

No. _____

In the Supreme Court of the United States

CONFEDERATED TRIBES AND BANDS OF
THE YAKAMA INDIAN NATION, *et al.*,
Petitioners,

v.

ROBERT MCKENNA, ATTORNEY GENERAL
OF THE STATE OF WASHINGTON,
Respondent.

*On Petition for Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit*

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether federal courts called upon to enforce Indian treaty protections in tribal challenges to State regulation may enter judgment against the Indian Tribe without considering evidence and entering findings of fact on the Indians' understanding of the United States' treaty promises.

**PARTIES TO THE PROCEEDING AND
CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 14.1, the following list identifies all of the parties appearing here and in the court below.

Petitioner Confederated Tribes and Bands of the Yakama Indian Nation (“Yakama Nation”) and Petitioner King Mountain Tobacco Company, Inc. (“King Mountain”) were appellants / plaintiffs in the proceedings below.

The Respondent Robert McKenna, Attorney General of the State of Washington was appellee / defendant in the proceeding below. While the current Attorney General is Robert W. Ferguson, the caption has not been updated to reflect this change.

Pursuant to Rule 29.6, Petitioner Yakama Nation states that it is a federally recognized Indian Nation and has no parent company, and no public company owns any interest in Petitioner Yakama Nation. Petitioner King Mountain certifies that it is a non-governmental corporation organized and existing under the laws of the Yakama Nation, with its principal place of business on the Yakama Reservation in White Swan, Washington. King Mountain submits the following statement of its corporate interests and affiliations:

1. King Mountain is not a publicly-traded company;
2. King Mountain does not have any parent corporation; and
3. No publicly-held corporation owns 10 percent or more of King Mountain stock.

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PETITION FOR A WRIT OF CERTIORARI

The Confederated Tribes and Bands of the Yakama Indian Nation and King Mountain Tobacco Company, Inc. respectfully petition for a writ of certiorari to review the opinion and judgment of the U.S. Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals (App. A, 1-20) is reported at 768 F.3d 989. Petitioners' Motion for Rehearing En Banc was denied by the Court of Appeals on November 3, 2014, (App. C, 42-43). The decision of the United States District Court, Eastern District of Washington is available at 2013 WL 1403342 (E.D. Wash. Apr. 5, 2013), (App. B, 21-41).

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit which Petitioners ask this Court to review was entered on August 26, 2014, and the order denying Petitioners' motion for rehearing en banc was entered on November 3, 2014. This petition is timely under 28 U.S.C. § 2101(c) and Supreme Court Rule 13.1 and Rule 13.3, because it is being filed within 90 days of the entry of the order denying rehearing en banc. This Court has jurisdiction to review the judgment of the U.S. Court of Appeals for the Ninth Circuit pursuant to 28 U.S.C. § 1254(1).

**CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED**

This matter involves Article VI, clause 2 of the Constitution of the United States, which declares that

“all Treaties made, . . . under the Authority of the United States, shall be the supreme Law of the Land and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” The treaty involved in this case is titled: Treaty between the United States and the Yakama Nation of Indians, 12 Stat. 951 (June 9, 1855), the terms of which must be read in connection with the Minutes of the Treaty Negotiations attached at App. 57-160.

This matter also involves Article I, Section 8, clause 3 of the Constitution of the United States, which establishes the plenary authority of the Congress “[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”

STATEMENT OF THE CASE

I. Background Facts and Issues.

A. The Confederated Tribes and Bands of the Yakama Indian Nation.

The Confederated Tribes and Bands of the Yakama Indian Nation is a federally recognized confederated Indian Tribe consolidating members of fourteen tribes and bands of Columbia Plateau Indians. In the early 1800s, these fourteen tribes and bands controlled over eleven million acres of land along the Columbia River within the exterior boundaries of what today is the State of Washington. Since long before the Yakama first encountered American settlers, people of the Yakama Nation used these lands for farming, agricultural purposes and as a source of goods for trade.

The Yakama people are and have always been “inveterate traders” with extensive trading practices and territory. *Yakama Indian Nation v. Flores*, 955 F. Supp. 1229, 1238 (E.D. Wash. 1997), *aff’d sub nom. Cree v. Flores*, 157 F.3d 762 (9th Cir. 1998) (“*Cree II*”). Their trading practices included trade with travelers entering Yakama territory, as well as trade that occurred well beyond their lands. *Yakama Indian Nation*, 955 F. Supp. at 1238.

B. The Yakama Treaty of 1855.

In 1850, Congress authorized the negotiation of treaties to extinguish Indian aboriginal title to land lying west of the Cascade Mountains. 31 Cong., Ch. 16, 9 Stat. 437 (June 5, 1850). In 1853, the Washington Territory, which includes the present State of Washington, was organized out of the Oregon Territory. 32 Cong., Ch. 90, 10 Stat. 172 (Mar. 2, 1853). In 1855, Isaac Ingalls Stevens, Governor of the Washington Territory, and General Joel Palmer, Superintendent of Indian Affairs in the Oregon Territory, acting on behalf of the United States Government, initiated Treaty negotiations near present day Walla Walla, Washington with Kamaiakin, Sklom, Owhi, Te-cole-kun, La-hoom, Koo-lat-toose, Sch-noo-a, Me-ni-nock, Shee-ah-cotte, Sla-kish, Elit Palmer, Tuck-uille, Wish-och-knipits, Ka-loo-as and other leaders of the fourteen tribes and bands that became the Confederated Tribes and Bands of the Yakama Indian Nation. App. 55-56; 57-160. The success of these negotiations was critically important to the United States for a number of reasons, including the need to secure land for settlers moving into the Washington Territory. *Washington v. Wash. State Commercial*

Passenger Fishing Vessel Ass'n, 443 U.S. 658, 699, modified sub nom. *Washington v. United States*, 444 U.S. 816 (1979) (“The primary purpose of the six treaties negotiated by Governor Stevens was to resolve growing disputes between the settlers claiming title to land in the Washington Territory under the Land Donation Act of 1850, 31 Cong., Ch. 16, 9 Stat. 437 (June 5, 1850), and the Indians who had occupied the land for generations”).

During the Treaty negotiations the Yakama, as members of an oral culture, focused on the federal commissioners’ spoken words, not the phrases written in the Treaty itself, which none of the Yakama signatories could read. By necessity, the Yakama’s understanding of their agreement with the United States came from verbal descriptions of the Treaty articles passed through a chain of interpreters and Indian criers.¹ These verbal descriptions were captured in part in minutes taken by the representatives of the United States who negotiated with the Yakama people. Treaty Minutes, App. 57-160. These minutes, testimony of Yakama elders and similar sources are part of the Treaty and must be relied upon by federal courts when called upon to determine the meaning of the Treaty’s text. *Tulee v. Washington*, 315 U.S. 681, 684-85 (1942) (“It is our

¹ *Fishing Vessel*, 443 U.S. at 667 n.10 (“Indeed, the translation of the English words was difficult because the interpreter used a ‘Chinook jargon’ to explain treaty terms, and that jargon not only was imperfectly (and often not) understood by many of the Indians but also was composed of a simple 300-word commercial vocabulary that did not include words corresponding to many of the treaty terms”).

responsibility to see that the terms of the treaty are carried out, so far as possible, in accordance with the meaning they were understood to have by the tribal representatives at the council.”); *United States v. Winans*, 198 U.S. 371, 381 (1905) (“How the treaty in question was understood may be gathered from the circumstances.”).

The negotiations at Walla Walla culminated in the Yakama Treaty of 1855, which was subsequently ratified by the Senate and signed by President Buchanan.² The Yakama Treaty resulted in the Yakama people’s surrender to the United States of nearly ten million acres, or 90% of their land. *United States v. Smiskin*, 487 F.3d 1260, 1265 (9th Cir. 2007); Yakama Treaty, App. 42-43; Treaty Minutes App. 57-160. In return, the Yakama people were promised “the exclusive use and benefit” of their land and promised by federal negotiators that “*you can rely on all its provisions being carried out strictly.*” *Yakama Indian Nation*, 955 F. Supp. at 1243 (discussing the representations of General Palmer at the Treaty negotiations) (emphasis in original); Yakama Treaty, App. 42-43; Treaty Minutes, App. 57-160.

² Treaty between the United States and the Yakama Nation of Indians, 12 Stat. 951 (June 9, 1855). Although the original Treaty is entitled “Treaty with the Yakimas,” Yakama Tribal Resolution T-053-94 (Jan. 14, 1994), recognized the official spelling as “Yakama.”

II. United States Supreme Court Precedent Construing the Yakama Treaty.

The United States Supreme Court has been called upon on four separate occasions to interpret the Yakama Treaty. *Fishing Vessel*, 443 U.S. 658; *Tulee*, 315 U.S. 681; *Seufert Bros. Co. v. United States*, 249 U.S. 194 (1919); *Winans*, 198 U.S. 371.³ The Court's first Yakama Treaty opinion, *United States v. Winans*, 198 U.S. 371 (1905), was decided fewer than fifty years after the Treaty's Senate adoption, by Justices who had a current view of these now historic events as they were all in their teens and twenties at the time the United States entered the Treaty. The Supreme Court held that judicial determination of protections secured by the Yakama Treaty required courts to consider evidence beyond the Treaty language itself:

[The district court] decided that the Indians acquired no rights but what any inhabitant of the territory or state would have. Indeed, acquired no rights but such as they would have without the treaty. This is certainly an impotent

³ This does not include the Court's decision in *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134 (1980), in which the Court mentioned in passing that the Yakama Treaty right to exclude others from the Reservation did not preclude state taxes assessed against nonmembers of the Yakama Nation for transactions in personalty with no substantial connection to reservation lands. Neither the district court nor the Supreme Court (on direct appeal) was presented evidence on the Yakama understanding of the Treaty, nor asked to enter findings on that understanding. See *Confederated Tribes & Bands of the Yakama Nation v. Gregoire*, 680 F. Supp. 2d 1258, 1267 (E.D. Wash. 2010).

outcome to negotiations and a convention which seemed to promise more, and give the word of the nation for more. And we have said we will construe a treaty with the Indians as “that unlettered people” understood it, and “as justice and reason demand, in all cases where power is exerted by the strong over those to whom they owe care and protection,” and counterpoise the inequality “by the superior justice which looks only to the substance of the right, without regard to technical rules.” How the treaty in question was understood may be gathered from the circumstances.

Id. at 380-81 (citations omitted).

In every decision in which it has been asked to do so since *Winans*, the Court has confirmed the requirement that judicial analysis of the rights secured in the Treaty must include a determination of what the Yakama people understood their Treaty to mean: “it is the intention of the parties, and not solely that of the superior side, that must control any attempt to interpret the treaties.” *Fishing Vessel*, 443 U.S. at 675-76; *Seufert Bros.*, 249 U.S. 194; *Tulee*, 315 U.S. 681. As the Supreme Court confirmed in *Fishing Vessel*:

When Indians are involved, this Court has long given special meaning to this rule. It has held that the United States, as the party with the presumptively superior negotiating skills and superior knowledge of the language in which the treaty is recorded, has a responsibility to avoid taking advantage of the other side. “[T]he **treaty must therefore be construed, not according to the technical meaning of its**

words to learned lawyers, but in the sense in which they would naturally be understood by the Indians.” This rule, in fact, has thrice been explicitly relied on by the Court in broadly interpreting these very treaties in the Indians’ favor.

Id. at 666-67 (citations omitted) (emphasis added).

III. Proceedings in the District Court.

The Yakama Nation and King Mountain, a Yakama member owned corporation that manufactures cigarettes on allotted Yakama trust land using tobacco grown on trust land, sued the Attorney General of the State of Washington in the United States District Court for the Eastern District of Washington. The complaint asked the court to enjoin the State of Washington from violating the guarantees and protections secured to the Yakama people in the Yakama Treaty. Specifically, the complaint challenged the State Attorney General’s enforcement of Washington’s escrow statute, Wash. Rev. Code §§ 70.157.005–70.157.030, which prohibits the sale of cigarettes within the State unless the seller makes State required monetary escrow deposits.

In response to the State’s motion for summary judgment, and in support of its own summary judgment motion, the Petitioners submitted extensive evidence showing the Yakama people’s understanding of their Treaty protections. The evidence included testimony of Yakama elders, historical documents, expert historical and ethnographic opinions, and citation to findings of fact entered in other Yakama Treaty cases.

The State did not dispute any of the Petitioners' evidence. The State offered no evidence of its own.

The district court refused to consider the Petitioners' evidence, and declined to enter any findings of fact. Instead, the court simply held that the Treaty on its face is not sufficiently "express" to preclude enforcement of the challenged State financial regulations against the Yakama Nation and its members.

IV. Decision of the Ninth Circuit Court of Appeals.

The Yakama Nation and King Mountain appealed the district court's grant of summary judgment against them, and the district court's order that dismissed the complaint in its entirety. The Petitioners' first issue on appeal was:

Whether the district court erred when it granted summary judgment against the Yakama Nation and this Yakama business based solely on the text of the Yakama Treaty, without considering evidence on the Treaty's meaning to the Yakama people.

Ct. App., ECF No. 10; App. 8 ("Appellants argue that summary judgment in favor of the State was improper because the district court failed to consider evidence showing how the Yakama people understood the Treaty in 1855"). The Ninth Circuit Court of Appeals decided this issue against the Petitioners without distinguishing or following Supreme Court precedent requiring that the Yakama Treaty's protections be interpreted as the Yakama people understood them. Instead, the court adopted the State's purely legal

argument – that the Yakama Treaty text on its face must contain an express exemption from state regulation – without analysis, simply stating:

[T]he district court did not err by declining to make findings regarding the Treaty’s meaning to the Yakama people at the time of its signing, because the meaning to the Yakama people cannot overcome the clear words of the Treaty.

App. 20. But the court failed to note that its decision limited “the clear words of the Treaty” to the technical meaning of those words to the “learned lawyers” involved in this case. *Cf. Fishing Vessel*, 443 U.S. at 667 n.10.

The Ninth Circuit Court of Appeals denied the Petitioners’ request to review the panel’s decision en banc. App. 21-42.

REASONS FOR GRANTING THE PETITION

There are two reasons why this Court should grant this petition for writ of certiorari and review the Ninth Circuit Court of Appeals’ decision:

1. The ruling by the Ninth Circuit Court of Appeals conflicts with Supreme Court precedent requiring Indian treaties in general, and the Yakama Treaty in particular, to be interpreted as the Indians understood the treaty terms when courts are addressing treaty challenges to state regulation.
2. By refusing to require consideration of the evidence and entry of findings of fact, the Ninth Circuit Court of Appeals improperly sanctioned

a lower court's departure from the accepted and usual course of judicial proceedings calling for an exercise of this Court's supervisory power.

I. Supreme Court Precedent Requires Courts to Give Effect to the Terms of Indian Treaties as the Indian Parties Themselves Would Have Understood Them.

The Supreme Court has on multiple occasions discussed at length the legal standard imposed upon district courts when they are called upon to interpret the rights reserved by Indian tribes in their treaties with the United States, including the Yakama Treaty. *E.g.*, *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172 (1999); *Choctaw Nation v. Oklahoma*, 397 U.S. 620 (1970); *Jones v. Meehan*, 175 U.S. 1 (1899); *Fishing Vessel*, 443 U.S. 658; *Tulee*, 315 U.S. 681; *Seufert Bros.*, 249 U.S. 194; *Winans*, 198 U.S. 371. In each of these decisions by the United States Supreme Court, and in a string of decisions of the Ninth Circuit Court of Appeals entered prior to the ruling being challenged in this petition, this Court and the Ninth Circuit have held that when interpreting a treaty with an Indian tribe, the treaty first must be construed as the Indians would have understood it at the time of signing, and then any ambiguities resulting from that construction must be resolved in favor of the tribe. *E.g.*, *Smiskin*, 487 F.3d 1260; *Cree II*, 157 F.3d 762; *Cree v. Waterbury*, 78 F.3d 1400 (9th Cir. 1996) ("*Cree I*").

Although the facts presented in the case below were undisputed, the district court not only refused to examine the Yakama Treaty or any of the Petitioners' proffered undisputed material facts regarding the

intent and meaning of the Treaty, but the district court in its “analysis” section never mentions the Yakama Treaty, only once mentions “an” Indian treaty, and then does so without any discussion of treaty intent or meaning. App. 35-38. Moreover, the district court failed to discuss or offer any explanation as to why it was not bound by over a century of this Court’s precedent, or why it felt free to ignore the factual analysis this Court insists must be followed when interpreting the Yakama Treaty.

The Ninth Circuit improperly compounded this error. Initially, the court confirmed that it “review[s] de novo the interpretation and application of treaty text.” App. 7. It then recognized that any analysis of the “plain language” of a treaty must be “**viewed in historical context** and given a fair appraisal.” App. 9 (emphasis added) (citing and quoting *Or. Dep’t of Fish & Wildlife v. Klamath Indian Tribe*, 473 U.S. 753, 774 (1985)). Yet although it cited *Or. Dep’t of Fish & Wildlife*, the Ninth Circuit ignored that this Court *engaged in detailed analysis of the “historical record” in that case and addressed, among other facts* “the lengthy negotiations between the Tribe and the United States” during which “the Tribe was represented by counsel, the tribal negotiating committee members spoke and understood English, and the Tribe secured a number of alterations to the United States’ original proposals.” *Id.* at 772-73.

However, instead of honoring this Court’s treaty interpretation requirements, and directing the district court to adhere to this Court’s treaty analysis precedent requiring factual determination of the Indians’ understanding of their Treaty protections, the

Ninth Circuit rejected treaty precedent and improperly embraced non-treaty case law in this treaty centric case, stating:

The Indian canon of construction does not alter the outcome in this case because the relevant text of the Yakama Treaty is not ambiguous and the plain language of the Treaty does not provide a federal exemption from the Washington escrow statute.

App. 13.

II. The Ninth Circuit Court of Appeals and District Court Decisions Challenged in This Petition Both Improperly Applied This Court's Non-Treaty Case Law to This Treaty Rights Case.

The Ninth Circuit Court of Appeals ignored this Court's controlling Indian treaty jurisprudence and decades of its own precedent. Instead, for the first time in over a century of appellate review of Indian treaty challenges to state regulation, the Ninth Circuit refused to require the district court to examine the historical record and consider evidence regarding the Yakama people's understanding of the Treaty and, instead, placed the burden on the Petitioners to identify an exemption or ambiguity in the plain text of the Treaty before applying the required canon of construction. App. 20 ("The district court did not err by granting summary judgment to the State without making factual findings about the historic meaning of the Treaty to the Yakama people, because the Treaty's meaning to the Yakama people cannot overcome the plain and unambiguous text of the Treaty."). To

explain its decision to approve the district court's departure from the accepted and usual course of judicial proceedings, the Ninth Circuit relied exclusively on judicial statements concerning **statutory** interpretation, and failed to address or distinguish Supreme Court precedent establishing requirements for **treaty** construction.

A. The Supreme Court Has Consistently Applied Different Canons of Construction to Interpret Indian Treaties and Statutes.

This Court has two related, but separate, lines of precedent governing analysis of tribal right limitations on state regulation. The first line of precedent addresses how courts must interpret tribal rights preserved in treaties. *E.g.*, *Fishing Vessel*, 443 U.S. 658; *Mille Lacs Band*, 526 U.S. 172. The second addresses tribal rights in the context of statutory enactments. *E.g.*, *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973); *South Carolina v. Catawba Indian Tribe*, 476 U.S. 498 (1980).

Although treaty interpretation and statutory interpretation share some similar principles of construction,⁴ they are fundamentally different in one

⁴ Both the statutory canon and the treaty canon require that any ambiguities in the terms of the statute or treaty be construed in favor of the tribe. *Choctaw*, 397 U.S. at 631 (“this Court has often held that treaties with the Indians must be interpreted as they would have understood them . . . and any doubtful expressions in them should be resolved in the Indians’ favor”); *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766 (1985) (“statutes are

very important way: the treaty interpretation “canons call for promoting the treaties’ central purposes [and] construing treaties as they were originally understood by the tribal representatives, rather than according to legal technicalities.” *United States v. State of Washington*, 759 F.2d 1353, 1358 (9th Cir. 1985); see *Mille Lacs Band*, 526 U.S. at 196; *Fishing Vessel*, 443 U.S. at 676; *Meehan*, 175 U.S. at 11; *Tulee*, 315 U.S. at 684-85; *Seufert Bros.*, 249 U.S. at 198; *Winans*, 198 U.S. at 380-81. To interpret a treaty, a court cannot simply read its text. Instead, treaties are interpreted “not according to the technical meaning of its words to learned lawyers, but in the sense in which they would naturally be understood by the Indians.” *Meehan*, 175 U.S. at 11; *Fishing Vessel*, 443 U.S. at 676 (citing same). When treaty construction is required, this Court has confirmed that lower courts must “look beyond the written words to the larger context that frames the Treaty, including ‘the history of the treaty, the negotiations, and the practical construction adopted by the parties.’” *Mille Lacs Band*, 526 U.S. at 196 (citing *Choctaw Nation v. United States*, 318 U.S. 423, 432 (1943)). At no point has the Supreme Court required that the Indian tribe bear the initial burden of showing ambiguity in the text of the treaty on its face before employing the canon of construction.

This Court’s distinction between treaty construction and statutory construction is fundamentally sound. A treaty, “including one between the United States and an Indian tribe, is essentially a contract between two sovereign nations.” *Fishing Vessel*, 443 U.S. at 675.

to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit”).

Fundamentally, Indian treaties were “designed primarily to transfer [Indian] land to the United States, not to terminate [tribal] rights.” *See Mille Lacs Band*, 526 U.S. at 196. Federal statutes, on the other hand, are not the product of such bargaining between sovereigns and it would seldom be necessary to require an examination of an Indian tribe’s understanding of statutory terms at the time the statute was enacted.

This Court most recently confirmed the import and proper application of treaty construction in *Mille Lacs Band*, 526 U.S. 172. In that decision, the Court once again reiterated the more demanding nature of treaty canons of construction, and required an examination of the historical record to determine how the tribal signatories understood the terms of the treaty:

In this case, an examination of the historical record provides insight into how the parties to the Treaty understood the terms of the agreement. This insight is especially helpful to the extent that it sheds light on how the Chippewa signatories to the Treaty understood the agreement because we interpret Indian treaties to give effect to the terms as the Indians themselves would have understood them.

Id. at 196. In *Mille Lacs Band*, the Court conducted an extensive examination of the historical record, which included “an analysis of the history, purpose, and negotiations” of the treaty at issue, before deciding in favor of the tribe’s interpretation of its treaty rights. *Id.* at 202. *Mille Lacs Band* confirms the enduring force of the treaty canons when courts are called upon to interpret the rights reserved by Indian tribes in their treaties with the United States.

B. For Decades the Ninth Circuit Adhered to the Supreme Court's Treaty Construction Mandate.

Until entry of the decision that the Petitioners ask this Court to review on writ of certiorari, the Ninth Circuit had faithfully adhered to this Court's treaty construction requirements. *See United States v. State of Washington*, 759 F.2d at 1358. ("These canons call for promoting the treaties' central purposes; construing treaties as they were originally understood by the tribal representatives, rather than according to legal technicalities; resolving ambiguities in favor of the Indians; and interpreting the treaties in the Indians' favor."). For example, in *Cree I*, 78 F.3d 1400, the Ninth Circuit Court of Appeals set out in detail the determining analysis to be applied in that Circuit when addressing whether the Yakama Treaty exempts the Yakamas from a state regulation. Specifically, the Ninth Circuit examined whether the Yakama Treaty exempted the Yakama from heavy vehicle registration requirements and licensing fees imposed by the State of Washington on Yakama Indian-owned vehicles traveling on state highways. *Id.* at 1402. The Yakama plaintiffs in *Cree I* argued they were exempt from the challenged state law due to the Yakama Treaty's language securing to them "*the right, in common with the citizens of the United States, to travel upon all public highways.*" *Id.* at 1402 (citing Article III, ¶ 1, of the Yakama Treaty) (emphasis in original). The Ninth Circuit expressly rejected the argument advanced by the State of Washington that "the Yakamas bear the burden of proving a tax exemption in the Treaty." *Id.* at 1403. Following the Supreme Court's Indian treaty

interpretation mandate, the Ninth Circuit stated the test as follows:

The State argues that the Yakamas bear the burden of proving a tax exemption in the Treaty. However, in interpreting a treaty between the United States and an Indian tribe, the court must interpret the treaty “in the sense in which [the treaty language] would naturally be understood by the Indians.”

Cree I, 78 F.3d at 1403 (internal citations omitted). Ultimately, the Ninth Circuit faulted the district court for failing to develop a factual record of the Yakama Indian’s understanding of what the Treaty language meant. *Id.* at 1404. Specifically, after evaluating this Court’s decision in *Fishing Vessel*, the *Cree I* court found that “there has been no finding of what the Indians understood their right to use government-built highways to encompass.” *Id.* The court remanded with the instructions that the district court “must undertake a factual inquiry into the intent and understanding of the parties at the time the Treaty was signed to determine the meaning of the highway right.” *Id.*

On appeal after remand, the Ninth Circuit carefully reviewed the historical record developed by the district court, concluded that the district court “undertook a careful inquiry into the intentions of the parties at Walla Walla,” and upheld the district court’s grant of summary judgment in favor of the Yakama plaintiffs. *Cree II*, 157 F.3d at 774. The Ninth Circuit specifically found that the “district court eloquently set forth its findings that travel was of great importance to the Yakamas, that they enjoyed free access to travel routes for trade and other purposes at Treaty time, and that

they understood the Treaty to grant them valuable rights that would permit them to continue in their ways.” *Id.* at 769. The *Cree II* court agreed with the district court that, “in light of those and its other findings, the Treaty clause must be interpreted to guarantee the Yakamas the right to transport goods to market over public highways without payment of fees for that use.” *Id.* Furthermore, the Ninth Circuit recognized that:

A quest for historical truth is always a difficult undertaking. We are asked to journey back to Walla Walla in 1855 and discern the intentions of two radically different peoples who did not share the same language, culture or values. As the record of this case discloses, scholars have devoted their entire careers to this undertaking and have reached differing conclusions. The district court undertook a careful inquiry into the intentions of the parties at Walla Walla and, given the evidence, its interpretation is certainly plausible.

Id. at 774.

The “careful inquiry” required by the Ninth Circuit in *Cree I and Cree II* has been repeatedly relied upon and cited as the correct application of the treaty canon in the context of state regulation. *See Smiskin*, 487 F.3d at 1265-66 (discussing and relying upon the “extensive factual findings made by the district court” on remand following *Cree I*); *Ramsey v. United States*, 302 F.3d 1074, 1077-78 (9th Cir. 2002) (discussing at length the *Cree I* and *Cree II* opinions). Similarly, in *United States v. State of Washington*, 520 F.2d 676, 693 (9th Cir. 1975), the Ninth Circuit affirmed “in all

respects, with [one] clarification” a decision by the United States District Court for the Western District of Washington, that included 253 separate findings of fact with regard to the historical backdrop, the parties’ understanding, and the conduct of parties following various Indian treaties at issue in the case. *See United States v. State of Washington*, 384 F. Supp. 312, 348-99 (W.D. Wash. 1974), *aff’d* 520 F.2d 676 (9th Cir. 1975).

