4 will not defeat federal jurisdiction over this case. The Defendants respectfully
 5 request that this instant action be dismissed if the Yakama Nation does not join these
 6 officials as defendants by the date selected by this Court.

7 Joinder of the Yakima County Sheriff and Prosecuting Attorney is required
 8 because the Yakama Reservation as established by Congress in 33 Stat. 595, as
 9 amended by Executive Order 11670, 3 C.F.R. 208 (1971-75 Comp.) (May 20, 1972)
 10 (hereinafter “congressionally established reservation”), lies within Yakima County
 11 and Klickitat County. Tract D, which lies outside the congressionally established
 12 reservation, also lies within both Klickitat County and Yakima County. Entry of the
 13 Yakama’s requested injunction against the Klickitat County Prosecuting Attorney and
 14 Sheriff, in the absence of the Yakima County Sheriff and Prosecuting Attorney,
 15 would provide less than the relief the Yakama’s seek and would result in arrest
 16 warrants from Yakima County courts that relate to prosecutions in those courts of
 17 Yakama members for offenses committed within the reservation being directed to the
 18 Klickitat County Sheriff for execution.²⁹ Failure to join these officials as defendants
 19 in the current action would likely result in a future separate lawsuit between the
 20 Yakama Nation and the Yakima County Sheriff and Prosecuting Attorney.

21
 22 ²⁹An arrest warrant issued by the Yakima County Superior Court, the Yakima
 23 County District Court, or the municipal courts within Yakima County are valid
 24 throughout the State of Washington. *See, e.g.*, Article IV, section 6 of the
 25 Washington Constitution; RCW 2.08.201; RCW 3.66.100; CrR 2.2(d)(1); CrRLJ
 26 2.2(d)(1); These arrest warrants are directed to all peace officers in the state,
 27 including the Klickitat County Sheriff. *See* CrRLJ 2.2(d)(1); CrR 2.2(d)(1). The
 28 Klickitat County Sheriff has a duty to arrest individuals who are the subject of such
 warrants. *See* RCW 36.28.010(3); AGO 1956 No. 316 (1956) (available at
[http://www.atg.wa.gov/ago-opinions/arrest-and-bail-duty-sheriff-serve-warrant-iss](http://www.atg.wa.gov/ago-opinions/arrest-and-bail-duty-sheriff-serve-warrant-issued-committing-magistrate-another-county)
[ued-committing-magistrate-another-county](http://www.atg.wa.gov/ago-opinions/arrest-and-bail-duty-sheriff-serve-warrant-issued-committing-magistrate-another-county) (last visited Mar. 14, 2018)).

1 In the federal system, every United States Attorney is subordinate to the
 2 Attorney General. An order that enjoins the Attorney General from taking certain
 3 actions would also constrain the authority of the United States Attorneys.
 4 Washington State's form of government, however, differs markedly from that of the
 5 federal government, in that each separately elected county prosecuting attorney is
 6 answerable only to the voters of that county. As summarized by the Washington State
 7 Supreme Court:

8 County prosecutors are invested by the State with a limited grant of
 9 power to represent the State of Washington to enforce the laws of the
 10 State within each prosecutor's county. A prosecutor's authority is, with
 11 exceptions not relevant here, limited to the county the prosecutor serves.
 12 The State grants the same authority to the prosecutors of neighboring
 13 counties. The decision whether to prosecute or not, and the decision
 14 whether to enter into a plea bargain agreement or not, is generally within
 15 the discretion of each county prosecutor. How that discretion is
 16 exercised affects the quality of law enforcement and the administration
 17 of justice within each county, and thus it is of vital importance to the
 18 separate counties to determine, individually, the character and emphasis
 19 of prosecutions. [Footnote omitted.]

20 *State v. Bryant*, 146 Wn.2d 90, 102, 42 P.3d 1278, 1284 (2002). In practice, the
 21 separately autonomous prosecutor policy means that an injunction that restricts the
 22 charging decisions or authority of the Klickitat Prosecuting Attorney with respect to
 23 members of the Yakama Nation will not limit the practices of the Yakima County
 24 Prosecuting Attorney with respect to members of the Yakama Nation. If the Yakima
 25 County Prosecuting Attorney were to prosecute a Yakama Nation member under
 26 conditions that would violate any injunction this Court might grant to the Yakama
 27 Nation vis-a-vis the Klickitat County Prosecuting Attorney, arrest warrants or other
 28 orders issued in the Yakima County courts could result in the Klickitat County Sheriff
 being subject to competing orders as described *supra* in footnote 29.

