

Washington State v. Yakama Nation

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Gregoire's Right to Place Tribal Dispute in the Court Pipeline Rather than fault Attorney General Christine Gregoire for intervening in a dispute involving Yakama tribal utility charges, we applaud a government official for attempting to get some answers to ongoing jurisdictional questions on the reservation.

Gregoire has filed a formal complaint with the state Utilities and Transportation Commission. The complaint calls for the utilities to stop collecting the charge from reservation customers and to seek a judge's opinion on the validity of the charge. The rate hike went into effect about six months ago after the Yakama Nation approved an ordinance requiring utility companies to pay 3 percent of reservation-based revenues in return for rights of way on reservation lands, which tribal officials say have either expired or were never granted.

The WUTC effectively ducked the issue by letting stand the companies' request to impose the 3 percent charge on reservation customers as a tax rather than spread it among ratepayers statewide as a fee. Even the Yakama Nation disagrees with that interpretation.

Gregoire's complaint is separate from a citizen lawsuit filed over the charges.

A Yakima County Superior Court judge is expected to rule sometime this month on a lawsuit brought by the Citizens Standup Committee of Toppenish, which contends the state lacks authority to rule on a tribal law affecting non-Indian reservation residents. The citizens group has long argued the Yakama Nation does not have jurisdiction of any kind over non-Indians within the exterior boundaries of the reservation.

But Gregoire's action is more focused. "It's fundamentally unfair to leave this at the doorstep of the ratepayers," she said. We agree. The utilities commission has up to 10 months from the filing to address the complaint, which Gregoire says will trigger a quasi-judicial proceeding that will produce a record that can be appealed through the courts.

She predicts the issue may eventually go all the way to the U.S. Supreme Court. We do not argue the merits of the charge and whether it's a fee or tax and who should pay it. But we see the issue as but one more example of the thorny thicket of jurisdiction that must be resolved in the best interests of the Yakama Nation and non-Indian reservation dwellers. The nation rightly operates as a sovereign nation. But when the non-Indian issue is factored into jurisdiction within the exterior boundaries of a reservation, things get murky in several areas of dealings among the state, nation and non-Indian reservation residents.

Years ago, the state assumed jurisdiction on reservation lands in eight different areas of law, including school attendance and welfare. But it took a U.S. Supreme Court ruling to answer those questions.

It's not unprecedented then to expect some up-to-date sorting out of jurisdictional issues, and if the courts are the only way to accomplish that then so be it.

Gregoire's action focuses on one of those issues that must be clarified for all concerned parties.