C. In This Case, the Ninth Circuit and the District Court Ignored This Court’s Treaty Construction Mandate.

Disregarding treaty interpretation precedent from this Court and its own circuit, and in order to avoid the historical record ignored by the district court, the panel below cited three opinions from this Court to claim that the district court could interpret the Yakama Treaty without reference to the evidence before it. All of the Supreme Court cases on which the court below relied, however, concerned interpretation of federal statutes, rather than Indian treaties, or were entirely unrelated to the interpretation of a claimed treaty right. App. 7-16 (citing *Mescalero v. Jones*, 411 U.S. 145, 148-49 (1973) (addressing whether the Indian Reorganization Act of 1934, as amended, 48 Stat. 984, 25 U.S.C. § 461, preempted the state’s nondiscriminatory regulation of off-reservation tribal activities); *Catawba Indian Tribe, Inc.*, 476 U.S. at 506 (addressing whether the Catawba Indian Tribe Division of Assets Act, 73 Stat. 592, 25 U.S.C. §§ 931-938, barred application of the state’s statute of limitations); *Colville*, 447 U.S. 134 (addressing whether the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. § 461, the Indian Financing Act of 1974, 88 Stat. 77, 25 U.S.C. § 1451,

the Indian Self-Determination and Education Assistance Act of 1975, 88 Stat. 2203, 25 U.S.C. § 450 *et seq.*, the Indian traders statutes, 25 U.S.C. § 261 *et seq.*, preempted state's sales and cigarette taxes)). In relying upon cases involving statutory construction, the court altered the Petitioners' burden of proof and relegated this Court's Indian treaty canons of construction to mere platitudes. This Court's decisions and prior decisions of the Ninth Circuit established an accepted and usual course of judicial proceedings for analysis of treaty right protections from state regulation. The Ninth Circuit's decision below improperly sanctioned the district court's departure from this accepted and usual course of judicial proceedings, calling for an exercise of this Court's supervisory power.

First, the Ninth Circuit relied heavily on *Mescalero* to hold as a threshold matter that "*Mescalero* requires that we determine whether Washington's escrow statute is discriminatory and whether King Mountain's activities go beyond the boundaries of the reservation." App. 9; *see* App. 10 ("This was a proper application of *Mescalero* by the district court, not a new test."); App. 11 ("The State responds that the district court correctly applied the *Mescalero* test and determined that the Treaty is not an express federal law that exempts King Mountain from state economic regulations. We agree with the State."). However, in the passage of the *Mescalero* decision cited by the district court, the Supreme Court was discussing whether Congress **by statute** had granted the tribe an off-reservation tax exemption. *Mescalero*, 411 U.S. at 156. *Mescalero* did not concern the rights claimed by a tribe under a treaty and, as a result, the Court had no reason to consider

the interpretative treaty canons that apply to the present case. Notably, in the forty years since the Supreme Court decided *Mescalero*, not once has the Supreme Court referred to or relied upon *Mescalero*⁵ as trumping or otherwise allowing a district court to forego an “examination of the historical record . . . to the extent that it sheds light on how the [Indian] signatories to the Treaty understood the agreement because we interpret Indian treaties to give effect to the terms as the Indians themselves would have understood them.” *Mille Lacs Band*, 526 U.S. at 196.

Having found the statute to be non-discriminatory and the relevant activities to be “largely off-reservation,” the Ninth Circuit turned to two statements from opinions of this Court in **non-treaty cases** to:

(1) shift the “burden of proving that the Yakama Treaty is an express federal law that exempts it from Washington’s escrow statute”;⁶ and

(2) support the court’s claim that “[t]he canons of construction regarding the resolution of ambiguities in favor of Indians . . . does not permit reliance on ambiguities that do not exist; nor does it permit disregard for the clearly expressed intent of Congress.”⁷

⁵ The Ninth Circuit opinion references *Mescalero* ten times. App. 6-11.

⁶ App. 12 (citing *Colville*, 447 U.S. at 160). The Ninth Circuit opinion references *Colville* six times. App. 12-16.

⁷ App. 19 (citing *Catawba Indian Tribe*, 476 U.S. at 506).

But neither of the cases relied on by the Ninth Circuit - *Colville* and *Catawba Indian Tribe* - concerned the application of the treaty canons. Rather, both were concerned with statutory construction.

Applying the statutory canons, and without consideration or discussion of the historical record presented by the Petitioners, the Ninth Circuit concluded that from the plain text of the Treaty, “[t]he district court did not err by granting summary judgment to the State without making findings about historical meaning of the Treaty to the Yakama people.” App. 15. In so holding, the Ninth Circuit rejected this Court’s precedent and the Ninth Circuit’s own previous holdings requiring that a court “look beyond the written words to the larger context that frames the Treaty, including ‘the history of the treaty, the negotiations, and the practical construction adopted by the parties.’” *Mille Lacs Band*, 526 U.S. at 196; *United States v. State of Washington*, 759 F.2d at 1358. The Ninth Circuit’s opinion, therefore, sanctioned the district court’s circumvention of this Courts’ vital treaty canons and justifies the exercise of the Court’s supervisory powers.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

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APPENDIX A

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

No. 13-35360

D.C. No. 2:11-cv-03018-LRS

[Filed September 26, 2014]

KING MOUNTAIN TOBACCO)
COMPANY, INC.; CONFEDERATED)
TRIBES AND BANDS OF THE YAKAMA)
INDIAN NATION,)
<i>Plaintiffs-Appellants,</i>)
)
v.)
)
ROBERT MCKENNA, Attorney)
General of the State of Washington,)
<i>Defendant-Appellee.</i>)
)

OPINION

Appeal from the United States District Court
for the Eastern District of Washington
Lonny R. Suko, District Judge, Presiding

Argued and Submitted
August 27, 2014—Seattle, Washington

Filed September 26, 2014

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Before: John T. Noonan, Susan P. Graber,
and Morgan Christen, Circuit Judges.

Opinion by Judge Christen

SUMMARY*

Indian Law

Affirming the district court's summary judgment, the panel held that the Yakama Treaty of 1855 did not preclude enforcement of the State of Washington's escrow statute, which requires tobacco companies to place money from cigarette sales into escrow to reimburse the State for health care costs related to the use of tobacco products.

The panel held that Washington's escrow statute was a nondiscriminatory law and that the activities of King Mountain Tobacco Co., a company owned and operated by an enrolled member of the Yakama Indian Nation, were largely off-reservation. Accordingly, absent express federal law to the contrary, King Mountain was subject to the escrow statute. The panel held that the plain text of the Yakama Treaty did not create a federal exemption from the escrow statute. Specifically, Article II of the Treaty, which established the boundaries of the Yakama reservation and reserved it for Yakama use and benefit, was not an express federal law that exempted King Mountain from the escrow statute. Nor was Article III, which reserved to the tribe the right to travel on public highways and the

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

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right to hunt and fish. The panel held that the district court did not err by declining to make findings regarding the Treaty's meaning to the Yakama people at the time of its signing because the meaning to the Yakama people could not overcome the clear words of the Treaty.

COUNSEL

Randolph H. Barnhouse (argued) and Justin J. Solimon, Johnson Barnhouse & Keegan LLP, Los Ranchos de Albuquerque, New Mexico, for Plaintiffs-Appellants.

David M. Hankins (argued), Senior Counsel; Joshua Weissman, Assistant Attorney General; Robert W. Ferguson, Attorney General of the State of Washington, Olympia, Washington, for Defendant-Appellee.

OPINION

CHRISTEN, Circuit Judge:

King Mountain Tobacco Company and the Confederated Tribes and Bands of the Yakama Indian Nation (collectively "Appellants") sued the Attorney General of the State of Washington for declaratory and injunctive relief from Washington's escrow statute, Wash. Rev. Code §§ 70.157.005–70.157.030 (2013). The escrow statute requires King Mountain to place money into escrow to reimburse the State for health care costs related to the use of tobacco products. The amount placed in escrow is based on the number of cigarette sales made that are subject to state cigarette taxes. Appellants argue that the Yakama Treaty of 1855 is an

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“express federal law” that exempts the Yakama people from Washington’s escrow statute. The State argues that the Treaty does not preclude it from regulating tobacco products sold nationally and that, as a nondiscriminatory state law that is not expressly preempted by federal law, the escrow statute applies to King Mountain. The district court granted summary judgment in favor of the State, and Appellants appeal. We have jurisdiction under 28 U.S.C. § 1291, and we affirm the judgment of the district court.

BACKGROUND

The Treaty between the Confederated Tribes and Bands of the Yakama Indian Nation and the United States was negotiated and signed in 1855. *See* Treaty with the Yakamas, 12 Stat. 951 (1855).¹ Under the Treaty, the people of the Yakama Nation agreed to cede a majority of their lands to the United States in return for certain reserved rights. *Id.* The Yakama Nation also agreed to live on reserved lands held in trust by the United States. *Id.*

A. King Mountain Tobacco Company

King Mountain Tobacco Company is owned and operated by Delbert Wheeler, an enrolled member of the Yakama Nation. King Mountain initially obtained all of its tobacco from an entity in North Carolina. Today, King Mountain grows some of its tobacco and manufactures its tobacco products, in part, on trust lands within the boundaries of the Yakama Nation. In 2009, approximately 3.1% of the tobacco used in King

¹ The Treaty refers to the tribe as the “Yakamas” but the parties use “Yakama,” so we adopt that convention.

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Mountain's products was grown on trust lands. By 2010, that amount had risen to 9.5%. In 2011, it rose again, to 37.9%.

King Mountain ships its tobacco crop to Tennessee where it is threshed. From there, the tobacco is sent to a factory in North Carolina where more tobacco is added to the reservation tobacco. This process is called "blending." After blending is complete, the tobacco is sent back to the reservation. King Mountain sells cigarettes and other tobacco products on the reservation, throughout Washington, and in about sixteen other states.

B. Washington's Escrow Statute

In 1998, forty-six states, the District of Columbia, and five United States territories settled a lawsuit against four major cigarette manufacturers, creating a Master Settlement Agreement (MSA). The MSA requires the manufacturers to make substantial annual cash payments to the settling states and territories, in perpetuity, to offset the increased cost to the health care system created by smoking. In return, the manufacturers obtained a release of specified past and future tobacco-related claims against them.

Not all cigarette manufacturers joined the MSA, either initially or later. The states feared that these non-participating manufacturers (NPMs) would become insolvent against future liability for smoking-related health care costs. Because of this concern, many states adopted escrow statutes. The escrow statutes require NPMs to either join the MSA or pay into a qualified escrow fund. *See, e.g.*, Wash. Rev. Code § 70.157.020(b) (2013).

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Washington adopted an escrow statute to offset smoking-related health care costs caused by NPMs. *Id.* § 70.157.005. For each qualifying unit of tobacco sold, NPMs must make a flat-fee payment into an escrow fund. *Id.* § 70.157.020(b)(1). The NPMs earn interest on the escrow account balances. *Id.* § 70.157.020(b)(2). The money in the escrow account may be released only: (1) to pay a judgment or settlement; (2) as a refund to the NPM for overpayment to the account; or (3) as a refund to the NPM after the funds have been in the account for 25 years. *Id.*

King Mountain initially complied with Washington's escrow statute; but in 2011, it filed this lawsuit to contest its obligation to comply.

C. The District Court's Order

Appellants and the State filed cross-motions for summary judgment in district court. Appellants offered evidence of the Yakama people's understanding of the 1855 Treaty to support their claim that the Treaty is an express federal law that exempts King Mountain's activities from state economic regulation. The district court made findings regarding how Washington's escrow statute operates and regarding King Mountain's business.

The district court began its analysis by observing: "It is well-settled that a state can regulate (i) off-reservation transactions conducted by Native Americans; (ii) on-reservation sales to persons other than Native Americans; and (iii) impose certain requirements upon Native Americans in regulating those sales." It also explained, quoting *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148–49 (1973):

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“Absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State.”

The district court found that “King Mountain’s operations involve extensive off-reservation activity” and that “the cigarettes and roll-your-own tobacco products produced by King Mountain are not principally generated from the use of reservation land and resources.” Rejecting King Mountain’s argument to the contrary, the district court concluded: “Washington[’s] escrow statutes are non-discriminatory state laws of general application.” Applying *Mescalero*, the court ruled that “King Mountain ha[d] not met its burden of showing express federal law exempting its business from state regulation nor [did] it offer case authority invalidating application of any state’s escrow statute based on an Indian Treaty or any other federal law.” The district court granted the State’s motion for summary judgment and denied Appellants’ motion.

STANDARD OF REVIEW

This court reviews a district court’s order granting summary judgment de novo. *Ramsey v. United States*, 302 F.3d 1074, 1077 (9th Cir. 2002). Viewing the evidence in the light most favorable to the nonmoving party, we determine “whether there are any genuine issues of material fact and whether the district court correctly applied the relevant substantive law.” *Id.* We also review de novo the interpretation and application of treaty text. *Cree v. Flores*, 157 F.3d 762, 768 (9th Cir. 1998) (*Cree II*). “Underlying factual findings, including findings of historical fact, are reviewed for clear error.” *Id.*

DISCUSSION

Appellants argue that summary judgment in favor of the State was improper because the district court failed to consider evidence showing how the Yakama people understood the Treaty in 1855. They also argue that the Yakama Treaty is express federal law exempting the Yakama people from the Washington escrow statute. In response, the State counters that its escrow statute is a nondiscriminatory law that applies to the Yakama people's off-reservation activities because there is no express federal law that prevents its application.

The Supreme Court has explained: "Absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State." *Mescalero*, 411 U.S. at 148–49. Accordingly, our court has explained: "[A] state's authority to tax tribal members is limited depending on the subject and location of the tax." *Ramsey*, 302 F.3d at 1078. We also have explained that federal laws, such as treaties, ordinarily must be interpreted in the light most favorable to Indians:

When a court interprets a state's taxation of Indians' off-reservation activities, the court determines if there is an express federal law prohibiting the tax. The federal law must be interpreted in the light most favorable to the Indians, and extrinsic evidence may be used to show the federal government's and Indians' intent. Unlike the federal standard, there is no requirement to find express exemptive language

before employing the canon of construction favoring Indians.

Id. at 1079. But “even though legal ambiguities are resolved to the benefit of the Indians, courts cannot ignore plain language that, viewed in historical context and given a fair appraisal, clearly runs counter to a tribe’s later claims.” *Or. Dep’t of Fish & Wildlife v. Klamath Indian Tribe*, 473 U.S. 753, 774 (1985) (citations and internal quotation marks omitted).

A. Washington’s escrow statute is a nondiscriminatory law and King Mountain’s activities are largely off-reservation.

As an initial matter, *Mescalero* requires that we determine whether Washington’s escrow statute is discriminatory and whether King Mountain’s activities go beyond the boundaries of the reservation. *See* 411 U.S. at 148–49. Appellants argue that Washington’s escrow statute is discriminatory, without explaining what the statute discriminates against.² Their citation to *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 335 (1977), is inapposite because they provide no evidence to suggest that the Washington escrow statute treats in-state cigarette manufacturers differently than out-of-state manufacturers. We conclude the district court correctly determined that Washington’s escrow statute is nondiscriminatory.

² At oral argument, Appellants took the position that the statute discriminates against the Yakama because it requires the Tribe to waive its treaty rights. This argument is circular; it presupposes that the Treaty exempts the Yakama from Washington’s escrow statute.

Appellants also argue that the district court erred by creating a new rule requiring courts to determine whether a product is principally generated from reservation land before extending the Treaty protections. The district court found that “King Mountain’s operations involve extensive off-reservation activity.” It also found that “the cigarettes and roll-your-own tobacco products produced by King Mountain are not principally generated from the use of reservation land and resources.” This was a proper application of *Mescalero* by the district court, not a new test. It was appropriate for the court to make a preliminary determination about whether King Mountain’s activities were “off-reservation” for purposes of applying the test from *Mescalero*. See *Ramsey*, 302 F.3d at 1079.

The district court found that King Mountain ships its tobacco crop to Tennessee where it is threshed. Then the tobacco is sent to a factory in North Carolina where more tobacco is purchased and blended with reservation tobacco. In 2011, less than half of the tobacco in King Mountain’s products was grown on the reservation. After the blending process, the tobacco is sent back to the reservation, where much of it is made into cigarettes. King Mountain sells its tobacco products throughout Washington and in about sixteen other states. Appellants do not argue that any of the district court’s factual findings were clearly erroneous, see *Cree II*, 157 F.3d at 768, and we find no support for Appellants’ implied argument that the district court clearly erred by finding that King Mountain’s tobacco-related activities were largely “off-reservation.”

Having concluded that Washington's escrow statute is nondiscriminatory and that King Mountain's tobacco related activities take place largely off-reservation, *Mescalero* requires that we decide whether there is an express federal law that exempts King Mountain's activities from state economic regulation. See *Mescalero*, 411 U.S. at 148–49; see also *Ramsey*, 302 F.3d at 1077, 1079; *Cree v. Waterbury*, 78 F.3d 1400, 1403 (9th Cir. 1996) (*Cree I*).

B. The plain text of the Yakama Treaty does not create a federal exemption from Washington's escrow statute.

Appellants argue that the district court erroneously applied the standard for determining whether a federal law, rather than a state law, applies to an Indian tribe. They also argue that the Yakama Treaty is express federal law that exempts King Mountain from Washington's escrow statute. The State responds that the district court correctly applied the *Mescalero* test and concluded that the Treaty is not an express federal law that exempts King Mountain from state economic regulations. We agree with the State.

Contrary to King Mountain's position, the district court did not apply the "express exemptive language" test for determining whether a federal law applies to the tribe. See *Ramsey*, 302 F.3d at 1078–79 (explaining the differences between the "express exemptive language" test, which applies to federal laws, and the "express federal law" test, which applies to state laws). The district court applied the test from *Mescalero* to determine whether there was an "express federal law exempting [King Mountain's] business from state regulation." The district court did not engage in an

exhaustive review of the meaning the Yakama would have given to the Treaty as of 1855 because it reasoned that “King Mountain can prove no set of facts in support of the claim that Washington’s escrow statutes are in conflict with the Treaty or federal law which would entitle Plaintiffs to relief.”³

Because the Washington escrow statute is a nondiscriminatory law, Appellants bear the burden of proving that the Yakama Treaty is an express federal law that exempts it from Washington’s escrow statute. *See, e.g., Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 160 (1980) (“The Tribes, and not the State as the District Court supposed, bear the burden of showing that the [state] recordkeeping requirements which they are challenging are invalid.”). “A treaty can constitute such an express federal law.” *Cree I*, 78 F.3d at 1403. As we have noted, there is no requirement to find express exemptive language *before* employing the canon of construction favoring Indians under the state standard. *Ramsey*, 302 F.3d at 1079. But “[t]he canon of construction regarding the resolution of ambiguities in favor of

³ The State argues that Appellants did not preserve their factual inquiry argument regarding the meaning of the Yakama Treaty to the Yakama people. In its motion for summary judgment, King Mountain repeatedly stated that an Indian Treaty must be construed in favor of the Indians, and it summarized the evidence that it submitted in support of this argument. After reviewing the record, we conclude that the State’s waiver claim is not supported. Appellants continually argued that the district court had to consider the meaning of the Treaty to the Yakama people, and that it believed there were no disputed facts about how the Yakama people understood the Treaty in 1855. These arguments are not inconsistent and they were preserved.

Indians . . . does not permit reliance on ambiguities that do not exist; nor does it permit disregard of the clearly expressed intent of Congress.” *South Carolina v. Catawba Indian Tribe, Inc.*, 476 U.S. 498, 506 (1986); *see also Klamath Indian Tribe*, 473 U.S. at 774 (“[E]ven though legal ambiguities are resolved to the benefit of the Indians, courts cannot ignore plain language that, viewed in historical context and given a fair appraisal, clearly runs counter to a tribe’s later claims.” (citations and internal quotation marks omitted)).

The Indian canon of construction does not alter the outcome in this case because the relevant text of the Yakama Treaty is not ambiguous and the plain language of the Treaty does not provide a federal exemption from the Washington escrow statute.

1. Article II of the Yakama Treaty does not constitute an express federal law that exempts King Mountain from Washington’s escrow statute.

Article II of the Yakama Treaty establishes the physical boundaries of the Yakama reservation and prohibits non-Indians from inhabiting reservation land unless an exception applies. Article II of the Treaty reads in relevant part:

There is, however, reserved, from the lands above ceded for the use and occupation of the aforesaid confederated tribes and bands of Indians, the tract of land included within the following boundaries, to wit: [Description of the physical boundaries of the reservation]

All which tract shall be set apart and, so far as necessary, surveyed and marked out, for the

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exclusive use and benefit of said confederated tribes and bands of Indians, as an Indian reservation; nor shall any white man, excepting those in the employment of the Indian Department, be permitted to reside upon the said reservation without permission of the tribe and the superintendent and agent. And the said confederated tribes and bands agree to remove to, and settle upon, the same, within one year after the ratification of this treaty. In the mean time it shall be lawful for them to reside upon any ground not in the actual claim and occupation of citizens of the United States; and upon any ground claimed or occupied, if with the permission of the owner or claimant.

Treaty with the Yakamas, art. II, 12 Stat. 951 (1855).

Appellants argue that, under the Treaty “the Yakama people were to be the sole residents of the reserved lands (‘use and occupation’) and were to be the sole beneficiaries of the resources cultivated on the reserved lands (‘exclusive use and benefit’).” They conclude that as understood by the Yakama, the Treaty “would preserve [the tribe’s] traditional practices of using their lands for growing tobacco and trading that product with other Yakama and non-Yakama alike, without economic restrictions.”

Article II defines the geographic boundaries of the Yakama reservation, and reserves it for Yakama use and benefit, while prohibiting non-Indians from living on the reserved land. The “use and occupation” phrase describes the agreement that the reserved land would be dedicated for the Yakama to live on and work on: “There is, however, reserved, from the lands above

ceded for the *use and occupation* of the aforesaid confederated tribes and bands of Indians, the tract of land included within the following boundaries.” *Id.* (emphasis added). The “exclusive use and benefit” language concerns who may live on reservation land: “All which tract shall be set apart and, so far as necessary, surveyed and marked out, for the *exclusive use and benefit* of said confederated tribes and bands of Indians, as an Indian reservation; nor shall any white man . . . be permitted to reside upon the said reservation without permission” *Id.* (emphasis added).

There is no ambiguity in Article II requiring us to decide how the Treaty would be interpreted with regard to the rights of the Yakama to trade outside the reservation. Washington’s escrow statute does not interfere with King Mountain’s ability to grow tobacco on reservation lands and benefit from the sale of its tobacco products. Further, Supreme Court authority precludes interpreting the Yakama Treaty in the manner urged by Appellants; “exclusive benefit” cannot mean that King Mountain is free to sell cigarettes to non-Indians and nonmembers without any regulation by the state. *See Confederated Tribes of Colville Indian Reservation*, 447 U.S. at 151.

In *Confederated Tribes of Colville Indian Reservation*, the Supreme Court explained that a “State may sometimes impose a nondiscriminatory tax on non-Indian customers of Indian retailers doing business on the reservation.” *Id.* In that case, the Court held that cigarette sales by a tribe to non-Indians and nonmember Indians were taxable by the state, even though sales to tribal members were not taxable by the

state and the tribe imposed its own tax. *Id.* at 155–56, 160–61. The Court explained that state taxes were not preempted by federal law and did not interfere with tribal self-government. *Id.* at 155–56. In *Colville*, the Supreme Court specifically addressed the same treaty at issue here, the Yakama Treaty of 1855. *Id.* at 156.

The Washington escrow statute is not a tax. King Mountain earns interest on the money held in escrow and may receive a refund after 25 years. Wash. Rev. Code § 70.157.020(b)(2) (2013). This provision is significant because the escrow scheme imposes a less significant burden on trade than the tax approved by the Supreme Court in *Colville*. Further, *Colville* involved activity by the Yakama tribe, 447 U.S. at 139–40, whereas the activity here is by a private company owned by one Yakama tribal member. We fail to see how a cigarette tax on tribal activity would not be preempted by the Yakama Treaty, but a less intrusive escrow requirement on a private business owned by one tribal member would be preempted.

Although a treaty may constitute an express federal law that could exempt tribal activity from state economic regulation, *Cree I*, 78 F.3d at 1403, Article II of the Yakama Treaty does not provide such an exemption in this case. Article II does not address trade, and there is no ambiguity that required the district court to conduct an exhaustive review to discern the meaning the Yakama people would have given to the Treaty at the time of its signing. We agree with the district court that Article II does not provide an express federal exemption from Washington’s escrow statute.

2. Article III of the Yakama Treaty does not constitute an express federal law that exempts King Mountain from Washington’s escrow statute.

Article III of the Yakama Treaty reserves to the tribe the right to travel on public highways and the right to fish and hunt. Appellants claim that “[t]his Court’s controlling case law has interpreted Article III as unequivocally prohibiting imposition of economic restrictions or pre-conditions on the Yakama people’s Treaty right to engage in the trade of tobacco products.” The language of Article III and our precedent do not support this claim. The relevant part of Article III reads:

And provided, That, if necessary for the public convenience, roads may be run through the said reservation; and on the other hand, the right of way, with free access from the same to the nearest public highway, is secured to them; as also the right, in common with citizens of the United States, to travel upon all public highways.

Treaty with the Yakamas, art. III, 12 Stat. 951 (1855). As shown by the plain text of Article III, the Treaty reserved to the Yakama the right “to travel upon all public highways.” Nowhere in Article III is the right to trade discussed.

Cree I and *Cree II* involved the same Article III provision of the Yakama Treaty. *Cree II*, 157 F.3d at 764; *Cree I*, 78 F.3d at 1402. In *Cree I*, our court explained that the Yakama Nation brought suit to prevent the State of Washington “from applying state

truck license and permit fees to members of the Yakama tribe.” 78 F.3d at 1401. The district court granted summary judgment in favor of the Yakama Nation “on the ground that the phrase ‘in common with,’ as used in the Treaty in reference to the highway right” precluded imposition of those fees. *Id.* at 1401–02. Our court reversed the district court’s ruling and remanded for fact-finding regarding the meaning the parties would have given to the highway right at the time the Treaty was executed. *Id.* at 1404.

On remand, the district court conducted an extensive review of the facts and made several findings. *Cree II*, 157 F.3d at 766. It granted summary judgment in favor of the Yakama Nation after concluding that the Treaty provided an exemption for the Yakama people from the Washington truck license and permit fees. *Id.* at 764. We affirmed the district court’s decision. *Id.* at 774. We reasoned that the Treaty was evidence of the importance of the right to travel to the Yakama, *id.* at 772, and concluded that “the Treaty clause must be interpreted to guarantee the Yakamas the right to transport goods to market over public highways without payment of fees for that use,” *id.* at 769.