Washington also elects sheriffs by county. The sheriff's jurisdiction is limited
 to the county except under very limited circumstances.³⁰ The Klickitat County Sheriff

³⁰See generally *State v. Knight*, 79 Wn. App. 670, 681, 904 P.2d 1159, 1165
 (1995) (a sheriff has authority to enforce state criminal law in any part of the county,

1 has no ability to control or dictate how a neighboring sheriff sets his or her priorities
 2 or who the neighboring sheriff arrests or houses in his or her jail. Again, this means
 3 that an injunction that bars the Klickitat County Sheriff from arresting or detaining
 4 members of the Yakama Nation will not alter the practices of the Yakima County
 5 Sheriff with respect to members of the Yakama Nation. This creates a very real risk
 6 that a Yakima County Sheriff's Deputy, who is exercising the authority, he or she
 7 possesses under RCW 10.93.070, may arrest a Yakama Nation Member for an offense
 8 committed within the Klickitat County portion of the congressionally created
 9 reservation, for which the Klickitat County Sheriff and his deputies could not under
 10 the injunction. Failure to join the Yakima County Sheriff leaves Yakama Nation
 11 members without the total relief the Yakama Nation is seeking, which would likely
 12 result in a second lawsuit raising the same issues as the present case.

13 Other officials, who also possess authority to enforce the laws within the
 14 Yakama Reservation and/or Tract D, are not answerable to either the Klickitat County
 15 Prosecuting Attorney or the Klickitat County Sheriff. Any injunction against the
 16 Klickitat County Prosecuting Attorney or the Klickitat County Sheriff will be
 17 ineffectual as to these other officials.

18 The Washington Attorney General "can deputize himself (subject to the
 19 concurrence of the governor or other authorities listed in RCW 43.10.232(1)) to stand
 20 in the role of the county prosecutor and exercise the same power as" the Klickitat
 21 County Prosecuting Attorney. *Skokomish Indian Tribe*, 994 F. Supp.2d at 183.³¹ If

22
 23 incorporated or not); Washington Mutual Aid Peace Officers Powers Act, Chapter
 24 10.93 RCW (enumerating when a sheriff can act as a law enforcement officer outside
 25 his county).

26 ³¹Additional statutes authorize the attorney general to initiate criminal
 27 prosecutions without the consent of the prosecuting attorney. *See, e.g.*, RCW
 28 77.15.065; SSB 6051 § 2(3) (2018) (awaiting governor's signature, available at
[http://lawfilesexst.leg.wa.gov/biennium/2017-18/Pdf/Bills/Senate%20Passed%20L](http://lawfilesexst.leg.wa.gov/biennium/2017-18/Pdf/Bills/Senate%20Passed%20Legislature/6051-S.PL.pdf#page=1)
[egislature/6051-S.PL.pdf#page=1](http://lawfilesexst.leg.wa.gov/biennium/2017-18/Pdf/Bills/Senate%20Passed%20Legislature/6051-S.PL.pdf#page=1) (last visited Mar. 14, 2018)).

1 the Klickitat County Superior Court should order the detention of a Yakama Nation
2 Member in a prosecution conducted by the Washington Attorney General, the
3 Klickitat County Sheriff could find himself subject to competing court orders.

4 A number of municipalities lie entirely or partially within the borders of the
5 congressionally established reservation. Cities in Washington may conduct criminal
6 prosecutions in their own name and by their own authority.³² Violations of the city
7 codes are investigated by city police. The city police possess the power to arrest the
8 lawbreakers and to book the lawbreakers into the county jail. The attorneys who
9 represent the cities in municipal prosecutions and the city police officers are
10 answerable to the people of the city, not to the prosecutor or the sheriff of the county
11 in which the city is located. The failure to join the municipal prosecutors and police
12 chiefs would deprive the Yakama Nation of the full relief it seeks, could subject the
13 Klickitat County to competing state and federal court orders, and is likely to spawn
14 a second declaratory judgment action.