This right was reaffirmed in *United States v. Smiskin*, 487 F.3d 1260 (9th Cir. 2007). *Smiskin* involved Yakama members who were criminally indicted for trafficking in contraband cigarettes. *Id.* at 1262. The federal statute criminalizing this conduct incorporated state law definitions and notice requirements. *Id.* at 1263. We affirmed a district court order dismissing the indictment because the Yakama Treaty exempted the Yakama people from complying

with state law notice requirements. *Id.* at 1272. We concluded that “[a]pplying [that] type of requirement to the Yakamas imposes a condition on travel that violates *their treaty right to transport goods to market without restriction.*” *Id.* at 1266 (emphasis added).

We had previously found ambiguity in Article III’s right to travel, and required application of the Indian canon of construction to clarify the extent of that right. *See Cree I*, 78 F.3d at 1404. But the right to travel is express in Article III of the Yakama Treaty, and the *Cree* cases involved the right to travel (driving trucks on public roads) for the purpose of transporting goods to market. In *Smiskin*, we rejected the government’s argument that the right to travel did not apply when the Yakama were engaged in commerce. 487 F.3d at 1266–67 (“[T]he right to travel overlaps with the right to trade under the Yakama Treaty such that excluding commercial exchanges from its purview would effectively abrogate our decision in *Cree II* and render the Right to Travel provision truly impotent.”). These cases clarified the extent of the right to travel found in Article III of the Yakama Treaty.

But there is no right to trade in the Yakama Treaty. The Indian canon of construction “does not permit reliance on ambiguities that do not exist; nor does it permit disregard of the clearly expressed intent of Congress.” *Catawba Indian Tribe*, 476 U.S. at 506. The district court did not err by granting summary judgment to the State without making findings about the historic meaning of the Treaty to the Yakama people, because the Treaty’s meaning to the Yakama people cannot overcome the plain and unambiguous text of the Treaty. *See Klamath Indian Tribe*, 473 U.S.

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at 774. Article III does not provide an express federal exemption from Washington's escrow statute.

CONCLUSION

Washington's escrow statute is a nondiscriminatory law that applies to off-reservation activity. Appellants failed to prove that the Yakama Treaty is an express federal law that exempts King Mountain from Washington's escrow statute. The plain language of the Yakama Treaty does not provide an express federal exemption from the escrow statute. And the district court did not err by declining to make findings regarding the Treaty's meaning to the Yakama people at the time of its signing, because the meaning to the Yakama people cannot overcome the clear words of the Treaty. We affirm the district court's order granting summary judgment in favor of the State and dismissing Appellants' motion for summary judgment.

AFFIRMED.

APPENDIX B

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
NO. CV-11-3018-LRS
[Filed April 5, 2013]**

KING MOUNTAIN TOBACCO)
COMPANY, INC.; CONFEDERATED)
TRIBES AND BANDS OF THE YAKAMA)
NATION,)
)
Plaintiffs,)
)
-vs-)
)
ROBERT McKENNA, ATTORNEY)
GENERAL OF THE STATE OF)
WASHINGTON,)
)
Defendant.)

ORDER RE SUMMARY JUDGMENT MOTIONS

BEFORE THE COURT are the cross-motions for summary judgment filed by the parties on November 9, 2012: Plaintiffs' Motion for Summary Judgment (ECF No. 85); Defendant's Motion for Summary Judgment (ECF No. 90); and other miscellaneous motions. Oral

argument was held on February 11, 2013, and at the conclusion, the motions were taken under advisement.

I. BACKGROUND AND FACTS

This declaratory judgment and injunctive relief action is brought by the Plaintiffs against the Washington Attorney General based on allegations of systematic and continuous violations of: (i) the Treaty of 1855 between the United States and the Confederated Tribes and Bands of the Yakama Nation; (ii) federal laws; and (iii) tribal laws of the Confederated Tribes and Bands of the Yakama Nation. Plaintiff King Mountain is a tobacco product manufacturer, owned by Delbert Wheeler, a Yakama Nation member.

In the mid-1990s, Washington and several other states sued cigarette manufacturers, seeking to protect public health and recover costs and other damages incurred by the states due to smoking-related illnesses. In 1998, the States' Attorneys General Litigation against the major tobacco companies resulted in The Master Settlement Agreement ("MSA") between 46 states and tobacco product manufacturers ("Original Participating Manufacturers" or "OPM"). Pursuant to the MSA, the OPMs obtained release of specified past and future tobacco-related claims against them in exchange for an agreement to make substantial annual cash payments to the states in perpetuity to offset the burden that their cigarettes impose or will impose on the public health system. The payments from the OPMs are designed to compensate the states for expenses they incur as the payers of last resort for health care costs of citizens who suffer smoking-related illnesses.

The MSA carves out three different groups of manufacturers: the OPM, Subsequent Participating Manufacturers, and Non-Participating Manufacturers (“NPM”). The Washington Legislature, like the legislatures of the other settling states, adopted a Qualifying Statute. See Wash. Rev. Code § 70.157.005. In its findings, the Legislature expressly recognized the need to establish a reserve fund to cover the potential liability of NPMs. Washington’s Qualifying Statute requires all NPMs to make payments into qualified escrow accounts or join the MSA. The Qualifying Statute, therefore, requires tobacco product manufacturer Plaintiff King Mountain Tobacco, an NPM, to either join the MSA or deposit funds into escrow, based on the amount of their cigarette sales, that the State would obtain access to in the event of a future settlement or judgment against King Mountain. NPMs, who do not join the MSA, are required to make escrow payments for only those cigarettes or roll-your-own containers that are subject to Washington’s cigarette tax, Wash. Rev. Code § 70.157.010(j)-.020(b).

From the Plaintiffs’ perspective, the MSA resulted in the enactment of the Washington State Escrow Statutes (“escrow statutes”), which place economic restrictions and preconditions on the ability of NPMs to participate in the tobacco product market. From the Defendant’s perspective, the escrow requirement works differently than the State’s cigarette taxes. The State obtains access to escrow funds only under certain conditions; otherwise, the funds revert to the tobacco product manufacturer. The financial institution holding the escrow funds may release the funds only (1) to pay a judgment or settlement of a qualifying claim (i.e., state or consumer sues manufacturer for damages due

to smoking), (2) to reimburse the manufacturer for amounts above what the NPM would have had to pay had it been a Participating Manufacturer, or (3) to return the escrow funds to the manufacturer 25 years after they were placed into the escrow fund. Wash. Rev. Code § 70.157.020(2). In addition, the manufacturer receives any interest earned on the account on an ongoing basis.

The Washington Attorney General enforces the escrow statutes and must bring a civil action against any NPM that fails to certify compliance with the statute. Wash. Rev. Code § 70.157.020(3). Upon a finding of a second knowing violation of the Qualifying Statute, a court may prohibit the manufacturer from selling cigarettes in Washington (either directly or through a distributor) for a period of two years.

Plaintiff King Mountain engages in a multistate business growing tobacco and manufacturing cigarettes and roll-your-own tobacco. The business involves (1) shipping King Mountain tobacco to Tennessee, where it is threshed, (2) shipping tobacco to North Carolina, where King Mountain tobacco is blended with North Carolina grown (Alliance One) tobacco, (3) transporting the blended tobacco on its trucks from North Carolina back to Washington, (4) advertising its cigarettes in multiple states through trade shows and the Internet, and (5) selling its cigarettes (through a distributor) to retail stores throughout Washington (and multiple other states) that ultimately sell cigarettes to consumers. ECF No. 95.

In 2009, approximately 3.1% of the tobacco used in the resulting cigarettes was grown on reservation land while the rest was purchased from Alliance One. *Id.* In

2010, the amount of King Mountain tobacco was 9.5%, and in 2011, 37.9%. *Id.* King Mountain pays Alliance One by the pound for the blended tobacco. *Id.* With the exception of a subsequent Native American ceremony to preserve the sacred character of King Mountains' tobacco products, also referred to as "blending," all the blending of King Mountain and Alliance tobacco occurs in North Carolina. *Id.*

King Mountain and its distributor, Mountain Tobacco, sell the cigarettes to distributors throughout Washington and in approximately 16 other states. *Id.* For non-reservation distributors throughout Washington, King Mountain provides those cigarettes to Mountain Tobacco, which then delivers the cigarettes. *Id.* King Mountain delivers cigarettes directly to reservation retailers. *Id.* King Mountain advertises its products at trade shows in multiple states, as well as through the Internet. *Id.*

The Yakama Nation and National Congress of American Indians have taken the position that King Mountain is not subject to the requirements of the Washington escrow statutes. After certifying its escrow obligation in 2007, and generally complying with the escrow requirement for several years under the Qualifying and Complementary Statutes, King Mountain now denies its obligations under State law. The present lawsuit was commenced when the State failed to acknowledge that the economic restrictions and preconditions imposed by the Washington State escrow statutes violate established 1855 Yakama Treaty Rights ("Treaty").

II. PLAINTIFF'S MOTION TO STRIKE (ECF No. 74)

Plaintiff moves to strike reports and exclude testimony of Emily Greenwald (ECF No. 74), which motion was filed on November 9, 2012 but deferred by the Court on January 25, 2013 (ECF No. 139). Plaintiffs argued that Dr. Greenwald's opinions on Article III of the Treaty are barred by the doctrine of collateral estoppel, and are irrelevant, unreliable, and inadmissible. Plaintiffs further argued that Defendant's expert, Dr. Greenwald, Ph.D., is not qualified to opine on the issues addressed in her reports.

Defendant did not use or rely on the testimony of Dr. Greenwald for purposes of its summary judgment motion. The Court, therefore, denies Plaintiffs' motion to strike as moot.

III. DEFENDANT'S MOTION TO STRIKE PLAINTIFFS' NEW LEGAL THEORY AND RELATED FACTUAL SUBMISSIONS (ECF No. 107)

Defendant argues that Plaintiffs improperly raised a new claim of relief, which was not in their First Amended Complaint, in support of their motion for summary judgment. Defendant states that Plaintiffs' complaint asserts only two claims and both rely on the Treaty and other unspecified federal law. Defendant argues that during the summary judgment motion, Plaintiffs expanded on their argument. Specifically, Plaintiffs explained in the summary judgment that because the Washington Department of Revenue defined certain King Mountain sales as tax exempt,

those sales were not “units sold” within the definition set forth in Rev. Code Wash. §70.157.010(j). Plaintiffs concluded that in addition to the Treaty protections exempting King Mountain from State escrow obligations, it is also exempt from State escrow obligations for its on-reservation sales based on the State’s determination that these sales are not taxable.

The Court finds that although the Plaintiffs’ First Amended Complaint sets forth claims that rely on the Treaty and other federal law, the information about state tax-exempt products at issue is relevant and tied into the Plaintiffs’ lawsuit. Plaintiffs, however, have not offered evidence relating to verifiable state tax-exempt sales for which King Mountain has deposited money into escrow for, as “units sold,” that would or should be segregated from the other indirect sales at issue in this lawsuit nor has timely discovery apparently occurred on this issue. Therefore, the motion to strike is granted, in part.

IV. APPLICABLE LAW

Summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A key purpose of summary judgment “is to isolate and dispose of factually unsupported claims” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). Summary judgment is “not a disfavored procedural shortcut,” but is instead the “principal tool[] by which factually insufficient claims or defenses [can] be isolated and prevented from going to trial with the attendant unwarranted consumption of public and private resources.” *Celotex*, 477 U.S. at 327.

The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact. *See Celotex*, 477 U.S. at 323. The moving party must demonstrate to the Court that there is an absence of evidence to support the non-moving party's case. *See Celotex Corp.*, 477 U.S. at 325. The burden then shifts to the non-moving party to "set out 'specific facts showing a genuine issue for trial.'" *Celotex Corp.*, 477 U.S. at 324 (*quoting* Fed. R. Civ. P. 56(e)).

A genuine issue of material fact exists if sufficient evidence supports the claimed factual dispute, requiring "a jury or judge to resolve the parties' differing versions of the truth at trial." *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir.1987). At summary judgment, the court draws all reasonable inferences in favor of the nonmoving party. *Dzung Chu v. Oracle Corp. (In re Oracle Corp. Secs. Litig.)*, 627 F.3d 376, 387 (9th Cir. 2010) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986)). The evidence presented by both the moving and non-moving parties must be admissible. Fed. R. Civ. P. 56(e). The court will not presume missing facts, and non-specific facts in affidavits are not sufficient to support or undermine a claim. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888-89 (1990).

V. CROSS-SUMMARY JUDGMENT MOTIONS

Plaintiffs assert that King Mountain is engaged in the trade of farming, cultivating, and trading tobacco just as the Yakamas have been for centuries. The MSA resulted in the enactment of the State escrow statutes, which Plaintiffs complain place economic restrictions and preconditions on the ability of King Mountain, an NPM, to participate in the market. Further, Plaintiffs

conclude, the economic restrictions and preconditions imposed by the State escrow statutes violate established Treaty rights.

A. Treaty - Articles II and III

The first argument raised by Plaintiffs for why King Mountain should not be required to comply with the State escrow statutes is that King Mountain is exempt from such escrow payments under the Treaty of 1855, 12 Stat. 951. Article II of the Treaty describes the land that was reserved to the Yakama Nation and stated that the “tract shall be set apart and, so far as necessary, surveyed and marked out, *for the exclusive use and benefit* of said confederated tribes and bands of Indians” *Id.* (emphasis added). Plaintiffs argue that the language “for exclusive use and benefit” evidences an intent by the United States to not restrict certain activities, including the manufacturing of tobacco products and trade. Also, it was the Yakamas understanding that Article II was a guarantee that they would always have the “exclusive use and benefit” of the income from their lands.

The second argument advanced by Plaintiffs is that, as a matter of law, the State escrow statutes are preconditions and economic restrictions that violate Yakama members’ Article III Trade and Travel Rights. Article III of the Treaty of 1855 states, in pertinent part, as follows:

And provided, that, if necessary for the public convenience, roads may be run through the said reservation; and on the other hand, the right of way, with free access from the same to the nearest public highway, is secured to them; as

also the right, in common with citizens of the United States, to travel upon all public highways.

Plaintiffs assert that the parties to the Treaty could not have contemplated a State mandate that required Yakama people to surrender revenue generated by them on Yakama land to be held and used for the benefit of the state as a precondition to exercising their Treaty-protected rights to trade in tobacco. To that end, Plaintiffs reason, the Treaty's recognized broad protections secure King Mountain's right to produce and sell its products in the State of Washington without the encroachments imposed by the State escrow statutes.

Plaintiffs assert that the Ninth Circuit has expressly held that Article III protects the Yakamas' right to travel and trade, without restriction, with respect to tobacco products. *United States v. Smiskin*, 487 F.3d 1260, 1266-67 (9th Cir. 2007) ("Thus, whether the goods at issue are timber or tobacco products, the right to travel overlaps with the right to trade under the Yakama Treaty such that excluding commercial exchanges from its purview would effectively abrogate our decision in *Cree II* and render the Right to Travel provision truly impotent."); *Yakama Indian Nation v. Flores*, 955 F. Supp. 1229, 1248 (E.D. Wash. 1997) (holding that "the language of the Treaty, when viewed in the historical context as the Yakamas would have understood it, unambiguously reserves to the Yakamas the right to travel the public highways without restriction for purposes of hauling goods to market"); *Cree v. Flores*, 157 F.3d 762, 769 (9th Cir. 1998) (affirming the *Flores* district court's finding that

Article III “must be interpreted to guarantee the Yakamas the right to transport goods to market over public highways without payment of fees for use”).

In further support of their arguments, Plaintiffs rely on *Smiskin* which held that an Indian treaty “must be construed as the Indians would naturally have understood it at the time of the treaty, with doubtful or ambiguous expressions resolved in the Indians’ favor.” *United States v. Smiskin*, 487 F.3d 1260,1264 (9th Cir. 2007). It is undisputed, Plaintiffs argue, that before the time of the Treaty, the Yakama were “inveterate traders.” *Flores*, 955 F. Supp. at 1238.

In summary, Plaintiffs conclude that as a matter of fact and law, there is no dispute-and Defendant has failed to rebut-that the Yakama understood Article II of the Treaty to guarantee them the right to engage in the historic practice of growing and trading tobacco without any economic impediments, restrictions, or conditions being imposed by any state or the federal government. This conclusion is based on: (1) the historical significance of tobacco being grown by the Yakama and then subsequently traded with other Yakama and non-Yakamas alike; (2) the representations made by the United States representatives to the Yakama at the time of the Treaty negotiations at the Walla Walla Council; and (3) the language of the Treaty itself.

Defendant responds, in opposition to Plaintiffs’ Treaty rights arguments, that allowing the Yakamas to travel and use their land are not express exemptions from nondiscriminatory Washington regulation of tobacco products. Defendant states that Article II merely preserved the physical land for the Indian

reservation. King Mountain engages in an expansive, multistate business growing tobacco and manufacturing cigarettes and roll-your-own tobacco and the broad scope of Plaintiffs' commercial enterprise takes this conduct out of the realm of mere reservation activity. In other words, when taking into account the manufacturing process involved and the amount of reservation-grown tobacco that is used in King Mountain's products, Defendant asserts that the cigarettes and roll-your-own tobacco produced by King Mountain are not principally generated from the use of reservation land and resources.

Relying on *Mescalero*, Defendant asserts that King Mountain's claim contradicts long-established law of the highest court that absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to non-discriminatory state law otherwise applicable to all citizens of the State. *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148-49 (1973).

Defendant points out that Plaintiffs' travel cases (*Smiskin*, *Fiander*, *Ramsey*, *Cree*) are inapposite as none of those cases deal with regulations similar to the escrow statutes that regulate the product itself that is subject of commerce, rather than how such a product is brought to market. Similarly, Defendant points out that because the tobacco product manufacturer retains rights in its deposits and the money is not transferred to the State except in the event of settlement or judgment, the escrow requirement differs from a typical tax. Therefore, the cases relied upon by Plaintiffs holding taxes are improper as to the Indians are not applicable to the facts of this case.

Citing *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163 (1989), which involved a non-Indian company that operated by way of an oil and gas lease on land owned by the United States in trust for the Jicarilla Tribe, Defendant argues the highest court held that the mere fact that the state tax imposes some limit on the profitability of Indian oil and gas leases was too indirect to reject state taxation. *Id.* at 191. Defendant contends the argument made by Plaintiffs here is even weaker than the argument made on behalf of Jicarilla Tribe because mineral leases were the primary source of the Jicarilla Tribe's operating revenues. King Mountain, although owned by a Yakama member, is a private rather than a tribal enterprise.

In a similar vein, Defendant explains that Washington's escrow statutes are not a "precondition" to King Mountain engaging in economic activity. King Mountain need not comply with the escrow statute to grow tobacco on its land. Rather, Washington law imposes non-discriminatory requirements when King Mountain chooses to sell cigarettes to nonmembers in Washington. The mere fact that the escrow requirement reduces profits partially derived from reservation land is not enough to demonstrate interference with the use and benefit of Yakama land. Defendant supports this argument with the *Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 155 (1980) case.

Defendant also argues that tobacco products threaten public health and are squarely within a State's police power to promote public health, safety, welfare and morals. *Star Scientific, Inc. v. Beales*, 278 F.3d 339, 361 (8th Cir. 2002). As a tobacco product

manufacturer, King Mountain shares in its responsibility as it relates to the sale and distribution of cigarettes in Washington. Defendant concludes that the State has a legitimate and regulatory interest in ensuring that King Mountain fulfills its obligation in Washington for the damages caused by its product to non-members on and off the reservation.

B. King Mountain Products Are State-Tax Exempt

Plaintiffs assert that Washington State has acknowledged that King Mountain products are state-tax exempt. Therefore, Plaintiffs conclude, the sales of King Mountain products are not subject to State escrow obligations.

Defendant disagrees as to the conclusion but concedes the Attorney General recognizes that sales made on the Yakama reservation to Yakama members or members of compact tribes are not subject to the State's escrow requirements because the "units sold" definition includes only sales subject to the state excise tax.¹

The Washington State Department of Revenue letter ruling relied on by King Mountain expressly states that King Mountain must escrow for the sales at issue in this lawsuit. In 2007, the Department of Revenue provided King Mountain a letter ruling regarding which sales are subject to state excise taxes. ECF No. 36-5. The letter ruling states (subject to certain conditions) that sales by King Mountain of cigarettes manufactured and sold within the

¹ ECF No. 94 at 32, footnote 5.

reservation are state tax exempt. But the Department also clearly informed King Mountain that “subsequent sales by purchasers” who are either non-Indian or non-member Indians either on or off the reservation and the Yakama Tribe or a Yakama member for selling activity taking place off the reservation were not tax exempt. The same ruling also required compliance with applicable provisions of the MSA. In sum, Defendant states the Department of Revenue letter ruling exempts from state excise taxes certain direct sales by King Mountain within the reservation, but does not exclude from state excise tax those indirect “downstream” sales to Indians, non-Indians and Indian tribal members.

VI. ANALYSIS

It is well-settled that a state can regulate (i) off-reservation transactions conducted by native Americans; (ii) on-reservation sales to persons other than Native Americans; and (iii) impose certain requirements upon Native Americans in regulating those sales. *Omaha Tribe of Nebraska v. Miller*, 311 F.Supp.2d 816, 826 (S.D. Iowa 2004) (citations omitted). Courts have repeatedly held that the mere fact that a regulation or tax decreases revenue for an Indian tribe does not mean the regulation or tax interferes with sovereignty rights or the Indian Commerce Clause. *State of Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 156 (1980). Long-established Supreme Court law provides that, “Absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to non-discriminatory state law otherwise applicable to all citizens of the State.”

Mescalero Apache Tribe v. Jones, 411 U.S. 145, 148-49 (1973).

King Mountain's operations involve extensive off-reservation activity. Uncontroverted evidence was presented that approximately 37.9% of the tobacco used by King Mountain to manufacture its products was grown on trust land in 2011, and approximately 9.5% in 2010, with the balance of tobacco being purchased from a source in North Carolina. ECF No. 95. King Mountain's business involves (1) shipping tobacco to Tennessee, where it is threshed, (2) shipping tobacco to North Carolina, where King Mountain tobacco is blended with Alliance One tobacco, (3) transporting the blended tobacco on its trucks from North Carolina back to Washington, (4) advertising its cigarettes in multiple states through trade shows and the Internet, and (5) selling its cigarettes (through a distributor) to retail stores throughout Washington (and multiple other states) that ultimately sell cigarettes to consumers.

When taking into account the manufacturing process and the amount of non-trust-land tobacco that is used in King Mountain's products, the Court finds that the cigarettes and roll-your-own tobacco products produced by King Mountain are not principally generated from the use of reservation land and resources. In sum, the finished cigarettes and roll-your-own tobacco are not directly derived from trust land. The principle in *Mescalero* applies to King Mountain. King Mountain has not met its burden of showing express federal law exempting its business from state regulation nor does it offer case authority invalidating application of any state's escrow statute based on an Indian Treaty or any other federal law.

As for King Mountain's claim that the Washington escrow statute discriminates against it, the Court rejects this argument. The Court finds the Washington escrow statutes are non-discriminatory state laws of general application and apply to all NPMs, and not just to Indian Tribes or tribal members. The escrow statutes' purpose is to impose the financial burdens from costs associated with illness resulting from cigarettes on tobacco product manufacturers rather than the states. See Wash. Rev. Code § 70.157.010(d). This includes all tobacco product manufacturers not participating in the MSA. The Court finds the Fourth Circuit Court of Appeals' explanation in *Star Scientific, Inc. v. Beales*, 278 F.3d 339 (4th Cir. 2002) instructive. The appellate court explained that the State's "decision to require nonparticipating manufacturers to place funds in an escrow account is not 'invidious discrimination' or a 'wholly arbitrary act.' Rather, it is a rational system for assessing tobacco manufacturers for the costs of cigarette smoking as well as regulating their conduct to the extent that they were sued and agreed to resolve that suit through settlement." *Id.* at 354 (citation omitted).

Additionally, the Court notes there are a number of cases that have upheld the Master Settlement Agreement and the escrow statutes as legitimate, non-discriminatory legislation. E.g., *Grand River Enterprises Six Nations, Ltd. v. Beebe*, 574 F.3d 929, (8th Cir. 2009), cert. denied, 130 S. Ct. 2095 (2010) (rejecting challenges to Master Settlement Agreement and Escrow statutes on grounds of antitrust, commerce clause, equal protection and procedural due process grounds); *Grand River Enterprises Six Nations, Ltd. v. Pryor*, 481 F.3d 60 (2d Cir. 2007); (upholding denial of

preliminary injunction to state's enforcing the escrow statutes); *Sanders v. Brown*, 504 F.3d 903 (9th Cir. 2007) (rejecting anti-trust challenges to Master Settlement Agreement escrow statutes).

VII. CONCLUSION

Based on the finding above that the finished cigarettes and roll-your-own tobacco are not directly derived from trust land, King Mountain can prove no set of facts in support of the claim that Washington's escrow statutes are in conflict with the Treaty or federal law which would entitle Plaintiffs to relief. Escrow is required for all non-exempt sales subject to the State's cigarette taxes, regardless whether those sales occur on or off the reservation. Escrow is not required for tax exempt King Mountain sales of cigarettes purchased directly by enrolled members of federally recognized Indian tribes from an Indian tribal jurisdiction of the member's tribe for the member's own use. If there were any past sales that were exempt from state excise tax, but for which King Mountain has deposited money into escrow anyway, King Mountain has failed to offer evidence in support of a refund claim and the court expresses no opinion concerning the same. Accordingly, King Mountain, a NPM, is required to comply with the escrow statute for all past and future sales deemed "units sold."

IT IS ORDERED:

1. Plaintiffs' Motion For Summary Judgment, **ECF No. 85**, is **DENIED**.
2. Defendant's Motion For Summary Judgment, **ECF No. 90**, is **GRANTED**.

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3. Defendant's Motion to Strike Plaintiffs' New Legal Theory and Related Factual Submission, **ECF No. 107**, is **GRANTED in part**.

4. Plaintiff's Motion to Strike Reports and Exclude Testimony of Emily Greenwald, **ECF No. 74**, is **DENIED as MOOT**.

The District Court Executive is directed to enter this Order and enter judgment consistent herewith.

DATED this 5th day of April, 2013.

s/Lonny R. Suko
LONNY R. SUKO
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
Eastern District of Washington

CASE NUMBER: CV-11-3018-LRS

[Filed April 5, 2013]

KING MOUNTAIN TOBACCO)
COMPANY, INC.; CONFEDERATED)
TRIBES AND BANDS OF THE YAKAMA)
NATION,)
)
Plaintiffs,)
)
v.)
)
ROBERT McKENNA, ATTORNEY)
GENERAL OF THE STATE OF)
WASHINGTON,)
)
Defendant.)

JUDGMENT IN A CIVIL CASE

* * *

☒ **Decision by Court. This action came to** before the Court. The issues have been heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that judgment is entered in favor of Defendant pursuant to the Order Re Summary Judgment Motions entered on April 5, 2013, ECF No. 159.

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4/5/2013
Date

SEAN F. McAVOY
Clerk

s/ Cora Vargas
(By) Deputy Clerk

Cora Vargas

APPENDIX C

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

No. 13-35360

**D.C. No. 2:11-cv-03018-LRS
Eastern District of Washington, Spokane**

[Filed November 3, 2014]

KING MOUNTAIN TOBACCO)
COMPANY, INC. And CONFEDERATED)
TRIBES AND BANDS OF THE YAKAMA)
INDIAN NATION,)
)
Plaintiffs - Appellants,)
)
v.)
)
ROBERT MCKENNA, Attorney)
General of the State of Washington,)
)
Defendant - Appellee.)

ORDER

Before: NOONAN, GRABER, and CHRISTEN, Circuit
Judges.

Judges Graber and Christen have voted to deny the
petition for rehearing en banc, and Judge Noonan has
so recommended.

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The full court has been advised of Plaintiffs-Appellants' petition, and no judge of the court has requested a vote on the petition for rehearing en banc. Fed. R. App. P. 35.

The petition for rehearing en banc is DENIED.

APPENDIX D

12 Stat. 951
(TREATY)

TREATY WITH THE YAKIMA, 1855.

June 9, 1855.

Articles of agreement and convention made and concluded at the treaty-ground, Camp Stevens, Walla-Walla Valley, this ninth day of June, in the year one thousand eight hundred and fifty-five, by and between Isaac I. Stevens, governor and superintendent of Indian affairs for the Territory of Washington, on the part of the United States, and the undersigned head chiefs, chiefs, head-men, and delegates of the Yakama, Palouse, Piquouse, Wenatshapam, Klikatat, Klinquit, Kow-was-say-ee, Li-ay-was, Skin-pah, Wish-ham, Shyiks, Oche-chotes, Kah-milt-pah, and Se-ap-cat, confederated tribes and bands of Indians, occupying lands hereinafter bounded and described and lying in Washington Territory, who for the purposes of this treaty are to be considered as one nation, under the name of "Yakama," with Kamaiakun as its head chief, on behalf of and acting for said tribes and bands, and being duly authorized thereto by them.^{A B}

^A Ratified Mar. 8, 1859.

^B Proclaimed Apr. 18, 1859.

ARTICLE 1

The aforesaid confederated tribes and bands of Indians hereby cede, relinquish, and convey to the United States all their right, title, and interest in and to the lands and country occupied and claimed by them, and bounded and described as follows, to wit:^c

Commencing at Mount Ranier, thence northerly along the main ridge of the Cascade Mountains to the point where the northern tributaries of Lake Che-lan and the southern tributaries of the Methow River have their rise; thence southeasterly on the divide between the waters of Lake Che-lan and the Methow River to the Columbia River; thence, crossing the Columbia on a true east course, to a point whose longitude is one hundred and nineteen degrees and ten minutes, (119 degrees 10',) which two latter lines separate the above confederated tribes and bands from the Oakinakane tribe of Indians; thence in a true south course to the forty-seventh (47 degrees) parallel of latitude; thence east on said parallel to the main Palouse River, which two latter lines of boundary separate the above confederated tribes and bands from the Spokanes; thence down the Palouse River to its junction with the Moh-hah-ne-she, or southern tributary of the same; thence in a southeasterly direction, to the Snake River, at the mouth of the Tucannon River, separating the above confederated tribes from the Nez Perce tribe of Indians; thence down the Snake River to its junction with the Columbia River; thence up the Columbia River to the "White Banks" below the Priest's Rapids; thence westerly to a lake called "LaLac;" thence southerly to a

^c Cession of lands to the United States.

point on the Yakama River called Toh-mah-luke; thence, in a southwesterly direction, to the Columbia River, at the western extremity of the "Big Island," between the mouths of the Umatilla River and Butler Creek; all which latter boundaries^D separate the above confederated tribes and bands from the Walla-Walla, Cayuse, and Umatilla tribes and bands of Indians; thence down the Columbia River to midway between the mouths of White Salmon and Wind Rivers; thence along the divide between said rivers to the main ridge of the Cascade Mountains; and thence along said ridge to the place of beginning.

ARTICLE 2

There is, however, reserved, from the lands above ceded for the use and occupation of the aforesaid confederated tribes and bands of Indians, the tract of land included within the following boundaries, to wit: Commencing on the Yakama River, at the mouth of the Attah-nam River; thence westerly along said Attah-nam River to the forks; thence along the southern tributary to the Cascade Mountains; thence southerly along the main ridge of said mountains, passing south and east of Mount Adams, to the spur whence flows the waters of the Klickatat and Pisco Rivers; thence down said spur to the divide between the waters of said rivers; thence along said divide to the divide separating the waters of the Satass River from those flowing into the Columbia River; thence along said divide to the main Yakama, eight miles below the mouth of the

^D Boundaries.

Satass River; and thence up the Yakama River to the place of beginning.^{E F}

All which tract shall be set apart and, so far as necessary, surveyed and marked out, for the exclusive use and benefit of said confederated tribes and bands of Indians, as an Indian reservation; nor shall any white man, excepting those in the employment of the Indian Department, be permitted to reside upon the said reservation without permission of the tribe and the superintendent and agent. And the said confederated tribes and bands agree to remove to, and settle upon, the same, within one year after the ratification of this treaty. In the mean time it shall be lawful for them to reside upon any ground not in the actual claim and occupation of citizens of the United States; and upon any ground claimed or occupied, if with the permission of the owner or claimant.^{G H}

Guaranteeing, however, the right to all citizens of the United States to enter upon and occupy as settlers any lands not actually occupied and cultivated by said Indians at this time, and not included in the reservation above named.

And provided, That any substantial improvements heretofore made by any Indian, such as fields enclosed and cultivated, and houses erected upon the lands

^E Reservation.

^F Boundaries.

^G Reservations to be set apart, etc., and Indians to settle thereon.

^H Whites not to reside thereon.

hereby ceded, and which he may be compelled to abandon in consequence of this treaty, shall be valued, under the direction of the President of the United States, and payment made therefor in money; or improvements of an equal value made for said Indian upon the reservation. And no Indian will be required to abandon the improvements aforesaid, now occupied by him, until their value in money, or improvements of an equal value shall be furnished him as aforesaid.^I

ARTICLE 3

And provided, That, if necessary for the public convenience, roads may be run through the said reservation; and on the other hand, the right of way, with free access from the same to the nearest public highway, is secured to them; as also the right, in common with citizens of the United States, to travel upon all public highways.^J

The exclusive right of taking fish in all the streams, where running through or bordering said reservation, is further secured to said confederated tribes and bands of Indians, as also the right of taking fish at all usual and accustomed places, in common with the citizens of the Territory, and of erecting temporary buildings for curing them; together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.^K

^I Improvements on ceded lands.

^J Roads may be made.

^K Privileges secured to Indians.

ARTICLE 4

In consideration of the above cession, the United States agree to pay to the said confederated tribes and bands of Indians, in addition to the goods and provisions distributed to them at the time of signing this treaty, the sum of two hundred thousand dollars, in the following manner, that is to say: Sixty thousand dollars, to be expended under the direction of the President of the United States, the first year after the ratification of this treaty, in providing for their removal to the reservation, breaking up and fencing farms, building houses for them, supplying them with provisions and a suitable outfit, and for such other objects as he may deem necessary, and the remainder in annuities, as follows: For the first five years after the ratification of the treaty, ten thousand dollars each year, commencing September first, 1856; for the next five years, eight thousand dollars each year; for the next five years, six thousand dollars per year; and for the next five years, four thousand dollars per year.^L

All which sums of money shall be applied to the use and benefit of said Indians, under the direction of the President of the United States, who may from time to time determine, at his discretion, upon what beneficial objects to expend the same for them. And the superintendent of Indian affairs, or other proper officer, shall each year inform the President of the wishes of the Indians in relation thereto.^M

^L Payments by the United States.

^M How to be applied.

ARTICLE 5

The United States further agree to establish at suitable points within said reservation, within one year after the ratification hereof, two schools, erecting the necessary buildings, keeping them in repair, and providing them with furniture, books, and stationery, one of which shall be an agricultural and industrial school, to be located at the agency, and to be free to the children of the said confederated tribes and bands of Indians, and to employ one superintendent of teaching and two teachers; to build two blacksmith's shops, to one of which shall be attached a tin-shop, and to the other a gunsmith's shop; one carpenter's shop, one wagon and plough maker's shop, and to keep the same in repair and furnished with the necessary tools; to employ one superintendent of farming and two farmers, two blacksmiths, one tinner, one gunsmith, one carpenter, one wagon and plough maker, for the instruction of the Indians in trades and to assist them in the same; to erect one saw-mill and one flouring-mill, keeping the same in repair and furnished with the necessary tools and fixtures; to erect a hospital, keeping the same in repair and provided with the necessary medicines and furniture, and to employ a physician; and to erect, keep in repair, and provided with the necessary furniture, the building required for the accommodation of the said employees. The said buildings and establishments to be maintained and

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kept in repair as aforesaid, and the employees to be kept in service for the period of twenty years.^{N O P Q}

And in view of the fact that the head chief of the said confederated tribes and bands of Indians is expected, and will be called upon to perform many services of a public character, occupying much of his time, the United States further agree to pay to the said confederated tribes and bands of Indians five hundred dollars per year, for the term of twenty years after the ratification hereof, as a salary for such person as the said confederated tribes and bands of Indians may select to be their head chief, to build for him at a suitable point on the reservation a comfortable house, and properly furnish the same, and to plough and fence ten acres of land. The said salary to be paid to, and the said house to be occupied by, such head chief so long as he may continue to hold that office.^R

And it is distinctly understood and agreed that at the time of the conclusion of this treaty Kamaiakun is the duly elected and authorized^S head chief of the confederated tribes and bands aforesaid, styled the Yakama Nation, and is recognized as such by them and

^N United States to establish schools.

^O Mechanics' shops.

^P Sawmill and flouring mill.

^Q Hospital.

^R Salary to head chief; house, etc.

^S Kamaiakun is the head chief.

by the commissioners on the part of the United States holding this treaty; and all the expenditures and expenses contemplated in this article of this treaty shall be defrayed by the United States, and shall not be deducted from the annuities agreed to be paid to said confederated tribes and band of Indians. Nor shall the cost of transporting the goods for the annuity payments be a charge upon the annuities, but shall be defrayed by the United States.

ARTICLE 6

The President may, from time to time, at his discretion, cause the whole or such portions of such reservation as he may think proper, to be surveyed into lots, and assign the same to such individuals or families of the said confederated tribes and bands of Indians as are willing to avail themselves of the privilege, and will locate on the same as a permanent home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable.^T

ARTICLE 7

The annuities of the aforesaid confederated tribes and bands of Indians shall not be taken to pay the debts of individuals.^U

^T Reservation may be surveyed into lots and assigned to individuals or families.

^U Annuities not to pay for debts of individuals.

ARTICLE 8

The aforesaid confederated tribes and bands of Indians acknowledge their dependence upon the Government of the United States, and promise to be friendly with all citizens thereof, and pledge themselves to commit no depredations upon the property of such citizens.^v

And should any one or more of them violate this pledge, and the fact be satisfactorily proved before the agent, the property taken shall be returned, or in default thereof, or if injured or destroyed, compensation may be made by the Government out of the annuities.^w

Nor will they make war upon any other tribe, except in self-defence, but will submit all matters of difference between them and other Indians to the Government of the United States or its agent for decision, and abide thereby. And if any of the said Indians commit depredations on any other Indians within the Territory of Washington or Oregon, the same rule shall prevail as that provided in this article in case of depredations against citizens. And the said confederated tribes and bands of Indians agree not to shelter or conceal offenders against the laws of the United States, but to deliver them up to the authorities for trial.^{x y}

^v Tribes to preserve friendly relations.

^w To pay for depredations.

^x Not to make war but in self-defense.

^y To surrender offenders.

ARTICLE 9

The said confederated tribes and bands of Indians desire to exclude from their reservation the use of ardent spirits, and to prevent their people from drinking the same, and, therefore, it is provided that any Indian belonging to said confederated tribes and bands of Indians, who is guilty of bringing liquor into said reservation, or who drinks liquor, may have his or her annuities withheld from him or her for such time as the President may determine.^Z

ARTICLE 10

And provided, That there is also reserved and set apart from the lands ceded by this treaty, for the use and benefit of the aforesaid confederated tribes and bands, a tract of land not exceeding in quantity one township of six miles square, situated at the forks of the Pisuouse or Wenatshapam River, and known as the "Wenatshapam Fishery," which said reservation shall be surveyed and marked out whenever the President may direct, and be subject to the same provisions and restrictions as other Indian reservations.^{AA}

ARTICLE 11

This treaty shall be obligatory upon the contracting parties as soon as the same shall be ratified by the President and Senate of the United States.^{BB}

^Z Annuities may be withheld from those who drink ardent spirits.

^{AA} Wenatshapam fishery reserved.

^{BB} When treaty to take effect.

In testimony whereof, the said Isaac I. Stevens, governor and superintendent of Indian affairs for the Territory of Washington, and the undersigned head chief, chiefs, headmen, and delegates of the aforesaid confederated tribes and bands of Indians, have hereunto set their hands and seals, at the place and on the day and year hereinbefore written.

ISAAC I. STEVENS,

Governor and Superintendent. (L.S.)

Kamaiakun, his x mark. (L.S.)

Skloom, his x mark. (L.S.)

Owhi, his x mark. (L.S.)

Te-cole-kun, his x mark. (L.S.)

La-hoom, his x mark. (L.S.)

Me-ni-nock, his x mark. (L.S.)

Elit Palmer, his x mark. (L.S.)

Wish-och-kmpits, his x mark. (L.S.)

Koo-lat-toose, his x mark. (L.S.)

Shee-ah-cotte, his x mark. (L.S.)

Tuck-quille, his x mark. (L.S.)

Ka-loo-as, his x mark. (L.S.)

Scha-noo-a, his x mark. (L.S.)

Sla-kish, his x mark. (L.S.)

Signed and sealed in the presence of - -

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James Doty, secretary of treaties,

Mie. Cles. Pandosy, O. M. T.,

Wm. C. McKay,

W. H. Tappan, sub Indian agent, W. T.,

C. Chirouse, O. M. T.,

Patrick McKenzie, interpreter,

A. D. Pamburn, interpreter,

Joel Palmer, superintendent Indian affairs, O. T.,

W. D. Biglow,

A. D. Pamburn, interpreter.

APPENDIX E

U.S. Department of the Interior. Bureau of Indian Affairs. *Certified Copy of the Original Minutes of the Official Proceedings at the Council in Walla Walla Valley, Which Culminated in the Stevens Treaty of 1855*. Portland, Oregon: Bureau of Indian Affairs, 1953. (copy of original minutes on file in the National Archives).

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U.S. Department of the Interior. Bureau of Indian Affairs. *Certified Copy of the Original Minutes of the Official Proceedings at the Council in Walla Walla Valley, Which Culminated in the Stevens Treaty of 1855*. Portland, Oregon: Bureau of Indian Affairs, 1953. (copy of original minutes on file in the National Archives).

C E R T I F I E D C O P Y

O F T H E O R I G I N A L M I N U T E S O F T H E O F F I C I A L
P R O C E E D I N G S

A T T H E C O U N C I L I N W A L L A W A L L A V A L L E Y ,

W H I C H C U L M I N A T E D I N T H E S T E V E N S T R E A T Y
O F 1 8 5 5

U N I T E D S T A T E S D E P A R T M E N T O F T H E
I N T E R I O R

B U R E A U O F I N D I A N A F F A I R S

P o r t l a n d A r e a O f f i c e

P o r t l a n d 1 8 , O r e g o n

J u n e 2 , 1 9 5 3

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Certified a true copy of a photostat copy of the original minutes on file in the National Archives of the United States of America, Washington, D. C., of the official proceedings at the Council in the Walla Walla Valley, held jointly by Isaac I. Stevens, Governor and Superintendent W. T., and Joel Palmer, Superintendent Indian Affairs O. T. on the part of the United States with the Tribes of Indians named in the Treaties made at that Council, which photostat copy certified to by the National Archivist is a part of the official files of this office.

E. Morgan Pryse, Area Director

A true copy of the Record of the official proceedings at the Council in the Walla Walla Valley, held jointly by Isaac I. Stevens Gov. & Supt. W. T. and Joel Palmer Supt. Indian Affairs O. T on the part of the United States with the Tribes of Indians named in the Treaties made at that Council June 9th and 11th 1855

PROCEEDINGS AT INDIAN TREATIES IN
WASHINGTON TERRITORY

EAST OF THE CASCADE MOUNTAINS

Programs of operations at the Walla Walla Council decided upon by the Commissioners Gov. Isaac I. Stevens and Superintendent Joel Palmer, May 22nd A. D. 1855.

Present--Indians common to both Territories, Oregon and Washington, viz. Nes Perces, Cayuse and Walla Wallas. Tribes in Oregon from the western boundary of the Snake Tribe to the Cascades of the Columbia. Tribes in Washington from the Bitter Root to the

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Cascades, except the Spokanes, Couer d'alenes, Colvilles and Pend D'Oreilles.

Gov. Stevens and Gen'l Palmer Superintendent of Washington and Oregon to act jointly for the Nes Perses, Walla Wallas and Cayuse common to the two Territories. To agree upon the terms of treaty. To sign jointly Each acting for the Indians the above tribes in his own jurisdiction.

Gen'l Palmer sole commissioner for the Oregon Indians proper present at the council.

Gov. Stevens, sole commissioner for the Washington Territory Indians proper present at the council.

Gov. Stevens to preside at the council.

The proceedings to be carefully recorded for the Tribes common to the two Territories seperately by the Secty of Gov. Stevens and the Secty of Gen'l Palmer.

The two records to be carefully compared and certified jointly by the commissioners.

Each commissioner to appoint an agent and commissary.

Gov. Stevens for the Washington Nes Perses, Cayuses and Walla Wallas. Gen'l Palmer for the Oregon Nes Perses, Cayuses and Walla Wallas. Goods and provisions to be distributed to the Nes Perses, Cayuses and Walla Wallas, by the Superintendents in proportion to the Indians under the jurisdiction of each.

OFFICERS OF THE JOINT TREATY

Gov. Stevens

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Gen'l Palmer - Commissioners

James Doty Sect'y for Washington Territory

Wm. McCoy " " Oregon "

H. A. Crosbie Commissary for Washington Territory

C. Olney " " Oregon "

Agent R. F. Lansdale, in charge of Washington Nes
Perses, Cayuses

and Walla Wallas

Agent R. R. Thompson, in charge of Oregon Nes Perses,
Cayuses and

Walla Wallas.

Wm. Craig Interpreter, Washington Territory

N. Raymond " " "

Leafoher interpreter, Oregon Territory

John Flette " " " " "

Censuses of the Nes Perses, Cayuses and Walla Wallas.

	Washington Ter'ty	Oregon Ter'ty	Total
Nes Perses	1400	400	1800
Cayuses	150	350	500
Walla Wallas including Utilas	600	200	800
	2150	950	3100

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This census to be revised on the Indians reaching the ground.

A public table for the prominent chiefs under charge of agents Landsdale, Thompson and Bolon.

Gov. Stevens details Palmer and F. Genitto.

Sup't Palmer also details one or two men.

Coll. Crosbie to take personal charge of issues for public table, of issues of provisions to Indian tribes, and goods distributed. Provisions and goods to be turned over to the agents, and issued under their direction.

May 28th, Monday.

Agent Bolon with an interpreter went to meet the Yakamas who are supposed to be near at hand, and returned at 10 a.m. having seen Cam-i-ah-kum and also the Chief Pee-o-pee-mox-a-mox.

The latter had said to Mr. Bolon, "that someone had informed him that the chiefs and others in the Commissioners camp had said that he was unfriendly to the whites. That his heart was with the Cayuses whose hearts were bad. He was very sorry to hear this. He had always been friendly to the whites and was so now. He should go today to see the Commissioners, and ask why such things had been said of him."

The Commissioners and Sec'y Doty visited the Lawyer at his lodge, as he was unable to walk without great difficulty. An old gun-shot wound received at the battle of Pierres Hole, having broken open again causing much pain.

The Lawyer explained a map of the Nes Perses country which he had drawn for Gov. Stevens. Several chiefs came in and suddenly U-u-sune-mal-e-can, /one of the chiefs/ said:

“The Cayuses wish us to go to their camp and hold a council with them and Pee-o-pee-mox-a-mox.

What have we to say to the Cayuses or Pee-pee-mox-a-mox? What are their hearts to us? Did we propose to hold a council with them or ask them for advise? Our hearts are Nes Perses hearts and we know them. We came here to hold a great council with the Great Cheif of the Americans, and we know the straight forward truth to pursue and are alone responsible for our actions. Three Cayuses came last night and spoke to Jim and two other head men urging them to come to a council at the Cayuse camp, to meet Pee-o-pee-mox-a-mox and Cam-i-ah-kum. He did not wish to go; they insisted; then I said to them: You had best say no more. His mind is made up.

What do you come here for and ask these chiefs to come to a council when to the Head Cheif and the rest you say nothing? Have we not told your messenger, yesterday, that our hearts are not Cayuse hearts? Go home! Our chiefs will not go. We have our own people to take care of they give us enough trouble, and we will not have the Cayuse troubles on our hands. This is my heart.”

Lawyer opened a book containing in their own language the advice left to them by their Great Cheif Ellis, and read as follows: Ellis said,

“Whenever the Great Cheif of the Americans shall come into your country to give you laws, accept them!

The Walla Walla heart is a Walla Walla; a Cayuse heart is a Cayuse; so is a Yakamas heart a Yakamas; a Nes Perses heart is a Nes Perses heart; but they have all received the white law. They are all going straight, yes! While the Nes Perses are going straight, why should they turn aside to follow others who are going straight? Ellis, advice is to accept the white law. I have read it to you to show my heart.”

The Commissioners were glad to hear what had been spoken. They know the Nes Perses were always friendly to the whites. Lewis & Clark had said this and all white men. The Commissioners were friendly to all Indians, and when they come together would tell them so, and show it by what they propose to do. They had no more to say now because when they spoke they wanted all the Indians to hear. The Commissioners then returned to camp.

At 11 a.m. Pee-o-pee-mox-a-mox, Cam-i-ah-cum, Owhi, Skloom and a number of Walla Walla and Yakamas rode into camp, and having shaken hands in the most friendly manner, with the Commissioners and agents, seated themselves under the arbor in front of the Commissioners tent and indulged in a smoke; using their own tobacco exclusively although other was offered them.

Gov. Stevens then said to them: “My friends, we are glad to see you. We are glad to see all the Indians around here, and what we say is spoken to all the tribes. When you are ready to come into council, when the council is opened, we will speak to you of the important business for which you have been called together. We have near to our hearts the prosperity of

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the Indians and the propositions to be made to you will prove this.

We shall endeavor to clearly explain the wishes of the Government, in order that you may fully understand them; as it is our desire you should.

If it is convenient to you we will suggest tomorrow at noon as the time for opening the council. We look upon you as friends, shall so speak to you; as one friend speaks to another, and wish you to reply as such.

Gen'l Palmer said: I am equally pleased with Gov. Stevens to see you. Many years ago I met you and considered you friends, and I look upon you as the same now, and hope our meeting will prove this to be true.

We come here to promote peace and happiness among you, leaving behind all that was bad, bringing only that which was good; thus we have but one heart. When you understand this then there will be no difficulty, but we will all work together for the best.

As all the chiefs are not here we will not speak of important business, but wait till all are present.

I wish to know if the time fixed by Gov. Stevens for opening the council is good, and if you will meet.

Pee-o-pee-mox-a-mox said: I want more than one interpreter at the Council, that we may know they translate truly.

Gen'l Palmer said: You may have any one who can comprehend what he is told to interpret, and who will suit you. We wish you to understand clearly what is

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said. Will you designate a interpreter whom you have confidence in?

The Chief said: I do not wish my boys running around the camps of the whites as these young men do. (alluding to some young Nes Perses who were lounging about our camp feeling quite at home as they knew themselves to be among friends.)

Pee-o-pee-mox-a-mox said: We have rode over today merely to see the Commissioners.

Gov. Stevens said: Come and see us as our friends and guests. Cam-i-ah-kum knows that our people have been in his country, and eaten of his food. So of Pee-o-pee-mox-a-mox and the Nes Perses. We always give food to our friends when they visit us, you have been invited to come and you are welcome to whatever we have.

We have a public table at which we are glad to have all our friends sit, and share that which hospitality induces us to offer.

We have provided plenty of food, and have already given beef, corn, and potatoes to those on the ground. They were invited and we wish them to have plenty to eat.

I was glad to hear that my friend Skloom had been so kind to Mr. Tinkham one of my party who crossed the mountains. He was in want and Skloom gave him provisions and clothing.

The Cheifs then took their leave.

PROCEEDINGS AT THE COUNCIL HELD AT CAMP STEVENS

WALLA WALLA VALLEY, ON THE 29TH DAY OF MAY 1855

Gov. Stevens, Superintendent of Indian Affairs in Washington Territory, and Gen'l Joel Palmer, Superintendent of Indian Affairs in Oregon Territory, with the following named chiefs, delegates and head men present at the Council, and representing their respective tribes and bands of Indians as below stated.

For the Nes Perses: Lawyer, Joseph, U-u-sune-mal-e-can, James, Timothy, Red Wolfe, Spotted Eagle, Three Feathers, Jason, Jacobs, Cow-pook, Is-coh-tim, Kay-kay-map, Tu-per-lan-its-a-kum, Billy, Toh-ton-mol-e-wot, The Snipe, Bold Eagle, and others.

For the Cayuses: The Young Chief, Steachus, Camaspilo, and others.

For the Walla Wallas: Pee-o-pee-mox-a-mox

For the Yakamas: Cam-i-ah-kun, Ow-hi, Skloom, Kow-was-say-ic, Si-ry-was, Skin-pah.

For the Palouses: Kah-lat-toose

For the Spokanes: Gerry

For the Piquose and Metows.

For the Oak-kin-a-kanes.

On May 29th, at 2:02 p.m. the Council opened. Present; the commissioners, officers of Treaties, the Indian agents, and some fifty citizens.

Besides the Indian chiefs already mentioned and some others, about 1800 Indians, Nes Perses, Cayuses, Walla Wallas, Yakamas, Dalles Indians and others on the Columbia above were assembled.

After the pipe had been smoked sometime, Gov. Stevens said:

“My Children: Before entering upon the council we must have good and faithful interpreters. We want men who will state truly and exactly all that is said; we want men that you know to be good men; men that you can trust; we want no others.

We propose as interpreters for the Nes Perses, William Craig, this man, (pointing to Mr. Craig) who has longer lived with you, also McDauphin and Delaware Jim.

For the Cayuses Mr. Pembrom and Mr. Olney.

For the Walla Wallas and Yakamas, John Whitford.

Thus for each language we propose to have two and three interpreters. Now I ask you, do you want others added to the number? Are you satisfied with these men? If you have any others you wish to propose, speak out, for we wish you to be satisfied.

Stachus, a Cayuse said: We know of no others whom we would wish. There may be some words hard for them to make us understand, but we think the arrangement good as it is.

Gov. Stevens said: When you cannot understand what we say to you, stop us and we will repeat it.

Each interpreter will now be sworn to be a faithful interpreter.