15 A number of state commissioned officers possess authority, separate and apart
16 from the county sheriff, to investigate crimes within the congressionally established
17 reservation and Tract D. The Washington State Patrol and the limited and general
18 authority officers of the Washington State Department of Fish and Wildlife, the
19 Washington Liquor and Cannabis Board, and the Natural Resources Police, all
20 possess the power to initiate a non-felony criminal prosecution by issuing a criminal
21 citation to a member of the Yakama Nation when the member commits a crime within
22 the exterior boundaries of the Yakama Nation over which the State possesses
23 jurisdiction under Public Law 280.³³ A person charged by citation may plead guilty
24 and be sentenced to jail before the Klickitat County Prosecuting Attorney learns about
25

26 ³²See generally Article XI, section 11 of the Washington State Constitution;
27 RCW 35.22.280(33)-(35); RCW 35.23.440(29); RCW 35.27.370(14); RCW
28 35A.11.020.

³³See CrRLJ 2.1(b).

1 the charges. In such event, the Klickitat County Sheriff will be in the unenviable
 2 position of violating an injunction issued by this Court or violating the warrant of
 3 commitment issued by the Klickitat County District Court. If a person charged by
 4 citation does not appear as directed in the document, a state court arrest warrant may
 5 issue that could subject the Klickitat County Sheriff to inconsistent federal and state
 6 court orders. Joining these state officers to this lawsuit is the only way to prevent
 7 competing orders and to ensure that a single lawsuit will allow the Yakama Nation
 8 to receive the fullest measure of relief it is entitled to.

9 Finally, the Washington Department of Corrections' community corrections
 10 officers possess the power to arrest felons who violate the terms of their sentences.³⁴
 11 The officers' powers extend to violations committed by Yakama Nation Members
 12 within the congressionally established reservation and Tract D.³⁵ By statute, the
 13 Klickitat County Sheriff must accept individuals arrested by a community corrections
 14 officer within Klickitat County and must keep such person in custody until the
 15 offender is released by the court or an authorized department staff member.³⁶ Joining
 16 the Department of Corrections as a defendant to this lawsuit reduces the likelihood
 17 that the Klickitat County Sheriff will be whipsawed by inconsistent obligations.

18 V. CONCLUSION

19 The Defendants respectfully request that this Court dismiss all claims against
 20 Klickitat County, Klickitat County Sheriff's Office and Klickitat County Department
 21 of the Prosecuting Attorney pursuant to Rule 12(b)(6).
 22
 23

24 ³⁴*See generally* RCW 9.94A.631.

25 ³⁵*See State v. Cayenne*, 165 Wn.2d 10, 195 P.3d 521 (2008) (crime-related
 26 prohibitions imposed under state law when sentencing a tribal member for an off-
 27 reservation crime continue to apply while the tribal member leaves on reservation
 28 lands).

³⁶*See* RCW 9.94A.631(3).

1 The Defendants respectfully request that this Court dismiss this action in its
 2 entirety if the Yakama Nation does not join the following necessary parties by the
 3 date selected by this Court: (1) Honorable Joseph Brusic, Yakima County
 4 Prosecuting Attorney; (2) Honorable Brian Winter, Yakima County Sheriff; (3)
 5 Honorable Bob Ferguson, Washington State Attorney General; (4) Chief Law
 6 Enforcement Officer, Washington State Dept. of Fish and Wildlife; (5) Captain Sheri
 7 Lopez, Liquor and Cannabis Board; (6) Chief Larry Raedel, Natural Resources
 8 Police; (7) Chief John R. Batiste, Washington State Patrol; (8) Mac Pevey,
 9 Department of Corrections, Assistant Secretary, Community Corrections Division;
 10 (9) Kenneth W. Raber, Toppenish City Prosecutor; (10) Curt Ruggles, Toppenish
 11 Police Chief; (11) Tony Swartz, Wapato City Prosecutor; (12) Chief of Police, City
 12 of Wapato; (13) Greg Cobb, Union Gap Chief of Police; and (14) Bronson Brown,
 13 City of Union Gap Attorney.

14 Respectfully submitted this 2nd day of April, 2018.

15 Respectfully Submitted,

16 /s/ David R. Quesnel
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25 *Attorneys for Defendants*

1 I hereby certify that on April 2, 2018, I electronically filed the foregoing with the
2 Clerk of the Court using the CM/ECF System, which in turn automatically generated
3 a Notice of Electronic Filing (NEF) to all parties in the case who are registered users
4 of the CM/ECF system. The NEF for the foregoing specifically identifies recipients
5 of electronic notice.

6 
7 _____
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