Gov. Stevens then administered to the interpreters the following oath.

You solemnly swear in the presence of almighty God, that you will well and truly interpret to the best of your ability what may be said by the Commissioners for the United States holding this council on the one part; and the chiefs and head men of the tribes and bands of Indians here present on the other part. So help you God.

Gov. Stevens then said: My children, the interpreters have each taken a solemn oath on the presence of Almighty God, to be true and faithful interpreters. I will now read the form of the oath. (and it was read as above).

Gov. Stevens continued: My children; I have much to say to you; my brother here Gen'l Palmer will have much to say to you. We want you to listen and be comfortable at the same time. We want clear skies, we want the ground to be dry. We will meet tomorrow with a clear sun and the day before us. Then we will open the whole subject, and will see if our hearts and your hearts will not come together.

We have met as friends today, tomorrow we will meet as friends and then enter upon our business. I therefore adjourn the council till 10 o'clock a.m. tomorrow. The weather is rainy and bad, tomorrow we hope the skies will be clear and you will all be able to be present. Should it rain tomorrow we will meet when it clears up.

One word on another point, you have come here by our invitation and are our guests. I have entered, and so has my friend here Gen'l Palmer, many an Indian

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lodge, and they always gave us to eat and drink. We therefore have brought provisions which we offer to you as a friend to a guest; and we therefore trust you will all feel free to receive the provisions we have brought to furnish you with as our guests.

I propose to the Walla Wallas, Cayuses and Yakamas that you take two oxen, drive to your camp and slaughter for yourselves.

Young Cheif replied: We have plenty of cattle, they are close to our camp. We have already killed three and have plenty of provisions.

Gov. Stevens said: We are much pleased to hear you are so well provided for, but we have plenty of provisions and you are welcome to them.

Young Cheif replied: We have plenty at present. We do not throw away your offer. If we want any we will come to you.

Gen'l Palmer (to the interpreter): Say to the Yakamas: You have come a long ways. You may not have provisions. If you want any we have them and you are welcome.

Young Cheif said: Cam-i-ah-kun is supplied at our camp.

Gov. Stevens said: There will be no more said today unless you wish to say something.

Young Cheif said: We have nothing to say today; the weather is bad, rainy. We do not throw away your offer; when we are done talking you will know our hearts. We will talk slow not all in one day. No snow falls at this

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season of the year. There will be time for you to go anywhere you wish.

The council then broke up and nearly all the Indians returned to their camps.

Pee-o-pee-mox-a-mox and Cam-i-ah-kun dined with the Commissioners and remained in their tent sometime smoking in a friendly manner.

Timothy, a Nes Perses cheif acted as crier for his nation and he will also record in their language the full proceedings each day of the council and this will be preserved among the archives of the nation and handed down to future generations.

May 30th, Wednesday.

At 1 o'clock P.M. the Indians began to assemble and at 1 3/4 P.M. the Council opened. Present same as yesterday.

Gen'l Palmer Said, My friends. I am glad to see so may of you here today. Yesterday the council was organized and Interpreters sworn to repeat to you what we say. To day my brother in Council will speak to you the great desire that our Chief has to promote your good.

I know that our Great Chief has a good heart. I know that my brother Gov. Stevens has a good heart, that they both desire to do and act for your good. I hope then you have come here with good hearts to listen to what he has to say. We both come here to talk to you as men and not as boys; we throw behind us everything that is bad, and come to you with one heart: we hope you have done the same: You are men able to judge between good

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and bad: and when my brother speaks to you, you can judge whether it be good or bad.

For the present I am done, and my brother will speak to you.

Gov. Stevens Said. My Children: The sky is clear, the ground is dry, my heart is glad to day. Our hearts are glad. You are men: You have families: You have the means to live.

You have all of you been friends to me and mine; Two years since I came along you; Two years only have I know you; I came from the great waters beyond the mountains, across the mountains, and you have all been friends to me.

The Nes Perses. Lawyer fed my men driven out of the mountains by the snow: the Cayuses and Walla Wallas received my men kindly; Pee-o-pee-mox-a-mox saw us in his country and gave us guides: the young cheif and his people had nothing but smiles and kindness for us; and yesterday Cam-i-ah-kun showed me a paper from Capt. McClelland saying that he furnished guides and welcomed them on their way.

So to the North and East; there sits a Flat Head and there a Coeur D'lane on the route across the Bitter Root; there are Poulouses and Colvilles and Spokanes away to the North; there are also men from both sides the river, from far down; all were kind, and I brought a message to all, from a tribe beyond the mountains: I have been among the Black-feet and have brought word that they would meet you in Council, and that war should cease.

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I met you in the trail, I saw your people in the Buffalo country: I met your people on the road to the Buffalo country: My heart said peace in the Buffalo country, peace here; peace is here now: peace between yourselves, peace between us. So for your kindness to me I am your friend, and I came from the Great Father to be your friend.

The interpreters yesterday took a solemn oath to speak truly. I took a solemn oath and my brother took a solemn oath to be your friends.

The Great Father has learned much of you. He first learned of you from Lewis & Clarke; Pee-o-pee-mox-a-mox remembers Lewis & Clarke, the Lawyer does: they came through your country finding friends and meeting no enemies.

I went back to the Great Father last year to say that you had been good, you had been kind, he must do something for you. My brother wrote to the Great Father in like manner.

He told the Great Father, these men have farms; the Great Father said I want them to have more and larger farms; I told him you had cattle and horses; he answered that he wanted your horses and cattle to increase: I told him some of your grown people could read and write: He answered, I want all the grown people and all the children to learn to read and write; I told him that some of you were handy at trades; he answered, that he desired to give all who choose the means to learn those trades;

Why did the Great Father answer in this way? Why did he send my brother and myself here this day, to say this to you? Because you are his children; his red

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children are as dear to him as his white children; his red children are men, they have hearts, they have sense; they feel kindness, they resent injury: we want kindness on the one side and kindness on the other: We want no injuries to resent.

The Great Father has been for many years caring for his red children across the mountains; there (pointing East) many treaties have been made. Many councils have been held; and there it had been found that with farms and with schools and with shops and with laws the red man could be protected.

Why do I say laws? What has made trouble between the white man and the red man? Did Lewis and Clark make trouble? they came from the Great Father; did I and mine make trouble? No! but the trouble had been made generally by bad white men and the Great Father knows it, hence laws.

The Great Father therefore desires to make arrangements so you can be protected from these bad white men, and so they can be punished for their misdeeds; and the Great Father expects you will treat his white children as he will make a law they shall treat you. We are now in council to see if we can arrange the terms which will carry this into effect.

Let us go back to old times across the mountains and see what was there done: the red man received the white man gladly; but after a while difficulties arose; the blood of the red man was spilled and the blood of the white man; there was cold; there was hunger; there was death. But a man came, William Penn, and said I will see if my white children and my red children cannot be friends, and they were friends: Wm Penn and

the Indians came together as we now come together; they made a Treaty; there was peace; and no white mans blood and no red mans blood had been shed, and there has been peace to this day; this was in olden times.

Oh! these people said we too will make treaties; we too will live in peace. They tried various plans, a plan that worked well when there were but few whites, did not work well when there were many. It was found that when the white man and the red man lived together on the same ground, the white man got the advantages and the red man passed away.

The Great Fathers name at that time was Andrew Jackson: he said I will take the red man across a great river into a fine country where I can take care of them; they have been there twenty years; they have their government, they have their schools, they have their own laws; their Cheif John Ross knows as much as my brother or myself and a great deal more; he is what you call a Lawyer: he is an Indian, a Cherokee. When he goes to see the Great Father, the President, he sits with him at table as you sit with us at table.

Before you met my brother and myself in council, you have your own council; and the Great Father when he acts has his council also, he has his cheifs.

When I saw the Great Father he called his cheifs together, and had a council about you. He has two cheifs who have the care of the red men, their names are Gen'l Orr and Robert Johnson, I want you to remember them. Robert Johnson lives near John Ross; they both told me that what had been done for John

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Ross should be done for you, and more, as I will tell you.

As we grow older we learn more and grow wiser; so of the Great Father and his chiefs; they did much for John Ross and his people twenty years ago; they have learned much since and know better what to do; they find one thing however the same now as then.

They gave John Ross and his people a tract of land into which no white man could go without their consent; they sent them an agent, they had schools, they had mills, they had shops, they had teachers, they had farmers, they had doctors. I repeat again no white man could go there unless the red man consented to it.

North of that tract of land the whites are going in but they cannot enter it; South of that tract of land the whites are going in but they cannot enter it; that tract of land is the Indians home; his home and the home of his children.

There are other tracts of land East of the mountains set apart for the red mans home; for there are many tribes. Those tracts the white man cannot enter without the consent of the red man. On all these tracts the red man has schools and farms and mills: they have teachers and physicians and an agent.

Now listen carefully: On these tracts the land was all in common: there were one or more larger fields for the tribes but no man had his special field: the Great Father and his chiefs now think that is not good: the Great Father said, the white man has his farm, his cattle and his horses; the red man shall have his farm his cattle and his horses; the Great Father says that

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when on that tract of land an Indian has his field, that field should be his.

This brings us now to the question. What shall we do at this council? We want you and ourselves to agree upon tracts of land where you will live; in these tracts of land we want each man who will work to have his own land, his own horses, his own cattle, and his own home for himself and his children.

On each tract we want an agent to live who shall be your brother, and who shall protect you from bad white men. I shall speak more of this subject by and by.

On each tract we wish to have one or more schools: we want on each tract one or more blacksmiths. one or more carpenters; one or more farmers: we want you and your children to learn to make ploughs, to learn to make wagons, and every thing which you need in your house. We want your women and your daughters to spin, and weave and to make clothes. We want to do this for a certain number of years.

Then you the men will be farmers and mechanics, or you will be doctors and lawyers like white men; your women and your daughters will then teach their children, those who come after them to spin, to weave, to knit, to sew, and all the work of the house and lodges, you will have your own teachers, your own farmers, blacksmiths, wheelwrights and mechanics: besides this we want on each tract a saw mill and a grist mill.

Now we want you to agree with us to such a state of things; You to have your tract with all these things; the rest to be the Great Father's for his white children.

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Besides all these things, these shops, these mills and these schools which I have mentioned; we must pay you for the land which you give to the Great Father; these schools and mills and shops, are only a portion of payment. We want besides to agree with you for a fair sum to be given for your lands, to be paid through a term of years as are your schools and your shops.

Now these payments are something you will have to think much about. Whatever is done is done with your free consent; I have more to say about these payments, about the agent, and about your doing better, as I think you will if we can agree.

I am tired of speaking; you are tired of listening. I will speak tomorrow. My brother will now say a few words to you.

Gen'l Palmer Said, I shall say but little to you today; it is not expected we can come together with one day's talk; nor do we expect you can understand with what has been said all that we want. You will not make up your mind until you hear all we have to say.

Tomorrow my brother will say something more to you; when he is through then I will speak to you. Sometimes when people have a matter to settle they commence way off; but as they understand each other they come together. With us, if we commenced way off, I hope we are a little nearer now, and by and by I hope we shall come quite together.

As we expect your are tired sitting, and as we do not wish to say too much at once, we will speak no more.

We will meet tomorrow if you like, at an earlier hour say 10 A.M. and you can come without our sending for

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you. If any present wish to say anything, we are ready to listen to it.

No reply was made by the Indians and the Council then adjourned as 4 1/2 P.M.

May 31st. Thursday.

The Indians assembled at 11 1/2 A.M. and at 12 M. the council commenced.

Gov. Stevens Said, My children. I said to you yesterday we want you to agree to live on tracts of land, which shall be your own and your childrens; we want you to sell the land you do not need to your Great Father; we want you to agree with us upon the payments for these lands; we want you to have schools and mills and shops and farms; we want you to have teachers and millwrights and farmers and artisans; we want your people to learn to read and write; your men and boys to be farmers or millwrights or mechanics, or to be of some profession as a lawyer or a doctor. We want your wives and daughters to learn to spin and to weave and to make clothes and all the labor of the house; this for a number of years as we may agree.

I said yesterday this would only be a part of the payment. We want also for a certain number of years to furnish you with some clothing, clothing for your men, your women and your children.

I will mention only some of the principal articles; there will be blankets and cloth for leggings, clothes made, shirts and other articles for the men and boys; there will also be blankets and shawls and calicos and shirting and other articles for the women and girls. The

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particular articles however will be agreed upon between yourselves each year; you may want certain articles one year, and different articles the next.

Besides clothing we would wish to furnish you with tools and implements for the shops; for the blacksmith; for the wheelwright, for the tin-smith and such other tools as you might need; we also want to provide you with tools for your farms, with ploughs and hoes and shovels and when you get further advanced with reapers and all the implements the white man has; we want in your houses plates and cups and brass and tin kettles; frying pans to cook your meat and bake ovens to bake your bread, like white people.

I have told you about the mill to grind wheat and corn, and about the mill to saw boards and lumber, and that we should employ carpenters in your service.

We want you by and by to live in houses and we shall furnish you with a mill to saw lumber, and with carpenters, and your own people by and by will become carpenters and then you will have houses; all this for a term of years. Then we hope that all you people, every family will have its farm, its cattle, its horses, and I trust, its sheep; then I said you will have your own teachers and your own schools; you will have your own smiths, your own wheelwrights, your own carpenters, your own physicians and lawyers and other learned men.

I told you of John Ross. As your fathers and your friends we think this will be good for you.

In thinking over the matter we want you to bear in mind what you have seen and what you know. That venerable old man Jim recollects when he first saw a

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house in this country; you all of you recollect when you first saw cattle, now you count your horses and your cattle by thousands.

The horse carries you wither you wish to go, yourself, your wife, your children; and your packs, and he works in your fields; your cattle now furnish you with a portion of your food; your cows furnish you with milk and you already know how to make butter; we trust you will make butter and cheese, and that your women will all have churns. Formerly you raised no wheat, no potatoes. Now you have both grain and vegetables. Is not this a great change? A change which you all have seen? Has it not been for your good?

Let us look at it now in a different way. My brother said yesterday he would have much to say today.

We do not want you to agree not to get roots and berries, and not to go off to the Buffalo; we want you to have your roots and to get your berries, and to kill your game; we want you if you wish to mount your horses and go to the Buffalo plains, and we want more; we want you to have peace there. What has disturbed you on these plains? The Blackfeet tribe of Indians who stole your horses and murdered your grown people and your children; we want that to cease forever.

The Blackfeet are not all bad people; they have some good chiefs among them and some good men; a part of them promised me two years ago not to make war upon you, and those have kept their promise; I could not see all, and those I could not see have since given trouble. But I left with them a man who spent a whole year with them; a man whom you have seen here; a man who writes at that table. He traveled all trough their

country, sometimes alone sometimes with two or three men; he saw them all, he talked to them about you, and they promised to meet you in council this year and make peace with you, to murder no longer your people, to steal no longer your horses.

The Blackfeet have now begun to think, if we stop stealing horses from the Indians this side of the mountains, what will become of our bands of horses? They will pass away. Raise your own horses says Mr. Doty as do the Flat Heads, the Nes Perses, the Cayuses, the Walla Wallas, the Coeur D'lanes, the Spokanes, the Yakamas and so back to the Flat Heads again. The Blackfeet then said, the Buffalo are not as plenty as formerly, we have to cut too many old bulls.

Mr. Doty then talked about you, said you had your fields, horses and cattle, and raised your own milk, meat and vegetables; the Blackfeet then said we too would like to have farms; we would like to have cattle and milk and bread.

The Blackfeet and other tribes who live in the Buffalo country, see that the Buffalo cannot subsist there forever; they feel that unless they change their mode of life, they will soon pass away.

They desire to change their mode of life. We shall help them provided they agree not to molest you.

When you see the Blackfeet at the Council they will ask you many questions, they will want you to tell them when you first had horses and cattle, and when you first had crops. If we agree at this council they will ask you all about that; and you will tell them you have not as much game as you once had, and the time is coming when you will not have dressed skins for your clothing;

you will tell them the Buffalo is passing away, and the time will come when we will not have robes for our tents and lodges; we have already changed and found it for our good, and we are determined to make another change in good season; we have made a bargain with the Great Father; we will have instead of tents of lodge skin when there are no Buffalo, houses of boards and of lumber; when the elk and the deer and the buffalo pass away, then we will have clothing, every man and woman and child like the white man; we have enough now to do to get roots and game and berries for our children; but we intend then to raise enough for our women and children, when their number have increased, and roots and berries and game are no longer to be found.

If we can agree here, this you will be able to say to the Blackfeet, and the Blackfeet will say, we will cut old bulls no longer, we will not starve, we will not die of cold, we will do as you have done, we will be friends, we will chase the Buffalo together on the plains, we will be friends forever.

I have spoken of an agent, I will speak more. If we agree at the council to have many things to do for you; the agent will live with you and see that it is done; if you think we have not done our part, go to the agent and tell him so, and he will see that we do it. If we think you have not done your part the agent will go to the chiefs and say so frankly and arrange it with them; he will be your elder brother, and will see that you are not wronged, and that the bargain is carried out.

I have much more in my heart to say but not now, there will be time enough by and by; my brother Gen'l Palmer has to speak, he is your friend as I am but he

has known you longer, and he can speak to you better than myself; he feels for you and you will find that every word which he says comes from a desire to serve you.

If you wish to hear him now he is ready to speak.

Gen'l Palmer Said. My friends, I do not wish to tire your patience too long, I have something to say to you, if you will listen a little longer I will speak.

My brother here speaks truly, when he says I desire to speak and act for your good.

In order to explain more fully the course pursued by the government towards the Indians on the other side of the mountains I will tell you of it; my brother here has reference to that subject and I may perhaps have to repeat his words.

He has told you something about our first settlements among the Indians over the mountains; those settlements were made over three hundred and sixty years ago. First came a cheif with several of his brethren in three ships across the ocean, they found many Indians in that country who received them kindly, they gave to them food and received in return beads and various trinkets; that cheif after traveling over a great extent of country and visiting many vilages left a part of his people and returned home.

After having been absent some time he returned with many others, upon arriving at the point where he had left his children none could be found. After the Cheif left, these people began to quarrel among themselves and with the Indians.

There were many causes for this; a portion of the Indians whose hearts were not good, stole the property belonging to these people; the whites retaliated by whipping and ill treating them. That was the first offense on the part of the Indians; the whites had long been without women and they often took forcibly the women of the Indians; this induced them on their part to retaliate; these difficulties continued from bad to worse until finally there was war; our people were but few, the Indians many; our people were all killed; there were also many Indians killed. Upon seeing our Chief return with his vessel and other vessels and so many people they fled; they knew they had done wrong as well as the whites, and they expected they would be punished for it; this time our chiefs brot' with them their women and children and cattle and horses, and tools to work with.

The Indians seeing they were not interfering with them returned and for a while they lived together in peace; but they lived indiscriminately together, a white man here and an Indian there; but they could not long live this; their customs and mode of life was different, they did not understand each other; they continued a number of years with little difficulties occurring, occasionally killing one another until it finally broke out with another war; peace would sometimes be made and last for a little time, but finally they would get foolish and their hearts would get bad; as it is said in this country sometimes; in this part of the country by the young men they are few and we are many let us wipe them out.

They finally made war, a council was held, speeches and harangues were made and they declared war, a few

white men were killed and many Indians were killed; there were more Indians killed than white men because we had better arms and know how to make them. This war continued some time but finally they had peace; the whites brought with them and made after they arrived here whiskey; this the Indians were very fond of and like all other persons after drinking it were foolish; they quarreled among themselves and killed each other and some whites in their drunken frolics; our cheif saw this condition and desired to do them good; he saw that the Indians and the white man could not live peaceably together: he called the Indians together in council; he proposed as we propose in this council, to purchase their country and select a place for them to live; he proposed to have a district of country set aside for the Indians to live in that no white man should live there; but the Indians said No! why should we leave the bones of our fathers and go to a strange land; we have plenty of elk, deer, bear, berries, and roots; we like you let us live together, we don't want to cultivate the soil you are welcome to occupy it; they were told that the wild game, the roots and the berries would not last always; they said they were a great and numerous people, they knew what was best for them and did not want our counsel; they quit talking, the whites went to their houses and Indians to their lodges; our people continued coming; every year vessels came until our people got as numerous as the leaves on the trees.

It was but a few years before their game was all killed off; for the white man killed the game as well as the Indians; the Indians had no food in his lodges, the women and children were hungry; at last they commenced stealing our peoples property and

plundering their houses; our people were forced to retaliate by whipping and shooting some of them. The Indians again sent messengers to the surrounding tribes to call them to make war; they resolved in council to exterminate the whites, kill them off; they commenced by burning houses, murdering women and children, and killed a good many of our people; finally our warriors were collected and they had war; they did not understand our mode of warfare and thousands of Indians were killed and but a few of our people were killed in the battles. This continued for a long time and the tribes finally concluded they had been acting foolish, and that they would receive the talk of our cheif.

Those that were left finally agreed to meet our cheif in council; they did so and there was peace. In that council it was agreed by the Indians that they would reside on a certain district, set aside for them certain limits, certain bounds; they agreed in that council to live in peace with the whites, and to commit no depredations on them, and to live at peace with other tribes; our cheif agreed that we would build them mills, black smith shops, carpenters shops and supply them with all necessary fixtures.

Our cheif directed his agents to build those mills and school houses and shops, and he employed teachers and smiths and millers and sent them among them. They supplied them with cattle and horses and oxen and ploughs and waggons and every variety of farming tools.

These Indians then began to see that they had acted very foolish, and that when they supposed they knew enough for them and did not want any of our counsel,

they knew nothing, they were as blind men; they have since been learning and continued to learn and prosper, and are now a great happy and good people; there were a few tribes who refused to go into that council, who refused to treat. What was the condition of that people? Those who thought themselves very wise and refused to take the advice of the white people those who continued to make war upon our people? Their game was all killed, they had nothing to eat, they fled to the mountains then they continued to live but a few years of miserable existence, until they were finally overtaken by more powerful tribes and all killed. There were other tribes in other districts of country, who heeded the advice of the cheif and were set aside in districts of country belonging to themselves.

In all cases where they have entered into a treaty and agreed to reside upon tracts set apart for them our cheif has aided them. All who have settled upon these tracts have not done well, for are lazy and have foolishly thrown away what has been paid them.

But you as a people know how to appreciate these advantages and would not throw them away; all experience we have had with Indians these Three hundred and sixty years shows us that the white man and the red man cannot live happily together; although we may live near together there should be a line of distinction drawn so that the Indians may know where his land is and the white man where his land is; you are all able to judge for yourselves by the constant difficulties that are occuring here among you, between the whites and the Indians.

We have some people whose hearts are bad, who violate our laws; we have men who are afraid to live in the

settlements, they seek opportunities to go among people at a distance, among the Indians; as an evidence of that I need only refer to matters that have transpired within the past four weeks in your own country; a few men had formed a plot by which they were to get your horses: their plan was this: part of those men went over into your bands and if they found any horse branded took a description of it, wrote it down in a book; when they had visited all your bands and got the description they would go away. Sometime after they would take their book and give one of their party a description of these horses and an order to get them; when they gather up all these horses they will drive them off to the Grande Ronde or some place in the Blue Mountains; they contemplate when they had got the stray horses coming back and driving all your horses to Salt Lake; but a short time ago Mr. Thompson came up and learned the trick: he went below and took out a warrant for them and these soldiers came up to try to arrest them.

It is these men I am told who would rob you of your property, who are giving you advice not to treat with us; whose counsels do you prefer to take? These men who would rob you, or ours who come to befriend you? These men who came here are strangers to you with smooth tongues, they care nothing about the truth. I don't mean to say that all who come among you are bad men; I am afraid there are a few of these young men who come to live among you and wish to get your women, not because they desire your women but because they want your horses; they will come and remain among you a few years, get a woman and raise children, but when they get a band of horses around them, they will be off and leave the women and

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children without anything; I have been told that one of these men has been in your camp since we have been holding this council, advising you to have nothing to do with us; these men you cannot tell always who they are, but all such men need watching; you will now be able to judge who are your friends, such men, or myself and my brother who have come here to act for your good.

We have been talking a good while and you have been listening. You are tired sitting. I have more to say to you but I will leave it till tomorrow and say no more at present.

The Council then adjourned at 3 1/2 P. M.

In the evening the Young Cheif sent a message to the Commissioners to the effect that he should be pleased if no council should be held tomorrow, as his people desired to make a great Feast and have a general holiday. To which request the Commissioners acceded.

Lawyer, Pee-o-pee-mox-a-mox, Young Cheif and Cam-i-ah-kun dined at Gov. Stevens table with Gen'l Palmer and the gentlemen of the party.

June 1st. Friday.

All about the Treaty Ground was very quiet, all the principal Cheifs dined at Gov. Stevens table.

The day was extremely warm and to have held a council would have been most uncomfortable.

June 2nd. Saturday.

The Indians began to collect at 11 1/2 A.M. Some delay was occasioned by the non appearance of Cam-i-ah-kun and Ow-hi. But at 12 M. all the chiefs being present the council opened.

Gen'l Palmer Said. My friends, we have met here today to continue the talk; I shall try and speak so that you may understand me.

I have said that the white man and the Indians could not long live together in peace, a few may do so, but where there are many we cannot do it. If your Chiefs are unable to restrain your people where there are but few, how can our Chief prevent his people from doing wrong when they are so many and scattered over so large an extent of country.

It is but fifty years since the first white man came among you, those were Lewis and Clark who came down the Big River - the Columbia. Next came Mr. Hunt and his party, then came the Hudson Bay Co. who were traders. Next came missionaries; these were followed by emigrants with waggons across the plains; and now we have a good many settlers in the country below you.

If there were no other whites coming into the country we might get along in peace; You may ask, why do they come? Can you stop the waters of the Columbia river from flowing on its course? Can you prevent the wind from blowing? Can you prevent the rain from falling? Can you prevent the whites from coming? You are answered No! Like the grasshoppers on the plains; some years there will be more come than others, you cannot stop them. Our chief cannot stop them, we

cannot stop them; they say this land was not made for you alone, the air that we breathe, the water that we drink, was made for all. The fish that come up the rivers, and the beasts that roam through the forests and the plains, and the fowls of the air, were alike made for the white man and the red man.

Who can say that this is mine and that is yours? The white man will come to enjoy these blessings with you; what shall we do to protect you and preserve peace? There are but few whites here now, there will be many, let us like wise men, act so as to prevent trouble.

And now while there is room to select for you a home where there are no white men living let us do so. I have made treaties with all the Indians tribes in the Willamette Valley, with all in the Umqua Valley, with all in the Rogue River and Shasta country; they have agreed to remove to such tracts as shall be selected for them; they have agreed to be friendly with the whites and all other Indians; they have sold us all their country except the reservations; we have agreed to build them mills, blacksmith shops, waggon makers shop, to erect a tin shop and gun smith shop, to build a school house and hospital, to employ millers, mechanics, school teachers, doctors and farmers, all these expenses to be paid by the government for twenty years.

Do you want these things: Do you want a saw mill to saw the timber to build your houses? You have a few lodges now, how long will they last? By and by where will you get your hides to make lodges? Gov. Stevens told you that the Blackfeet said the Buffalo were not as plenty as they were once; it is but a few years since there were a plenty of Buffalo at Fort Hall. Mr. Craig

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here has seen many of them there and probably others of you have; where are they now? all gone;

Do you want mills to grind your wheat and your corn? Do you want blacksmiths to make your ploughs and harrows? To make your axes, hatchets, hoes, knives, and to shoe your horses? Do you want a gun-smith to mend your guns when broken?: Do you want a tinner to mend your kittles, your pans and cups? Do you want a carpenter to build your houses and a waggon maker to make your waggons? Do you want a shoe maker to make your boots & shoes? Do you want a doctor to attend to the sick and give them proper medicines? Do you want farmers to assist you and show you how to raise wheat, corn and potatoes? Do you want school teachers to teach your children how to read and write? Is it not good that these men can write down what is said here and understand what it is? It would make my heart glad if you could all do so. It would make my brother's heart glad if you could all do so; would it not be good if you wanted to talk with my brother, or if you wanted to talk with our Great Chief? If you knew how to write and wanted to talk you could send it to him on paper and he would know your heart: would it not be good then to have schools among you?

Do you want to have plenty of provisions for your women and children? Do you want to have plenty of blankets and clothing? The deer skin and the elk skin cannot always be had to make your clothing; do you always want to live at peace with all persons? If you want all these things we are ready to give them to you; when we know your hearts then we shall know whether you want these things or not.

You have often been told that by and by our Great Cheif would send some person to buy your country. I suppose you have been looking for that person a long time; Dr. White came here. What did he do? He may have talked very well to you but what use? Mr. Wampool came, what did he do for you? My brother and myself have come, we have not only come to talk but to do something. Will you receive it or will you throw it behind you? We did not come here to scare you or to drive you away, but we came here to talk to you like men, and to make such arrangements as to preserve peace and protect you. Our agents have tried to protect you in all your rights: but I am fearful they will not always be able to do so, if you continue to live in this scattered condition.

I see here a good many old people. I expect you have left a good many of your old people at home; we want to do them some good while they yet live, and if you enter into a treaty with us we can then do them some good and do you all good; if we enter into a treaty now we can select a good country for you; but if we wait till the country is filled up with whites, where will we find such a place? My heart is that it is better for you to enter into a treaty now with us. I know that my brother has a good heart and wants to do you good, but we do not know how long we can act for you. Perhaps it may not be long before other agents will come; the next that come may not have such good hearts and do as much for you as we will.

If we make a treaty with you and our Great Cheif and his council approves it, you can rely on all its provisions being carried out strictly. My heart is that it is wise for you to do so. I will not speak any longer.

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Gov. Stevens Said. My Children, my brother and myself have opened our hearts to you, we want you to open your hearts to us.

Five Crows Said, we are tired.

Gen'l Palmer Said. We are not expecting to say any more today.

Five Crows Said. I have a little to say. Do you speak true that you call me brother? We have but one Father in Heaven; it is He /pointing above/ who has made all the earth; He made us of earth on this earth: He made our Fathers; when he gave us this earth. He gave no gardens also.

He created our Fathers when he created Adam; we were divided into different countries; It was He, the Almighty that passed the law; you must do no evil, you must not steal, you shall not take any thing without payment; the Great Father says he will send the thief into fire - into hell -

The Commissioners said will you speak now or on Monday?

Pee-o-pee-mox-a-mox Said. Why not speak tomorrow as well as today? We have listened to all you have to say, and we desire you should listen when any Indian speaks. It appears that Craig knows the hearts of his people, that the whole has been prearranged in the hearts of the Indians; that he wants an answer immediately without giving them time to think; that the Indians have had nothing to say so far it would appear that we have no cheif.

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I know the value of your speech from having experienced the same in California, having seen treaties there. We have not seen in a true light the object of your speeches; as if there was a post set between us, as if my heart cried from what you have said; as if the Almighty came down upon us here this day; as if He would say, What are you saying? Look at yourselves your flesh is white mine is different, mine looks poor; our languages are different. If you would speak straight then I would think you spoke well; we have come together to speak about the earth and not of God; you were not afraid of the Devil!

You see this earth that we are sitting on; this country is small in all directions. Why should you fear to speak on Sunday? Should I speak to you of things that have been long ago as you have done? The whites made me do what they pleased, they told me to do this and that and I did it; they used to make our women to smoke; I suppose then they did what was right: when they told me to dance with all these motions that are here then I danced. From that time all the Indians became proud, and called themselves chiefs.

On another subject I have something else to say. Now how are we here as a post? From what you have said I think you intend to win our country, or how is it to be? In one day the Americans become as numerous as the grass; this I learned in California; I know that is not right. You have spoken in a round about way; speak straight. I have ears to hear you and here is my heart. Suppose you show me goods shall I run up and take them? That is the way we are, we Indians, as you know us. Goods and the Earth are not equal; goods are for

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using on the Earth. I do not know where they have given lands for goods.

We require time to think, quietly, slowly. I see Americans in all countries, it is not the country to think about, we may think about another; there is the Mission /Catholic Mission/ it is right there and it is right it should be there. You have spoken in a manner partly tending to Evil. Speak plain to us. I am a poor Indian, show me charity; if there was a cheif among the Nes Perses or Cayuses, if they saw evil done they would put a stop to it and all would be quiet; Such cheifs I hope Gov. Stevens and Gen'l Palmer are. I should feel very much ashamed if the Americans should do anything wrong. I had but a little to say, that is all. I do not wish you to reply today, think over what I have said.

Cos-os-pi-lo- Said in substance as follows, it was addressed to his people and rendered by the Interpreters after the conclusion of his speech.

He reproved the young men for laughing and talking: said they considered him of no account any longer; they had knocked off his horns and his teeth were worn out; once he had horns and he could hook; teeth and they were sharp and he could bite; you young men think yourselves very smart by and by you will learn; now I am tired of your conduct; I am not speaking to Gov. Stevens or Gen'l Palmer, I am speaking to you young men, as my children, to listen and behave yourselves.

Gov. Stevens Said. We are ready to hear, my friends anything you have to say today. If you desire not to speak today the council will adjourn till Monday. We do not wish to speak on Sunday because our Great Cheif

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does not want us to do business on that day, unless it is a matter of necessity. We think that most of our red brethren do not wish to do business on Sunday. The Council is adjourned till Monday at 10 A.M.

And the Indians then dispersed at 3 P.M.

June 4th at 12 1/2 P.M. the Indians began to collect and 1 1/2 P.M. the council opened.

Gov. Stevens Said. Pee-o-pee-mox-a-mox said on Saturday, he had listened patiently to all we had said, and hoped we would listen patiently when any Indian spoke. We listened patiently on Saturday, we shall listen patiently today; we want you to open your hearts and speak freely.

After a long pause the Lawyer said. If you will designate some one to speak first he will speak. If you do not they will sit here all day without speaking.

Gov. Stevens Said. We expect the Head Cheifs know the hearts of their people. We will be glad to hear the Lawyer speak.

The Lawyer said. My cheifs and people, I will now speak, listen (to Commissioners) I ask good for these poor people; I think my cheif about what you have been speaking; It is from the man that made us, My Cheif, or is it from your own people? that is the reason of my asking, where is it from you have spoken My Cheif? Although I think it is from the white people; from where the white people is they have been dying and dying, and are yet dying, and also the whites are living all from the same people. The same thing of our people our red people that are younger and from the same

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root; and here you see these many of us yet and still living, old men and children.

The Supreme Being our maker listens to the white people who are dead and also to those who are living; the same thing with the red people, they listen to the dead and also the living.

And this what the President has made up his mind for us poor people; he has thought we were a poor people and says go and see them and learn them straight; and that is the reason you have told them you would learn them to read and write and all those other things you have spoken of; and that is the reason I have understood what you have spoken from the President; for that reason you have been asking us questions, and now we are asking questions from you.

It was not for nothing I have been listening to you. My country is poor it is a trifling country. You see the map the marks of our country, one stream runs one way another runs another way, it is all rock. My Cheif, but the Big Cheif from the light (the East) said to you go and talk to these people and you have done it, he says go there to take care of your white people and your red people and you have done it. As long as the Earth stands take care of the people; he said to the white people and the red people all as one let us listen to the laws, when the earth is done away with there is the end of the law, and that is the reason you see us good and we see you good.

My Cheif that is all I have to say at the present, there are a good many men here who wish to speak. Let them speak.

The Commissioners requested Pe-at-tan-at-tee-miner to speak, who replies. You have heard what I have to say. My mind is the same as the Lawyer has spoken. What I had to say he has said, he has spoken my mind, I have nothing to say, he has said all, for my land it is for you and for me. I shall do you no wrong and you do me none, both our rights shall be protected forever; it is not for ourselves here that we are talking, it is for those what come that we are speaking. This is all I have to say at this present time.

Cam-i-ah-kun was invited to speak and said. I have something different to say than the others have said. It is young men who have spoken; I have been afraid of the white man, their doings are different from ours. Your cheifs are good, perhaps you have spoken straight, that your children will do what is right, let them do as they have promised. This is all I have to say.

Pee-o-pee-mox-a-mox was next invited and said I do not wish to speak. I leave it to the old men.

Gen'l Palmer Said. We do not know who of them desire to speak; let their old men speak if they desire to do so.

Gov. Stevens Said. If u-u-Sin-mull-e-cun would like to speak we would be glad to hear him. He replied. I do not wish to speak now let those who have already spoken speak. What the Lawyer has said is my heart, it is not necessary for me to speak.

The Commissioners called upon Staachas to speak who said, how is a cheifs language? How is the Big Cheif talk? Where has their talk sprung from? That they have spoken straight on the part of the Indians; the Lawyer although young has spoken well for me. Who is

it that is going to speak straight for all of us. Now I want the whites and the Indians to show all their hearts; you know and we all know life while we are living, and I ask you my friends to speak straight and plain to us, as if I spoke to the President I say Yes. I would wish that the President was here so that we might all listen to him; he would enlighten us, he would give us life, he would make us to live as we ought to live, we would give each other our hands to hold always.

Lawyer spoke first and he will have more to say about this we are now speaking of. Lawyer has asked you to speak plain. I make the same request. I have nothing more to say.

Pee-o-pee-mox-a-mox Said. I do not know what they (the interpreters) have said. My heart was heavy, my heart has to separate so, that was my heart. I do not know for what lands they (the Interpreters) have spoken. If they had mentioned the lands that had spoken of then I should have understood them. Let it be as you propose, so the Indians have a place to live, a line as though it was fenced in, where no white man can go.

If you say it shall be so then all these Indians will say yes. Although that you have said the whites are like the wind: You cannot stop them, you make good what you have promised.

You have spoken for lands generally. You have not spoken of any particular ones, your words are here (at this place). If you spoke as the watch goes, then we would say yes; the manner in which you have addressed the whole of us has made my heart heavy. I

had nothing to say: I like you Americans; and I like the Hudson Bay Co. people by which means I am led this way and that way; I do not know as yet what lands these Indians have spoken for but when they mention the lands then I shall know.

Fah-hah-tsil-pilp or the Red Bear said: I am not ashamed of any of my friends, for why should I be ashamed? If there was something above that I should be ashamed of, then I should be ashamed; I am not ashamed of any people that are sitting around, we have spoken here with our brothers. This is the first time I have ever seen my brothers here.

I like your talk very much as I have heard it, and that is the reason I have listened to you well. And here where we see each other face to face we will talk straight. We shall know if you shall like my talk that I am now talking as I have like yours. I wonder if we shall both tell the truth to each other.

This is what I think my Brothers, that one time more we will talk, we will not say yes from what has yet been said.

Now my younger brother there will speak. Being thus called upon.

Tip-pee-il-lan-ah-cow-pook, or Eagle from the Light arose and said: Yes my friends you see where the Sun is. He hears me. It is from beyond where the Sun is that sent you here to talk.

The red people are put on this earth. A white man was sent on this earth from the Light (meaning the East). The red man was sent from the West, and now the big

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chief from the Light has sent his talk here to the red people.

The President has spoken to me through you and I hear it. He likes us. He has fixed places for us to sit on and love one another. And I also like the white people as the President likes us.

On a road ready finished, he has sent you here. Look at the face of the earth, there is a road to travel on. Roads up the valleys and roads on to the end of the earth. From the time you started, you found a road till this time.

You are now come to join together the white man and the red men.

And why should I hide anything? I am going now to tell you a tale. I like the President's talk; I am glad of it when I hear it here and for that reason I am going to tell you a tale.

The time the first white men ever passed through this country, although the people of this country were blind, it was their heart to be friendly to them. Although they did not know what the white people said to them they answered yes, as if they were blind. They traveled about with the white people as if the people that said that had been lost, and those lost people said to them, yes.

I have been talked to by the French and by the Americans, and one says to me, go this way, and the other says go another way; and that is the reason I am lost between them.

A long time ago they hung my brother for no offence, and this I say to my brother here that he may think of it.

Afterwards came Spalding and Whitman. They advised us well and taught us well, very well. It was from the same source, the Light (the East). They had pity on us and we were pitied. And Spalding sent my Father to the East--the states--and he went. His body was never returned. He was sent to learn good counsel and friendship and many things. That is another thing to think of.

At the time, in this place here, when there was blood spilled on the ground, tho there was blood upon the earth we were friendly to the whites and they to us. At that time they found it out that we were friends to them. My Cheif, my own cheif said, I will try to settle all the bad matters with the whites and he started to look for counsel to straighten up matters; and there his body lies, beyond here. He has never returned.

At the time the Indians held a grand Council at Fort Laramie. I was with the Flatheads and I heard there would be a council this side, next year. We were asked to go and find counsel, friendship and good advice. Many of my people started and died in the country. Died hunting what was right. There was a good many started there on Green River, the small-pox killed all but one. They were going to find good counsel in the East; and here I am looking still for counsel, and to be taught what is best to be done.

And now look at my peoples' bodies scattered everywhere hunting for knowledge, hunting for someone to teach them to go straight.

And now I show it to you, and I want you to think of it. I am of a poor people.

A preacher came to us, Mr. Spalding. He talked to us to learn, and from that he turned to be a trader, as though there was two in one, one a preacher and the other a trader. He made a farm and raised grain and bought our stock, as though there was two in one; one a preacher the other a trader.

And now from the East has spoken and I have heard it. And I do not wish another preacher to come and be both a trader and preacher in one. A piece of ground for a preacher, big enough for his own use, is all that is necessary for him.

Look at that, it is the tale I had to tell you, and now I am going to hunt friendship and good advice.

We will come straight here-- slowly, perhaps,--but we will come straight.

Gov. Stevens said: My brother, if any of you wish to speak today, I will still be silent. Is there anyone who wishes to speak now? If not, I will go on. We have listened to you carefully. We think we know your hearts.

You are willing to make a bargain. You want to know exactly the terms. We have promised mills, shops, schools, teachers, farmers, and all the other things for a term of years. You want to know how many years. We have promised you as the other part of the payment clothing for yourselves, your wives, and your children; tools and implements for your farms and shops and articles for your house.

You want to know how much clothing. How many implements and tools and articles for your farms, your shops, and your houses; and how many years will you have them?

Before I answer that, I will answer another question which you have asked me. You want to know where your Reservations are to be. What is the ground we have in view for you. I will explain this matter freely.

Here are the Nes Perses, Cayuses, Walla Wallas, Yakamas and Umatillas and bands on both sides the Great river to below the Dalles.

Tribes northwards: Colvilles, O-kin-a-kune, Palouse.

For the principal tribes here present, we have thought of two Reservations. One Reservation is the Nes Perses country and one in the Yakama country. The Reservation in the Nes Perses country, to extend from the Blue mountains to the spurs of the Bitter Root, and from the Palouse river to part way up the Grande Ronde and Salmon River.

On this Reservation we wish to place the Spokanes, the Cayuses, the Walla Wallas, as well as the Nes Perses, and also the Umatillas. That will be something for them to think about to see whether they can agree to it.

The Yakama Reservation to extend from the Attannun river--to include the valley of the Pisco river--and from the Yakama river to the Cascade Mountains. On this Reservation we wish to place the Colvilles, O-kin-a-kunes, Palouse, Pesquouse, Klit-a-tats, and the bands on the north side of the river below the Walla Wallas as far as the Kuth la poodle river, near the

Cowlitz. All these as well as the Yakamas on that Reservation.

There is a third Reservation East of Mr. Jeffersons which will be explained to you by Gen'l Palmer; there it is proposed to place the bands below the Umatillas.

We want you to think about this and see if you like it. You may think the Reservations are not good. If not you will say so. The Cayuses, the Walla Wallas, the Umatillas, may prefer the Yakama to the Nes Perses Reservation, and they may not like either.

I will give briefly the reason for selecting these two Reservations. We think they are large enough to furnish each man and each family with a farm, and grazing for all your animals. There is especially in winter grazing on each Reservation. There is plenty of Salmon on these Reservations, there are roots and berries. There is also some game. You will be near the Great Road and can take your horses and your cattle down the river and to the Sound to market.

Though near to the great roads, you are a little off from them, and you will not be liable to be troubled by travellers passing through.

We can better protect you from bad white men there. We can better prevent the trader and the preacher all in one man going there. We can better prevent bad men telling you to dance, and cheating you with lies. We can better stop the thief who comes to steal your horses. Your horses will be saved to you and there will be no thieves to throw into hell-fire.

You may ask, why so many tribes on one Reservation, and how is it proper to place them on the Reservation?

We want as many tribes together as can be taken care of by one agent. We can do more with the same means; this is a matter I wish to explain fully, and also about the payment in clothing, etc., which I mentioned in the first part of what I said, I will speak no more today, but speak tomorrow. Think over what I have said and hear the rest tomorrow.

Gen'l Palmer said: I shall say nothing to you tonight. You have been sitting a long time and you are tired. We want you to come tomorrow morning early. We want you all to come. You have heard but part, we want you to hear the whole, and when you hear all I think you will say it is good. I have nothing more to say to night.

The Council then adjourned at 6 P. M.

June 5th, Tuesday.

The Indians began to collect at 11½ A.M. and at 12 M. the council opened.

Gov. Stevens said: My children, I stated yesterday that we wished to place you on two Reservations and that as regards the tribes below the Umatillas. There was a third Reservation which would be explained by my brother, Gen'l Palmer. I stated we wanted as many tribes as could be taken care of by one agent.

I will now explain this matter fore freely. We wish to put the Spokanes, the Nes Perces, the Walla Wallas, the Cayuse, the Umatillas on one Reservation in the Nes Perses country.

Here (showing a draft on a large scale) is a map of the Reservation. There is the Snake River. There is the Clear Water river. Here is the Salmon river. Here is

the Grande Ronde river. There is the Palouse river. There is the El-pow-wow-wee.

We commence where this river, the Palouse, comes from the mountains, and down the river to the mouth of the Ti-not-pan-up, then to the Snake river 10 miles below the mouth of the El-pow-wow-wee, then to the source of the El-pow-wow-wee, Thence along the crest of the Blue Mountains to the Grande River below the Grande Ronde, thence along the ridge between the Wall-low-low river crossing the Snake River 15 miles below the mouth of Powder river, thence to the salmon river a little above the crossing, thence by the spurs of the mountains to the source of the Palouse river at the place of beginning.

This is a large Reservation. The best fisheries on the Snake River are on it; there are the fisheries on the Grande Ronde river. There are fisheries on the Os-ker-wa-wee, and the other streams. There are cumash grounds here at this place (pointing to the large cumash grounds of the Nes Perses). We feel if we put you on this Reservation our agent can visit you all and take care of you all.

Each tribe will have its own place on the Reservation. The Spokanes will have their place and their home. The Nes Perses their place and their home. The Walla Wallas their place and their home. The Cayuse and the Umatillas their place and their home.

The Spokanes will have a blacksmith, a school, and a farmer. The Walla Wallas will have a blacksmith, a school, and a farmer. The Cayuse and Umatillas will have a blacksmith, a school, and a farmer. The Nes

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Perses are more numerous, they will have two blacksmiths, two schools, and two farmers.

These schools are the first schools where your children will learn to read and write. The agent will live in some central place where there will be an agricultural and industrial school common to all the tribes. To this school all the tribes will send such of their children as wish to study more than in the first schools, and to learn trades. Here where the agent lives will be the tinner and the tin shop. There will be one for all the tribes. There will be the waggon maker and wheel right; there will be one for all the tribes.

For the four tribes there will be two saw-mills and two flouring mills in proper localities. Thus all the tribes will be on an even footing, and each will have the same provision made for them.

You will see that you will be better take care of all on one reservation; each tribe having its own place, than if the Spokanes were on one reservation with the whites all around them, the Nes Perses on one reservation with the whites all around them, the Cayuse and Umatillas on one reservation with the whites all around them.

Here (showing the map) you will be on one Reservation with equal rights under one Agent, and the same provisions for your welfare. But each tribe has its head cheif. A cheif takes care of his people. He people listen to him. He devotes his time, his very life to their good. We want you cheifs to be such men, we expect them to know about you and to see that we do our part. They will not work for themselves, they will work for you. We shall therefore give the Head Cheif of each tribe

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Five Hundred Dollars a year for 20 years to be paid in cash.

We shall build for each Head Cheif a good house to live in. The Agent will have his house and he will be paid. The Head cheifs shall have their houses and be paid. They will all labor for the good of the Indians.

You will be allowed to pasture your animals on land not claimed or occupied by settlers, white men. You will be allowed to go on the roads, to take your things to market, your horses and cattle. You will be allowed to go to the usual fishing places and fish in common with the whites, and to get roots and berries and to kill game on land not occupied by the whites; all this outside the Reservation.

My friends, I have held four councils on Puget Sound. I have made treaties with all the Indians on that sound. They number more than all the tribes here present. They have all agreed, should the President decide, to go on one Reservation. That Reservation is only about one fiftieth part as large as this; they have, however, few horses and cattle. They have not three hundred head. They take Salmon and catch whale and make oil. They ask for no more land. They think they have land enough. You will be farmers and stock raisers and wool growers and you need more.

Now I will tell you the payments that will be made provided you are placed on one Reservation. If you go on different Reservations different provisions will be made. Well, you all go on one Reservation, Spokanes, Nes Perses, Walla Wallas, Cayuses and Umatillas; we shall spend a certain amount in moving you onto the Reservation, in breaking up and fencing your farms, in

building houses for your chiefs, your sub-chiefs and your people, in cooking utensils for your houses, in milk pans and churns, in a good supply of blankets and clothing. In all these things we will expend for you, One Hundred Thousand Dollars. This will be done the first year you go on the Reservation.

Now, if any man gives up a tract of land in going onto the Reservation, he will have the same thing done for him that is done for all the rest and he will have, in addition, his improvements made good to him on the Reservation or the value of them paid to him in cash, as he may desire.

The other payments extend through twenty years. Two Hundred and Fifty Thousand Dollars. We do not want to spend this amount or much of it in cash, and I want my friend Pee-o-pee-mox-a-mox and the other chiefs to listen while I give the reason. I ask all the chiefs to hear my reasons and think of them.

We can furnish you with nearly twice as many goods with the same amount of money as you can get from the Traders. We shall buy the things you want in New York and San Francisco at cheap rates and good articles. The expense of getting them to you will not come out of your money; it will cost you nothing. You now pay Eight or Nine Dollars for a blanket at Fort Walla Walla, we shall furnish you two such blankets for less than that sum, say from six to seven dollars. At Fort Walla Walla a flannel shirt costs three dollars, we will give you three shirts for three dollars. You pay for a calico shirt at Walla Walla one and a half and two dollars. We can furnish calico shirts for fifty cents a piece. If we furnish the goods therefore, you will get three blankets, three flannel shirts and three calico

shirts for the same money you now pay for one blanket, one flannel shirt, one calico shirt, and have to make a long journey for them besides. We can furnish four hoes for a dollar and a half. You know what you have to pay for a single hoe at Fort Walla Walla and the Dalles. We want the payments to do as much for your good as possible. We don't want half of it to go into the pockets of Traders.

I ask the chiefs to listen to me again.

There will be a certain sum each year for their people. We want them each year to consult their people and tell us what things they want. We want them to make out a list how many blankets they want and what kind of blankets, the number of flannel and calico shirts they want, and so for every article of clothing for their men, women and children. Also the tools they want for their farms, their house and their shops. In short we want the chiefs to tell us how they want the money spent. The list to be made out every summer for the pay of the next year. If you want part of the pay made in money, we want you to give the reasons and state the sum each year. We will send your reasons to the President and let him decide. There are many of you we would be willing to give a part of the payment in money, but not to men who drink whiskey, and not to the men who do not take care of their wives and children. Let, therefore, your chiefs each year make out a list of how much money and we will send it to the President.

I have now a few words to say in regard to the Yakama reservation; the same provisions as regards schools, farms, and shops will be made, as in the case of the Nez Perses Reservation.

Here is the Yakama Reservation, commencing with the mouth of the Attanum river, along the Attanum river to the cascade mountains, thence down the main chain of the Cascade mountains south of Mount Adams, thence along the Highlands separating the Pisco and the Sattass river from the rivers flowing into the Columbia, thence to the crossing of the Yakama below the main fisheries, then up the main Yakama to the Attanum where we began.

We propose to place there the Colvilles, the O-kin-a-kunes and Pisuouse Indians (they now send their cattle and horses there in winter), also the Bands on the Columbia River below the Walla Wallas down to the mouth of the Kuth la poodle river, also the Klicatats around Mount Adams and Mount St. Helens. These Klicatats and these bands on the Columbia originally came from here or further north.

We will give one blacksmith, one farmer and one school for the Covilles, one of each for the Pisuouse and O-kin-a-kunes, one of each for the Yakamas, one of each for the Yakamas including the Palouses, one of each for the remaining bands. They shall have the agricultural and industrial school as in the other Reservation. They shall have the same mechanics, gunsmith, tinsmith, plough and waggon makers. Their children shall be taught and they shall learn trades like the children on the other Reservation. They shall have the same liberties outside the Reservation to pasture animals on land not occupied by whites, to kill game, to get berries and to go on the roads to market. Payments to be made in the same way as in the Nes Peres Reservation. One Hundred Thousand Dollars to

be expended the first year. Tow Hundred and Fifty Thousand Dollars, the next Twenty years.

I need say nothing more. It is designed to make the same provision for all the tribes and for each Indian of every tribe. The people of one tribe are as much the people of the Great Father as the people of another tribe; the red men are as much his children as the white men.

We think this plan will be for your good. We want you to think of it. I have tried to talk plain and to speak straight out. My Brother will now speak

Gen'l Palmer Said. My Brothers, my brother here has said as much perhaps as should be said. He has told you what we desire to do for you; it is for you to say whether you will receive it or throw it away; we have but one heart; he has been speaking of something which interests you; it is the duty of your cheifs and your men to think well of it. It was said by this man (Young Cheif) the other day that we were not acting wholly for these that are here now, but for those who come after us; it is the duty of a parent to provide for his children. You may not understand all the advantages of the propositions that have been made to you; but they are for your benefit and those who come after you; as a cheif desiring to promote your interest, I say it is good; that I would not deceive you; the Great Spirit who knows the heart of all men knows that I desire to promote your good.

We expect it will take at least two years to prepare these reservations for you to go onto. If we make a bargain and sign the papers, my Brother and myself and all the Head Cheifs and Head men, that paper

must go to Washington. Our Cheif and his council will examine it; if they approve it they say yes, and give us the money to expend in accordance with its provisions.

My brother has stated that you will be permitted to travel the roads outside the Reservation. We have some kind of roads which perhaps you have never seen; we may wish to make one of the roads from the settlements east of the mountains to our settlements here; they may desire to run that road through your Reservation; if we desire to do so we wish that privilege; that kind of road we call a railroad. I will try and explain to you the way in which we make such roads. We first lay on the ground sticks of timber, we then lay other sticks across in that way, unite them together and put a strip of iron on the top of them, we then place a waggon on those tracks and instead of having horses or oxen hitched to the waggon we build a fire; some of you have seen a steamboat; they have on this waggon a boiler filled with water, the fire heats the water and produces steam, which propels the machine. I am unable to explain the machinery or the way in which it works but they travel faster than your swiftest horses can run, all the time. If we start from here at sunrise we can be at Wascopen by the middle of the day. We sometimes attach twenty of those waggons together and one of those Engines draws the whole, they will take waggon s enough to draw more people than are here. We call the waggon in which they have the fire and water a Locomotive: I have rode on those waggons many a time so have our people here all or nearly all of them. Now if our cheif desires to construct such a road through your country we want you to agree that he shall have the privilege. You would have the benefit of it as well as other people.

We have another improvement that I wish to speak to you about, it is called a Telegraph. We may possibly desire to make such an improvement through your country. We set posts into the ground 15 or 20 feet high, and as far from here as that house; when the posts are set we place a wire on the top about as big as that; this wire extends as far as we wish to make the road if it is 100 or 1000 miles.

If my brother is at Oregon City and desires to speak to the Great Cheif he speaks to him if the wires extend that far; the man at the other end of the land will know what he says as quick as I who stand beside him; if the instrument which is attached to this wire should be in your country and a man should steal your horse, and you desired to send word to the Willamette Valley, you would tell this man and he would work the machine and the man in the Willamette would understand you had lost a horse, and before the theif could reach there they would know it, arrest him before he came. You may not understand them now, but when you know as much as the white man you will.

Now as we give you the privilege of traveling over roads, we want the privilege of making and traveling roads through your country, but whatever roads we make through your country will not be for your injury.

I told you yesterday I would explain to you another Reservation, but that Reservation is for the people who live below here; there are but few of them here; and as I expect to hold a council with them when I return, and as that Reservation does not particularly interest you, I need not explain it now.

App. 118

Now I want you all to talk among yourselves and think about what has been said to you, and I want you to think of it like men. When you think of it if you say that what we have said is good and that you receive it, you can express it to us and we can soon write out the Treaty.

You are now tired, you have been long sitting, you know our hearts, and if there is anything you do not fully understand before you make up your minds come and inquire and we will explain. If any of you wish to speak now we will listen to you. Or if you can make up your minds so as to give us an answer this evening come and do so and we will be ready to receive it.

Stachas Said. My friends I wish to show you my mind, interpret right for me. How is it I have been troubled in mind? If your mothers were here in this country who gave you birth, and suckled you, and while you were sucking some person came and took away your mother and left you alone and sold your mother, how would you feel then? This is our mother this country, as if we drew our living from her.

My friends, all of this you have taken. Had I two rivers I would be content to leave the one and live on the other.

I name three places for myself, the Grande Ronde, the Touchet towards the mountains and the Tucannon.

That is all I have to say.

After a long pause--

App. 119

Gov. Stevens Said. My brothers, if you do not feel inclined to speak today, we will come together again tomorrow.

We want the chiefs and the people to speak freely as Stachus has done. We will think of what Stachus has said. We could give our reasons now but we are all tired. We will tomorrow after you have spoken, state what we think. Come early in the morning and let us see if we cannot agree before night.

The Council is adjourned till 9 o'clock tomorrow.

Five Crows Said. I am as it were without thinking yet. I require time to think and then I will answer.

Council then adjourned at 4 1/2 P.M.

Thursday, June 7th.

Council met pursuant to adjournment - at 12 o'clock - Present as before.

Gov. Stevens. Said. My brothers we expect to have your hearts today, let us have your heart straight out.

Lawyer Said. My friends you have been speaking to me a poor people. This Earth is known as far as it extends. This earth has red people on it and it has had as far as it extends. The people are lost, they don't think whose talk has come to us poor people. On the other side of the big water there is a large country. We also know that towards the east there are a great many different kinds of people: there are red people and yellow people and black people, and a long time ago the people that travelled this country passed on the waters. And there is that country on that other side of the big water and

here is this on this side. On the other side of the big waters they have their laws. Yes, they have their laws there. We now hear the laws they have there, and we now know they have those laws there. We also know the white people pass about on the waters as they wish to. I do not know what they find in travelling about on these waters or what they are hunting, whether it is timber, leaves, grass or what. It was the Spaniards in that direction that just travelled about in their ships, they were the ones who first discovered this country and it was in that way they travelled to look for things, in that way they travelled when they found this country; the red people that along the shores to the big waters, those were the people, and at this place they landed to see those poor people. At that place the red man started and run off, or a part of them did because they did not know the people who came to see them, and the rest came and met them, there is where the white people first placed their children when they first come into the land. From this country they took back samples of rich earth, of flowers, and all such things; they also reported that there was a country on the other side, and it was peopled and these people reported they had found a country. And it was known that there was a new country found. And one of the head men said. I knew there was a country there before. Columbus the discoverer said Can you make an egg stand on end. Although he tried he could not do it, he did not understand how, it fell over: then Columbus showed them all that he could make it stand, and he did it, he made the egg stand. After they saw it done they could all do it.

Those children that he had placed in this country among the red people, from them the blood ran on both

sides: that is when the laws come into this country to those poor people: there were a great many white people come back to that place; that is the reason the red people travelled off further and from that they kept still travelling on further as the white people came up to them and this man's (Delaware Jim) people are from the same people: they have come till they are here to us now, and from that country some central part came Lewis & Clark, and that is the way the white people travelled and came in here to my forefathers. Where they came into our country they named that stream Kooskooski: it was then they knew us poor people. They passed through our country and knew all our country and all our streams, and on their return my forefathers used them well: as well as they could.

From the time of Columbus and from the time of Lewis & Clark we have known our friends: we poor people have known you as brothers although we were a poor people, a people knowing nothing when we first saw the white chiefs Lewis & Clark. From those poor people there were some of them that started in that direction (east) and of these there is only one now living (Spokane Gerry) they want to be taught, they returned after they could see a little and told us about the Great Spirit: they told us the laws for the poor people; they had seen and heard them. My Chief said our old laws are poor, the new laws we are getting are good laws, are straight. We said there were these laws, the laws of the Commandments; our old laws the laws of our forefathers and the new laws we are getting shown to us there were laws and those laws should be sent to us.

Ellis our Chief spoke strait for the white people, the President has sent you here to us poor people. Yes! the

President has studied this and sent you here for our good. That is the reason I said on Monday use us well my Chief we are a poor people.

The Governor has said the President has sent him to take care of his children: it was you that had spoken thus my brothers (Gov. Stevens and Gen. Palmer) I want the President to see what I a poor man has said. I have got your talk here (pointing to his note book) and although a poor man I can look at it from time to time. I can take care of that; my brother, we have been talking a long time and are all tired.

I think on the stream just below where Mr. Craig lives will be a good place for one mechanic or/on one of the ranches you have shown me. I also think/that perhaps in the country where I live may be good place for some more of them, in case they were crowded below it would be a good place where I live.

Now my friends I have spoken; those things that have been talked of, you know, I have shown you my heart. You have said to them all you had to say. I have also given you all I had to say.

Then my friends I have spoken; those things that have been talked of you know. I have shown you my heart. You have said to them you have said all you have to say. I also have said also all I have to say.

You spoke of a road through my country (the Reserve) it is a bad country, to make roads in, but perhaps it may go through, that is the reason I think we have both talked. 'Tis all our talk. Our Father Chief has said take care of one another. There is no reason that I should speak long although I have more to say. That is the reason I say take care of us well: that is all I have

to say at this time, my brethren. I will have one word more to say when we are about to part.

Gov. Stevens. We have the heart of the Nez Perces through their Chief, their hearts and our hearts are one. We want the hearts of the other people through their Chiefs.

Young Chief. Us Indians are blind the reason we do not see the earth well, the Lawyer sees clear. The reason that I do not know anything about this ground is I do not see the offer you have made us yet. If I had the money in my hand then I would see: the country is very large is the reason this land is afraid. I wonder if this ground has anything to say: I wonder if the ground is listening to what is said. I wonder if the ground would come to life and what is on it: though I hear what this earth says, the earth says, God has placed me here. The earth says, that God tells me to take care of the Indians on this earth; the Earth says to the Indians that stop on the Earth feed them right. God named the roots that he should feed the Indians on: the water speaks the same way: God says feed the Indians upon the earth: the grass says the same thing: feed the horses and cattle. The Earth and water and grass say God has given our names and we are told those names: neither the Indians or the Whites have a right to change those names: the Earth says, God has placed me here to produce all that, grows upon me, the trees, fruit, etc. The same way the Earth says, it was from her man was made. God on placing them on the Earth during then to take good care of the earth and do each other no harm. God said. You Indians who take care of a certain portion of the country should not trade it off unless you get a fair price.

I am as it were, blind. I am blind and ignorant. I have a heart but cannot say much, that is the reason the Chiefs do not understand each other right. They stand apart. Although I see your offer before me I do not understand it: Lawyer understood your offer and he took it I do not understand it and I do not yet take it: I walk as it were in the dark and cannot therefore take hold of what I do not see. Lawyer sees and he takes hold. When I come to understand your proposition then I shall take hold. I do not know when. Tis all I have to say.

Five Crows said. I will speak a few words. My heart is just the same as the Young Chief.

Gen. Palmer. We know no chief among the Walla Wallas but Pe-pe-mux-mux; if he has anything to say we should be glad to hear it.

Pe-pe-mux-mux. I thought these Indians were all the same as one, all alike (addressing the Indians he said). Why do you speak to one another? Listen to me. That is the way with your Chiefs, you white people. When you show us something then we think it good, treating us as children, giving us food. I do not know what is strait. I do not see the offer you have made to the Indians. I never saw these things with my father. My heart cried very hard when you first spoke to me, the same as if I was a feather. I flew, then I thought the same as if you were talking to a feather. I thought what will I do? I have seen everything on both sides of the river. You are all talking together, we are all talking together. If you were to separate as we are now and appoint some other time we shall have no bad minds. Stop the whites from coming up here till after this talk,

not to bring their axes with them, the same as if I saw my heart above.

I hope the president will not think I say or mean anything bad, there is no difficulty in sending letters about; this that I have said to you I do not know in what light you have taken it, whether I have spoken straight or wrong. The whites may travel in all directions through my country we shall have nothing to say to them providing they do not build houses on our land. Now I will speak about Lawyer.

I think my friend has given his lands, that is what I think from his words. You hear both of you what I say - it is only that I request another meeting, whenever it shall be. It is not only by one meeting that we can come to a decision. I have listened to you in a friendly way. If you come again with a friendly message from the President I shall see them at this place, tomorrow I shall come to see you and towards evening I shall go home. You have spoken to us in a friendly way and I speak to you in the same way, slowly. Gov. Stevens and Gen. Palmer I cannot give you a direct answer, perhaps you will not think well of my words. I beg you will leave me in this way for today. Tomorrow I will give you answer. I do not know; that is all I have to say.

Gen. Palmer. I wish to say a few words to these people, but before I do so if Kam-i-ah-kan wishes to speak he can do so.

Kam-i-ah-kan Said. I have nothing to say.

Gen. Palmer. I would inquire whether Pe-pe-mox-mox or the Young Chief speaks for the Umatillas. I wish to know if they are of the same heart.

Owhi. I have nothing to say about this land today. God gave us day and night, the night to rest in and the day to see, and that as long as the earth shall last, he gave us the morning with our breath; and so he takes care of us on this earth: and here we have met under his care. Is the earth before the day or the day before the earth. God was before the earth, the heavens were clear and good and all things in the heavens were good. God looked one way then the other and named our lands for us to take care of. God made the other. We did not make the other, we did not make it, he made it to last forever. It is the earth that is our parent or it is God is our elder brother. This leads the Indian to ask where does this talk come from that you have been giving us. God made this earth and it listens to him to know what he would decide. The Almighty made us and gave us breath: we are talking together and God hears all that we say today. God looks down upon his children today as if we were all in one body. He is going to make one body of us: we Indians present have listened to your talk as if it came from God.

God named this land to us that is the reason I am afraid to say anything about this land. I am afraid of the laws of the Almighty, this is the reason I am afraid to speak of the land. I am afraid of the Almighty that is the reason of my hearts being sad: this is the reason I cannot give you an answer. I am afraid of the Almighty. Shall I steal this land and sell it? or what shall I do? this is the reason that my heart is sad.

I love my life is the reason why I do not give my lands away. I am afraid I would be sent to hell. I love my friends. I love my life, this is the reason why I do not give away my lands. I have one word more to say.

My people are far away they do not know your words, this is the reason why I cannot give you an answer now. I show you my heart, that is all I have to say.

Gov. Stevens. Now will Kam a ah kan and Skloom speak.

Kam-a-ah-kan What have I to be talking about?

Gen. Palmer. We have listened and heard your Cheifs speak. The heart of the Nez Perces and ours are one. The Cayuses, the Walla Wallas and these other people say they do not understand us. We were in hopes we would have but one heart. Why should we have more than one heart? The Young Chief says he does not see what we propose to give them. Pe-pe-mox-mox says the same. Can we bring these saw mills and these grist mills here on our backs to show these people? Can we bring these blacksmith shops, the wagons & tools on our backs to show them at this time? Can we cause farms of wheat and of corn to spring up in a day that they may see it. Can we build these school houses and these dwellings in a day? Can we bring all the money that these things will cost that you may see it. It would be more than all the horses of any one of these men could carry. It takes time to do these things. We come first to see you and make a bargain. We brought but a few goods with us to give you but whatever we agree to give you you will get.

How long will these people remain blind. We came to try to open their eyes they refuse the light. I have a wife and children, my brother has also a wife and children. I have a good home, fields of wheat, potatoes, oats, peas and beans. Why should I leave them and come so far to see you? It was to try and do you good

but you throw it away. Why is it that you do so? We all sometimes do wrong. Sometimes because our hearts are bad, and sometimes because we have bad council. Your people have sometimes done wrong. Our hearts have cried. Our hearts still cry, but if you will try and do right we will forget it. How long will you listen to this bad council and refuse to receive the light?

I too love the earth where I was born. I left it because it was for my good. I have come a long way. We ask you to go but a very short distance. We don't come to steal your lands, we pay you more than it is worth. Here in this little valley and the Umatilla valley that affords a little good land, between these two streams and all around it is a parched up plain. What is it worth to you or to us? Not one half of what we have offered for it. Why do we offer you so much? It is because our Chief has told us to take care of his red people. We come to you with his messages to try and do you good. You throw his words behind you. Why do you do it? because you have listened to bad council.

I told you the difficulties that existed between the whites and the Indians beyond the mountains. If the whites and the Indians live together here as they did there, it would be the same. Our Chief knows this and he sent us here to see you and to talk with you, this we do before there are many whites here.

Pe-pe-mox-mox says "let us part and appoint another day". Before that day would arrive we might have a great deal of trouble. Gold has been found in the country above yours. Our people are very fond of it. When our people hear this they will come here by hundreds, among these who come there will be some bad people, those bad people will steal your horses and

cattle. There are but few of you, you cannot prevent it when you are scattered over a great extent of country, you cannot prevent it: but if you are living in these reservations we can protect you and your property. Then why should you refuse to receive our talk and refuse to allow us to protect you? Your refusal to receive it is not such talk as should come from Chiefs desirous of promoting the interest of their people. I want you to think more of this tonight and if you act like wise men I think you will arrive at a different conclusion.

We expect to perfect the arrangements with the Nez Perces perhaps tomorrow. We have but one heart, we expect it will always remain so. We want the Walla Wallas, the Cayuses and the Umatillas to unite with us and have but one heart: we want you to stop your ears against bad council and receive that which is good. We do not come among you as traders we come bearing the words of our Great Chief. If you refuse to receive it our hearts will be sad. Our hearts will be sorry for these chiefs for we like them. Our hearts will be sorry and bleed for all these old men. Our hearts will be sorry and bleed for these young men. Our hearts will be sorry and bleed for these women and children.

We want to help you to put food into your lodges and homes. We want to help you to get clothes and blankets to cover you from the storm; we want to help you to get arms and ammunition to kill game; we want to open your eyes and give you light that you may see. We want to make you a good people.

Will you receive our talk or will you throw it behind you. My heart will be glad tomorrow if you come and say we are all of one heart.

What I have said is for your good: think of it. I have nothing more to say.

Cam an pello It is true you have mercy on us. I think it is true what you have been saying: if you were to send me into a mountainous country still I would say you have mercy on us. What would I be glad for? I was glad to hear the first talk by the Governor, that was the reason I was glad to hear what they said. I would be very glad if he had said to me stop over on one side, then I would be glad.

What would I be glad about if I were to take a thing and throw it away? That is the reason my heart cries. If you would show me fine lands and I were to see them then I would be glad and go to them. How do you show your pity by sending me and my children to a land where there is nothing to eat but wood? That is the kind of land up there, that is the reason I cry. Look at my hands! An old man. I have but them by hard work: then I ask myself have I labored in vain? what have I to be glad for?

The white man first showed me and aided me in making my garden and every mile I have been laboring. Will God think nothing of the labor I have bestowed on my garden? Do you do this to me in pity? I am really pitiable and therefore I pray night and day till I am tired. I have no books. The missionaries told me if I had no books I had a book in my heart which enabled me to pray to God. They told me in taking water to drink I should think of God, this I have not learned of myself, it is what they have taught me and I keep it. The laws of God are not alone for you, they are for me as well.

Woa-lish-wam-pum I have got only two thing to say. I have listened to your speech without any impression. I did not understand it. I know this. We are the same. You have life and breath you white people; we red people have life and breath. I think the old laws are straight, that they should still exist.

The Nez Perces have already given you their land. You want us to go there. What can we think of that? That is the reason I cannot think of leaving this land to go there. Your words since you came here have been crooked. That is all I have to say.

Gen. Palmer. I desire to say a few words in reply to Cam an pello, he says he "is an old man, he has worked hard in his garden." We have said that any man who has a garden or a field and who left it to go to this reservation should have as much improvement made there for him, or be paid for it in money as he chooses. We will go farther and say he shall have a better improvement: it shall have a better fence, be ploughed well. We will not take them there to starve, they shall live better than where they are and if there is not good land enough in the reservation to make them farms we will make it larger.

Gov. Stevens Said. Although you are all tired, my friends, I must say a few words. My Brother and myself have talked straight. Have all of you talked straight? Lawyer has and his people have. And their business will be done tomorrow.

The Young Chief says he "is blind and does not understand, What is it that he wants?"

Stickuss says his "heart is in one of the three places, the Grand Ronde, the Touchet and the Tu-kan-on".

Where is the heart of the Young Chief?

Pe-pe-mox-mox "Cannot be wafted off like a feather."
Does he prefer the Yakama reservation to that of the
Nez Perces? We have asked him before, we ask him
now—where is his heart?

And Kam-a-ah-kan the great Chief of the Yakimas has
not spoken at all. His people have had no voice here
today. He is not ashamed to speak--he is not afraid to
speak--then speak out.

But Owhi is "afraid lest God be angry at his selling his
land". Owhi, my brother I do not think God will be
angry if you do your best for yourself and your children.
Ask yourself this question to night. Will not God be
angry with me if I neglect this opportunity to do them
good? Owhi says his people are not here. Why did he
promise to come here to hear our talk. I do not want to
be ashamed of Owhi. Owhi has the heart of his brother
Teayass and his people; we expect him to speak
straight out.

We expect to hear from Kam-a-ah-kan from Skloom.
The papers we will have drawn up tonight. You can see
them tomorrow. The Nez Perces must not be put off
any longer, their business must be dispatched.

I hope the hearts of all the others and our hearts will
agree. They have asked us to speak straight, we have
spoken straight. We have asked you to speak straight,
but we have yet to hear from you.

Gen. Palmer This man (How-lish-wam-pum) says the
reason he does not want to go to the Nez Perces'
country is that they have given it to us. If he and his
people go on that Reservation it will belong to them as

much as to the Nez Perces. They will all be served alike, every man will have his farm, it will be his.

Pe-pe-mox mox says we have met as friends let us say nothing that is bad, let us part friends. We have been friends a long time". I hope we shall always remain friends and as brothers. When we part we will part as friends. Then let us act as friends and as wise men.

Five Crows Listen to me you Chiefs. We have been as one people with the Nez Perces heretofore; this day we are divided. We the Cayuses, Walla Wallas, and Kam-a-ah-kans people and others will think over the matter tonight and give you an answer tomorrow.

Owhi Kam-a-ah-kan is the man who is to speak about these lands. I have nothing to say about them. We will settle the matter among ourselves.

Gen. Palmer We have heard what Five Crows has said. We want all this people to have one heart, they ought not to have two hearts. Our Great Chief looks upon them all as his children and I hope you will think on what is here said to you.

Gov. Stevens My Friends, we will meet in the morning again, we have to get through the business of the Nez Perces so that they may get home, they have a long journey before them. We shall meet as friends I hope. Your hearts and ours will be united I trust. We want every person to come early. If any person wishes to speak, speak now or otherwise we shall meet in the morning.

Council met at

Gov. Stevens Said. My friends, judging from your faces, I think you see your way clear. The paper of the Nez Perces is nearly ready and soon will be read to them. We expect that the Young Chief, that Pee-Pee-mox-mox and Kamiakan will speak now, and we hope that with them the business may be concluded today. Let us know what they want, we are here for that purpose.

The Young Chief Said, We have been tiring one another for a long time. We did not know our hearts, we did not understand each other on both sides, about this country. We have so many horses and cattle in this country is the reason we were troubled. Your marking out this country is the reason it troubles me so and has made me sit here without saying anything. You Americans, your forefathers are dying in your own country, as many of your people are wealthy in stock it requires a large tract to keep them. Those that have large bands of cattle marks each one a tract for himself. The reason why we could not understand you was that you selected this country for us to live in without our having any voice in the matter. We will think slowly over the different streams that run through the country, we will expose the country and think over it slowly. I cannot take the whole country and throw it to you. If we can agree this country will furnish food for the whites and for us. The whites and ourselves will be compelled to have equal privileges in getting timber from the mountains to build our houses and fences; then we shall love one another. The good of you white people is foremost, the bad is behind, it is the same with us. You embraced all my country, where was I to go, was I to be a wanderer like a wolf. Without a home,

without a house I would be compelled to steal, consequently I would die. I will show you lands that I will give you, we will then take good care of each other. The reason for my uneasiness is for my stock which is running all over the country. Perhaps we will be compelled to divide with our stock, one taking one way the other another way, perhaps out there (pointing South) it would be well to draw a line to divide us. This is the reason why I think we should stop a while that we may come to an agreement. We will see when you make another offer whether we can agree to it. Wait, we may come to an agreement when we see your offer, if any people come send good people; those of the settlers who are here now it is well they should stay. I think the land where my forefathers are buried should be mine; that is the place that I am speaking for. We will talk about it, we shall then know, my brothers, that is what I have to show to you, that is what I love the place we get our roots to live upon (meaning the Grand Ronde). The Salmon comes up the stream--that is all.

Gen. Palmer Said: My brothers, when we quit talking yesterday your minds were very much troubled, you were unwilling to go to the Nez Perces reservation. We have thought of your words. The Nez Perces have a great many horses & cattle, you too have a great many horses & cattle, perhaps you might not agree together quite so well; your people appear to be much divided where to go. We asked you to give us your hearts and tell us where it was, the Young Chief (We****) has given us his heart, the Grand Ronde Valley. We have thought of the Umatillas. Many of your people died there. It is a good country for your horses and cattle. We desired first to have you go all to one place, but to show you

that we wish to do you good I will make you another proposition. I propose to designate for the Cayuses, the Walla Walla & the Umatillas--To commence on the Columbia river (this is the Columbia river (pointing to the map) this is the Umatilla river, this is the Agency, this is McKay's place, this is Wild Horse Creek. Now I propose to select a reservation commencing at the mouth of Wild Horse Creek and running up this creek to the mountains to the head waters of Hou-te-nic Creek, now down that creek till you strike Mr. McKay's claim, now across from his claim to the Umatilla river, then up to the mouth of the Wild Horse Creek, leaving Wm. McKay's claim out of the reservation. This will include all your farms, your houses and gardens within the reservation. You will have sufficient grazing for your stock and land to make farms but your stock will have the privilege of grazing on any lands not claimed by the whites. If the whites should settle near to the reservation their stock might sometimes go onto the reservation while yours might go off it; if they should do so we would not want you to quarrel about it. We would build at suitable points on the reservation a saw-mill and a flouring mill; we would employ millers to attend them for you for twenty years, and by that time you would be able to attend them yourselves. We will have a blacksmith shop and employ a blacksmith for 20 years; we will have a plow and wagon-makers shop and employ mechanics for that for twenty years; we will have a carpenter and cabinet makers shop and employ mechanics for that for 20 years -- we will have at least two school houses and employ teachers for at least 20 years; we will build a hospital and furnish a doctor and medicines for twenty years; we will build a good house for Pee-Pee-Mox-Mox, and a good house for the Chief of the Cayuse; we will build a house for

Pee-Pee-Mox-Mox's son, we will plow and fence ten acres of land for Pee-Pee-Mox-Mox; we will plow and fence the same for the chief of the Cayuses; we will plow and fence five acres for Pee-Pee-Mox-Mox's son; we propose to do more for him and for his son because he leaves his country and goes to another place. We will give him as soon as he goes down to the Dalles for it \$500, in money - we will give him 3 yoke of oxen, wagon and two plows - we also give him some other things which it is not necessary to mention. We give him a salary and also the chief of the Cayuses of \$500. a year, in money, this to continue for 20 years - the same as is to be given to the Lawyer, the head chief of the Nez Perces. We give these salaries because they are the head chiefs, and are expected to labor for the good of their people, and in the event of the death of the head chief their successors get the salaries. Now in addition to these things we will expend fifty thousand dollars in the first and second years after the treaty is ratified. This money is to be expended in building houses, opening farms, buying teams and wagons and paying persons working for them, and in any way that the President may deem best calculated to promote their interests. In addition to this there will be expended for you eight thousand/dollars every year for five years, for the next five years six thousand dollars a year, the next five years four thousand dollars a year, for the next five years two thousand dollars a year -- this makes twenty years, and the amount to be expended one hundred thousand dollars (\$100,000). This amount will be expended as the President may direct; we should consult you every year as to how you wanted it paid -- part in money -- part in goods. You will not be required to go onto this reservation till our chief the President and his council sees this paper and

says it is good; and we build the houses, the mills, and the blacksmith shop. But we want you to allow the white people to come and settle in the country anywhere outside of the reservation. The President will have this reservation surveyed and marked off, so that every man that has a piece of land will know which is his. You will be allowed to go and catch fish and dig roots the same as the whites; and if any of our people do wrong to you you are not to shoot them, but to go to the Agent. We expect the chiefs to restrain their young men from doing wrong. We have a few goods here for you, those that we give you will be in addition to these payments, we charge you nothing for them. I have given you now my heart; I have offered you more than your country is worth -- more than you know how to count. How long will it take you to decide? If you say it is good the papers can be arranged tonight, tomorrow they can be signed; we would then give you these goods and you could go home with a good heart. We have been here a good many days talking - we are all tired; we commenced far apart; it is for you to say now whether we shall come together. This I say to the Cayuses, the Walla Walla & Umatillas - those people are all interested; Pee-Pee-Mox-Mox being the first chief I want to hear from him. I have nothing more to say.

Pee-Pee-Mox-Mox said -- The young chief has nothing more to say; he has said all he had to say, as if it was I that put obstacles in the way. Our hearts should not be otherwise than one. I have already spoken all that I have to say -- I and Gen. Palmer this morning. They have already written all that we have said. I spoke this morning about having a little house, a place to sell my cattle on the other side of the Columbia where my

cattle range for a trading post when the Americans pass. I have nothing to talk about; I have only a few words more. I said to Gen. Palmer that I desired permission to get fish there while I lived; when I learn that the house is made, (meaning the reservation) then I shall go there: when we have settled all things then you have your presents for these Indians. Now that we have made up our minds if you think proper you may give us some provisions; sometime tomorrow in the afternoon we will go home; you are now tired - that is all I have to say.

Gen. Palmer Said: - That we have agreed that Pee-Pee-Mox-Mox shall have the privilege of building a house at the mouth of the Yakima and catching fish for five years. I should like to have all the chiefs and head men of the Umatillas, Cayuses and Walla Wallas and also the name of every man on this paper that the President may see every man's name and know that they have given their consent.

Gov. Stevens Said: -- My friends. I am glad Looking Glass one of your chiefs is coming, he is a friend of Kamiakun; we have now got nearly round the circle; our hearts are almost together; I call upon Kamiakun to say whether we shall get entirely around. My friends, Looking Glass is close by: --he has come way from the Blackfeet - the buffalo country across the mountains; there is war; here is peace and friendship let his first glance be upon you sitting here; when he is close by two or three of us will go and take him by the hand and set him down by his chief in the presence of his friend Kamiakun. Let us now have Kamiken's heart.

Kam-i-ah-kan Said: The place that I am from there are but few Indians--all have gone to the Calapooya country. Some are at Nisqually and some at Taih--that is the reason I have deferred speaking till I see my Indians. I wish the Americans to settle on the wagon route; we do not confine them to the road; they may settle about the road so that the Indians may go and see them. I do not speak this of myself it is my people's wish. Owhi and Teias and the chiefs. I, Kamiakan do not wish for goods myself. The forest knows me, he knows my heart he knows I do not desire a great many goods. All that I wish is for an Agent, a good Agent who will pity the good and bad of us and take care of us. I have nothing to talk long about. I am tired, I am anxious to get back to my garden. That is all I have to say.

Joseph, Nez Perce: These are my children (looking around). I see them all sitting there: talking slowly is good. It is good for old men to talk straight; talk straight on both sides and take care of one another. It is not us, it is those of our children who come after us. It is good for the old people to talk together good and straight on account of our children on both sides to take care of each other till the last day, without speaking I am going. It is not anything bad that I am thinking that I am going without speaking, no, it is not anything bad, it is a place to live, a place for our good to live there. Think for year after year for a far way ahead. I wonder what you think if I could see your thoughts. It is not that there is anything bad that I speak. I hear you speaking to my children, and they have many hearts. I am going without talking and you don't know my talk. At the Grand Ronde I saw my children on both

sides; we have been talking and finished your talk; this is all I have to say.

Gov. Stevens Said. If anybody else wished to speak we shall be glad to hear them.

Red Wolf Said: I have only one or two things to speak: - I want Mr. Craig to stay there in the Nez Perce country, and not go away. The reason why I wish Mr. Craig to stay there is because he understands us - he speaks our language well; when there is any news that comes into the country we can go to him and hear it straight; the same for us when anybody comes to speak to us he will sit down with us and we understand them. It is good for him to stay there to interpret on both sides so that each can understand the other.

Gov. Stevens said: We wish to hear from Scloom, one of the Chiefs of the Yakimas.

Scloom said: What I have to say is about this the earth; It is long since the earth was made and the trees were made to grow out, and there was one there, a very small boy, I do not know what he knew but he took an axe and cut a tree, and marked it as if he has made a watch, he went to the tree and looked up and saw a star, he took a line and measured the land from that tree; all the land he had measured he plowed; about half way on the line he threw the tree across. For this country that he had plowed up he got \$800 for each mile: That is the reason the Indians like the place where they have their gardens; for the reason there was such a price paid for them; the land uncultivated where there are no gardens is not worth so much, it might be sold for \$40 a mile. Why should I speak a great deal? We are not bargaining for lots; you know

your own country above, you select your piece of land and pay a price for it. There it is the same and have choice. My friends, I have understood what you have said; when you give me what is just for my land you shall have it. This is all I have to say.

Gov. Stevens Said: I have a word to say in answer to the remarks of Skloom. Proposals have been made for the lands of the Yakimas and their neighbors; a place has been pointed out for the Indians to live in; outside of this place the gardens and farms are to be paid for in money at a fair value. The price paid will probably be a good deal more than the price he has mentioned for those gardens. I say to Skloom, we do sell good lands for eight hundred dollars a mile, but not in this country. We do not expect to sell any of this land. Skloom probably knows that. I ask Kamiakan and I ask Skloom, make your own propositions. I also say to Owhi, let us know what you think your lands are worth and where you want your home. We shall meet again in the morning, I want Kamiakun and his chiefs to make their own proposition. Looking-Glass is coming. We shall meet tomorrow morning.

Saturday, June 9th

The Council was opened at 2 o'clock P.M. when Gov. Stevens Said

My Friends, Today we are all I trust of one mind. Today we shall finish the business which brought us together. Yesterday the Yakamas had not made up their minds fully. Today they and ourselves agree; the papers have been drawn up. A paper for the Nez Perces: they live on one Reservation. A paper for the

Walla Walla, Cayuses and Umatillas, they have their Reservation on the Umatilla. And a paper for the Yakamas, they have their Reservation. These papers engage us to do exactly what we have promised to do.

My brother explained yesterday to the Walla Walla, Cayuses and Umatillas what would be given in their paper. It has been given to them in the paper.

In the paper for the Yakamas we have included the tribes who acknowledge Kam-i-ah-kan for their head chief. The Piscose, the Swan-wap-um and Palouse, the Yakamas, and all the Bands on the Columbia below the Walla Walla down to the White Salmon River. They have their reservation and fishing stations which they well know and which I understand is satisfactory.

The Nez Perces have their reservation as was shown them in council and in the paper everything was set down which was promised them. They all know what was said.

The money, the payment intended for the Nez Perces, the Walla Walla, the Cayuses and Umatillas has been divided. We have given two parts or a \$150,000 to the Walla Walla, Cayuses and Umatillas, We have given the Nez Perces three parts or \$200,000.

In the Yakama reservation we have not placed as many tribes as we expected. We have thrown out the Okan-ah-gaus and Colvilles and the Tribes below the White Salmon. Their numbers are about the same as the Nez Perces. We have given them the same amount. There is the paper for the Nez Perces (holding it up), here is the paper for the Yakamas. My brother will show the paper for the Walla Walla, the Cayuses, the Umatillas.

It is stated first in all the papers the Indians who signed the paper. then your lands are described. We have got the descriptions from yourselves. Then your reservations are pointed out, those you all know.

You will not be called according to the paper to move on the Reservation for two or three years: then is secured to you your right to fish, to get roots and berries, and to kill game: then your payments are secured to you as agreed: then your schools, your shops, and physician and the other things we have promised you are secured: then the salaries, the houses and the ten acre farms of your chiefs are secured to him.

Then there is another article if any of you get into debt then payments cannot be taken for your debts, every Indian must pay his own debts.

Then you promise/next to be friendly with other tribes and the whites.

Last you are to drink no whiskey and do all you can to prevent others doing it: and also those who drink whiskey will not be paid their annuities.

I have thus given the substance of the different Treaties. Shall it be read over in detail? You have already heard it not once but two or three times. It can be read over Article by Article and the Interpreters can state to you whether it is what you are promised. If there is anyone present who wishes to speak let him do so before we go on with this business. Let Looking Glass speak.

Looking Glass said. I am now going to speak. From those who have been speaking, they have been listening to us from above and from the ground. A long

time ago the Great Spirit spoke to my children. I am from the body of my parents and I set on a good place. The Great Spirit spoke to his children the Laws, will track on the ground strait and after that there have been tracks on my ground and after that the big Chief, the President, his ground was stepped on in the same way and for that reason I am not going there to trouble on his grounds and I do not expect anyone to tramp on mine.

I have great respect for my friends, he sees your eyes and your hearts, and that is the reason all this people are his children. Why do you want to separate my children and scatter them all over the country? I do not go into your country and scatter your children in every direction.

It is for me to speak for these my people my children, that is what I say. The Big Chief speaks to his children and I also speak to my children and tell them what to do: and that is what we are talking about: you see where the sun is. I never go where the whites are and mix with them and talk with them.

I am already named from above, by the Supreme Being, my heart is with the country. I live upon and head, that is the reason my heart tells me to say where my children shall go. I want you to look well to what I have shown you.

I want to know if an Agent will stay up in my country?

Gov. Stevens As long as there are people.

Looking Glass Will the Agent be there that long to keep the whites from pushing into our country?

Gen. Palmer said. Certainly.

Looking Glass. It is not for nothing I am speaking to my chiefs, it is to talk strait, it is just as if I were to see the President and talk to him it would be straight, that is just what I want, that you talk straight from the President. Look at my talk. I am going to talk straight. When I hear your talk it goes to my heart. I am not like those people (pointing about) who hang their heads and say nothing. We will have a short talk, not a long one. (after a silence of a few minutes the)

Young Chief Said. That is the reason I told the Governor to let it be till another time, till we know what the Looking Glass would say. I heard that Looking Glass was coming.

Governor Stevens I will say to the Young Chief, let Looking Glass have time to think, he is thinking now in order that he may speak, he will speak straight and from his heart. We will wait now till we have heard Looking Glass speak.

Looking Glass. The line of the Cayuse Reservation will be where the trail crosses the Walla Walla, thence in a straight line to the Umatilla below Wm. McKay's house, from thence north of the butte, straight to John Day's River. The reason why that shall be the line is that they want more room for their horses and cattle. (After a pause of a few moments he continued) By what time will you build the mill?

Gov. Stevens The year they move on, when the President approved the Treaty.

Looking Glass Yes! Now we will talk. We have talked before. You said you would send this talk to the

President and if he says yes, then it is right. Yes. And I will listen to what the President says and if he says yes, then we will talk.

Billy. I thought we had appointed Lawyer our head Chief and he was to do our talking, that is the reason why I have spoken.

Gov. Stevens. I will say to my brother the Looking Glass that everything we say and do is sent to the President. What Looking Glass has said and what I say now goes to the President, but can I send anything to the President unless you agree to it? Can the President act? We have met that we may agree upon something then it goes to the President. The Prest. has sent me and my brother to make this very agreement. We must agree upon something then it goes to the President and if he thinks it is good then he approves of it. I ask L. Glass to look upon it and see that it cannot be done any other way.

Gen. Palmer. Our great Chief, the President, directed me and my brother to come here. We have been here 19 days, we have been talking a great deal. That talk has been for your good. We came here to talk straight, we have shown you our hearts, we will not lie to you. Yesterday we made a bargain with the Cayuse the Walla Wallas and the Umatillas and the day before with the Nez Perces. The Looking Glass was not here but we did not forget him. We know that when he understands it all he will say yes. This morning we made a bargain with the Yakamas, they with these others all say yes. We have told these people and it is so said in the paper that their horses and cattle would be allowed to graze outside of the reservation the same as our people when it was not occupied by whites. If we

change the line to where he says we would have to stay here two or three days more to arrange the paper. We are all tired. You are tired. Shall we say one thing today and another thing tomorrow?

They have said yes! My heart says yes to the line that was shown yesterday and today. All things will be done as we told you. Shall we do so. My heart says yes. I have nothing more to say.

Looking Glass. Yes! Let it be so.

Eagle from the Light. When I spoke to you before I said that I should speak slowly and I have been thinking about what to say, but I don't know yet what to say. These people have been talking among themselves as though there was two and when I heard what they had to say I said very well: let us go as two.

Looking Glass. What I showed these people when I came here. I spoke beyond it (referring to the map) and you have said that this talk you would send to the President and he will see it.

You see my body it is not divided, it is one body as these are all my children (pointing about). They have all got horses and cattle that is the reason I made it larger.

I want you to talk plain just like the light and then I will say yes. That is all I have to say now.

Gov. Stevens. I will ask of Looking Glass whether he has been told of our council. Looking Glass knows that in this reservation settlers cannot go, that he can graze his cattle outside of the reservation on lands not claimed by settlers, that he can catch fish at any of the

fishing stations, that he can kill game and can go to Buffalo when he pleases, that he can get roots and berries on any of the lands not occupied by settlers. He knows what the Reservation is: that we promise him two mills, a saw and a grist mill, two schools and a blacksmith; that we give him a physician, and all the other things that have been spoken of: the people all know it, it has been read over two or three times.

This Reservation is in his own country. I ask Looking Glass is not this talking straight? We send all this to the President and besides this we pay a certain sum of which you all know: we have been looking for him ever since we have been here: Lawyer will recollect that I have been enquiring when will Looking Glass come? We wanted him to come.

Those who go to the Buffalo are all my children. I am going to see the Blackfeet next moon. The Blackfeet had stolen some of his horses, but he got them back again. I heard the story last night. He killed some of their men. I know that Looking Glass wants me to go and make peace in that country. Let us first agree here.

Gen. Palmer. We buy your country and pay you for it and give the most of it back to you again.

Looking Glass. You have said to me that the whites shall not go over that line, none shall go into that country and this you said and it is said: And you will show to the President what we have said.

Gov. Stevens. I understand Looking Glass has consented with the other Chiefs. The papers are now ready to sign: here I will particularly speak to Kamahkan or the head Chief of the Yakamas. Are you ready?

Young Chief. What the Looking Glass says, I say.

Gov. Stevens. I ask you whether you are ready to sign? I stated that whatever the Looking Glass said and we said would go to the President. We agreed upon a line yesterday and the day before. The papers are drawn: we ask are you now ready to sign these papers and let them go to the President.

Looking Glass. That he said yes to his line.

Gov. Stevens. Looking Glass is satisfied with the Nez Perce line, the young Chief and Pe-pe-mox-mox yesterday agreed to the Umatilla reserve.

Looking Glass. I said yes to the line I marked myself, not to your line.

Gov. Stevens. I will say to the Looking Glass, we cannot agree.

Gen. Palmer. I would say to the Looking Glass, what use is it to purchase his country and give it all back again. We did not come here to talk like boys. We don't wish to part with a misunderstanding.

The Nez Percés, the Walla Wallas, the Cayuses and the Umatillas agree to the boundaries as we have marked. Do you wish to throw all we have said to you behind you. Shall we like boys say yes today and no tomorrow? Pe-pe-mox-mox, Young Chief and the Nez Percés say yes! None of their people say no! Why do we talk so much about it? I have done.

Young Chief. The President is your Chief and you do what he tells you. That is the reason the Looking Glass marked out the line he wanted: he is the head Chief.

Looking Glass. It was my children that spoke yesterday and now I come and hear them speak. I asked my children what was their hurry? They knew that I was coming. Why did they run and speak till I came: that is the reason I marked it bigger. I wanted to talk with you and have you talk to me. And after that. Your talk and my talk will go to the President.

Gen. Palmer I will say to my brother that I did not know that he was absent when we made our minds to come here, and set the time. My brother and myself come here and we come a long way. We have been here a long time. We were not in a hurry, these people wanted to go home, they had fields of wheat, and of potatoes, the weeds were growing up, they wanted to go home, there was no one at home to take care of the fields. We have other persons to see besides these.

My Brother has to go to the Blackfoot country and make peace. He wanted to say to them. You shall not steal these peoples horses: you shall not make war upon them: these are the reasons we talk. We talk because our Great Chief told us.

The papers have not been signed, they had not forgotten him nor had we. Shall all our efforts to protect them be destroyed? Shall our talk be thrown away? If the Looking Glass is a Chief I hope he will act as a Chief acts for the good of his people.

If we were to say yes to his line our Chief would say No!. but if we shall say the line we have marked we believe our Chief will say Yes. Which will you do, take that line or have it all thrown away? Let us act like wise men and not part without doing good for each other.

Looking Glass. I am not going to say any more today.

Gen. Palmer. If the Nez Percés are ready they can talk among themselves and come tomorrow.

If the Cayuses, the Walla Wallas and Umatillas are ready to do what yesterday they said they would then the paper is ready for them to sign, and tonight they can get their goods and go home when they please.

The paper is also ready for the Yakamas if they choose to sign it they can do so.

Gov. Stevens. The council will now adjourn till Monday morning and I trust by that time Looking Glass will have thought the matter over and we will be able to agree.

Monday, June 11th

Council opened at 11 o'clock.

Gov. Stevens said: My children, we have met today for the last time. Every man here present has agreed to a treaty in council. The Nez Percés agreed to a treaty. Not one man spoke against it. All agreed that the head Chief would speak for you. You were all called upon to speak. I called upon Joseph to speak and he spoke: "I have a good heart," says Joseph, "what the Lawyer says let it be".

The Eagle-from-the light said, "the head chief Lawyer had spoken so be it."

The Red Wolf said, "What the Lawyer has said be it so, he is our head chief."

Said U-ute-sin-ma-le-kin "My cheif has spoken for me." Every man said, I say again, "Lawyer is our cheif." "I agree to the treaty." So said the Cayuses, the Walla Wallas, the Umatillas and the Yakamas. The Young Cheif and Stickuus said, "we pledged our words, we agree."

We all expect that you all will do what you promised to do. We don't believe you will break your word and make us ashamed of you. I don't believe we shall have to say to the President, "you have promised, and then broke your promise."

No! We know that you will keep you word. First the Nez Perces,--I shall call upon Lawyer the head chief, and then I shall call on the other chiefs to sign.

Will Lawyer now come forward. (he then came forward and signed the Treaty) Now I call upon Looking Glass and Joseph to sign the Treaty. (After they had affixed their names James and the other chiefs and head men put their names to it.)

Gov. Stevens: My Brothers, the Treaties have now all been signed. They will be sent to the President. All the speeches on both sides will be sent to the President. The President will see that everything has been fairly explained and agreed upon between us. He will see that you have all acted like men here. He won't find any fault even with Looking Glass.

Looking Glass came back after a long absents and asked time to look at the treaty. Time was given him to think it over. He was satisfied and we find his name next to his head chief's

I think the President will approve what we have done. We will let you know when we hear from him, which will be sometime next year.

We have some few presents to give you which will be distributed upon your leaving the ground. They are designed for those who need them most. You will dispose of them in that way.

Thenceforth you will have me for your Great Chief, Mr. Tappan for your Agent, and Mr. Craig for your Interpreter.

The Yakamas will have Mr. Bolon for their Agent. The Wallas, Cayuses and Umatillas will look to Gen'l Palmer hereafter.

There is another point which I wish to speak about from my heart. It is the Blackfoot Council. My brother, the Looking Glass, knows that we want peace on those Buffalo plains. You all know it. I think I can make peace there.

Nez Perces: Nearly one fourth of your people live there. I want some chiefs of courage and character, and one hundred of your braves to go to that council. I say to Lawyer, the head chief, of the Nez Perce's, I would be glad to have him go, I would be glad to have Looking Glass go. Arrange this among yourselves. I hope and trust that Mr. Craig will go with you.

The Cayuses, Walla Wallas, Umatillas, and Yakamas, I would like to have some of them also.

We shall have chiefs and braves from the Flatheads, the Cour de lains, Coo-too-mey's and I hope from the Spokanes. The Blackfeet have promised to meet you

there in Council and when we meet there will be peace among you. Think this matter over and decide for yourselves.

Gen'l Palmer: My brothers, I wish to say a few words before we part. When we came here we didn't know the hearts of your people. We have been together a long time and have talked a great deal. We have listened to what you have said, and you have listened to what we have said _____ you have sometimes been afraid that we were not working for your good. Your willingness to come forward and sign the Treaty is evidence that you have decided that we intended to do you good. We have shown you our hearts and you have shown us yours. We commenced a long way apart but now we are together. We are one. I hope we shall always remain as one and have but one heart.

From this time we expect that we and you will always be at peace. We not only want you to be at peace with all whites but we want you to be at peace with yourself. We didn't come here to divide you or to induce one to be against another. Why should you be at war with each other? You may live at separate places, but your hearts would be as one and help each other. The chiefs and old men should give good council to their young people. The young men should listen to the old men and be advised by them. The young people should strive to assist the old people. Take care of them. It is the duty of the old people when they see these boys act foolish to council them. It is the duty of all to take care of your women and children, furnish them with food and with clothing.

I say again! Take care of your old people, supply their lodges with provisions, for you will soon be old yourself and will need help.

We expect you will all leave this ground with good hearts and if there are any among you that have bad hearts, advise them to throw them away. If your people are foolish and do wrong it is your duty as chiefs to punish them for it. We shall try and prevent the whites from doing wrong to the Indians, and you must prevent your people from doing wrong to the whites.

The Treaty provides that if an Indian steals the property of the whites it may be paid for from the annuities. It also provides that if your people steal other tribes it will be paid for in the same way. We also provide that if the whites take the property of an Indian it must be paid for. The Agent who is the proper person to apply to in case an injury is done you and when any of your people do wrong to the whites, then it is the duty of the chiefs to punish the offender. If one does wrong to an individual he is not to redress his own wrong but he is to submit it to the chiefs or his council, or to the Agent and abide by their decision. It is to be hoped that your people will do no wrong. Let us try and prevent it if we can. We expect the chiefs to look to this and if there is any of their people who have stolen property and have it on hand it is my heart they should give it up to the Agent, and the Agent will do all he can to return your property.

We have, my brother, told you that we had a few goods to give you. Your people are not all here to receive them. We have been here a long time and cant remain to see you all. We shall therefore give these goods into the hands of the chiefs and we expect the Head Chiefs to call his chiefs and see them distributed justly.

My Brother, Gov. Stevens, will furnish the Nez Perce's with goods. Mr. Thompson and myself will furnish the

Cayuse, Walla Walla and Umatillas with goods. And when we get through talking the head chiefs of the Cayuses, Walla Wallas, Umatilla will go receive the goods and take care of them.

We have not got a great many goods but when this paper goes to the President and he says it is good, then we will supply you with other goods, and we shall do all things that we have agreed upon. Mr. Thompson will be the Agent for the Cayuses, Walla Wallas, and the Umatillas.

When we part we will all go to our homes with good hearts towards each other. When we have built the blacksmith shops, saw mills, and chiefs home and other things we have agreed to. Then we expect you will go upon the reservation, and when you go and if you leave your little farms and improvements they will be valued and you will be paid for them.

I shall go home with a good heart towards all your people, and I shall be very sorry if I hear your people have done wrong. I have nothing more to say at present.

If any of you have anything to say we are ready to listen to you.

Gov. Stevens: I will say to the Nez Perce's, I hope to visit them in their own country when I come back from the Blackfoot Council. I hope also to visit the Yakamas on my return.

The Cayuses, Walla Wallas and Umatillas will look to Gen. Palmer hereafter. They will also look upon me as their friend.

Tin-tin-meet-see: I understand you well. We are never the beginners in doing wrong to the whites. All Indians here understood well what has been said. When your white children come into this country they do things at random. (to the Indians) You have heard all that has been said and now let us go home and do right.

Eagle of the Light: My forefathers are all dead, I only am left, there is but the encampment remaining, it is good to hear and think of each other. We have heard good words spoken from the President to take care of us poor people well. His children's way you have come here to see. For days our bodies have been together, also the night and also for years, also for winters. You have shown that he likes his red children. I do not want our hearts to come together wrong, but right, and remain so as long as we are a people, and we will stop the bad people on both sides. The Lord will reward us both when our hearts are good that we will look and care for each other,--The old and the young will go right and then all will be right--from little could come great difficulties - that is the reason we speak from small things to big ones - that is all at present.

James Said: It is not from anything bad that I have not spoken. It is as though the man I speak of is not of the party. When the white people came to my country Mr. See told me when he came there he was coming for good and not for bad. When the white people come and they would come in great numbers do not do anything bad to them. I have never done bad to them. I wish Mr. Craig to stay with us and hear the Indians speak for he could speak to our people and they could understand him—therefore I wish him to stay.

Red Grizzly Said: I like your talk - you talk well. When you have finished I like it still, this you have brought us from the President. I like that talk my friends. From the time I spoke here I have been sick at heart. This man who has just now spoken, he spoke a little longer because he knows how to speak and there is also another who has just come, The Looking Glass, they speak straight and friendly. You have also spoken friendly, and shown them your heart plainly-not that I am a good man that I like it. My heart is glad as though I see your heart when I hear your words. What I have good to speak I have not spoke yet. (here he was interrupted by the Indians when the Red Owl said the young chief wished to say that he wanted you to stop the whites from taking their horses or cattle and if my horses go across the line of the reservation which is a small one I do not want these horses and cattle to be taken off because they are over the line).

Gen. Palmer said: My brethren. This man has said from little things grow great ones. It is true, it is so--a single word spoken unkindly leads to a difficulty. It would be better if we always would not do or say bad things, but if little things are done wrong we should try and forget them. I have been told that there are sometimes difficulties among the Indians in reference to their mode of worship. That is a thing that we do not interfere with. We are willing to let the people worship God as they please. We do not say do this or do that. If their heart is to sing or pray and preach it is good, if others say it is not our heart to pray and to preach it is good, but we want all people to be good people. If those who sing and pray think it is good, let them to try to convince others. Talk kindly, treat them kindly and convince them they will do right. Some will worship

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one way and some will worship another - do not quarrel about it but worship or not worship, we want you to have good hearts. I have done.--

Looking Glass Says:

As so many are now working, some other time you and I will have a heart. I have a good head and a good heart, by and by we will have a talk.

Council Adjourned sine die at three o'clock.

We hereby certify the above to be a true record of the proceedings.

SS James Doty

Secty. To Treaties in W. Terry.

SS Wm. McKay

Secty. To Treaties in O.T.

Approved

Isaac Stevens

Gov. & Supt. W.T.

Joel Palmer

Supt. Ind. Affairs

for O.T.

<http://www.lib.uidaho.edu/mcbeth/governmentdoc/1855council.htm>