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A Two-Part Examination of a Small Oregon Tribe's Success

In First Overcoming a Legal Prohibition of "Casinos," Finding Financing When Banks Did Not Understand Indian Gaming And Opening the State's First Tribal Casino

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PART I — WHAT IS A CASINO? Establishing Indian Gaming When a State Constitution Prohibits Casinos

Lotteries and the sale of Lottery tickets, for any purpose whatever, are prohibited, and the Legislative Assembly shall prevent the same by penal laws...

The Legislative Assembly has no power to authorize, "and shall prohibit, casinos" from operation in the State of Oregon.

Oregon Constitution - Article 15, Section 4.

Subsequent to enactment of the Indian Gaming Regulatory Act of 1988 ("IGRA"), Indian tribes had the right to offer casino-style gaming on tribal lands so long as that gaming was legal within their states and the gaming site was within "Indian Lands" as defined in the law.

One of those tribes was the newly-recognized (in 1982) Cow Creek Band of Umpqua Tribe of Indians of Oregon, which by 1989 wanted to transform its bingo hall into a casino. The Constitution had barred both lotteries and gaming, stating "The Legislative Assembly has no power to authorize, and shall prohibit, casinos from operation in the State of Oregon." This constitutional prohibition appeared unassailable.

Most thought that Indian casino gaming in Oregon simply would never happen. They had not reckoned with the tenacity of the Cow Creek's Washington, D.C. legal counsel, or the determination of the tribe's leadership and its economic arm, Umpqua Indian Development Corporation (U.I.D.C.), to ramp up tribal enterprise through expanded gaming.

Indian gaming proceeds differently in each state. Although IGRA affirmed the right of tribes to engage in gaming, such activity is confined by the regulatory authority of the state wherein the tribe resides and

seeks to develop such enterprise. The Oregon Constitution Article V, Section 4(10) clearly prohibited the Oregon legislature from authorizing casinos. On this basis a universal view within the state's Indian community believed that negotiation and execution of a Class III Tribal-State Compact was impossible in Oregon, rendering casino gaming unavailable to state tribes since an approved Class III Compact is an IGRA requirement.

In order to conduct Class III gaming (namely Video Lottery Terminals/"VLTs" and table games), the Cow Creeks had to find a way through the state's laws and Constitution that would lead to negotiating a compact with Oregon Governor Barbara Roberts.

Subsequent to the repeal of Prohibition in 1933, Oregon's Liquor Control Commission regulated sales of all "hard liquor" through state "green-front" stores. In the late 1940s, the state banned both punchboards and pinball machines that offered paybacks to gamers. Violators were raided by city police and county sheriffs. The consequences were prosecutions, seized machines, and fines. Oregon also had Sunday closing laws and "dry towns" where all liquor sales were prohibited.

By the 1980s, public attitudes about controlling society and gaming had softened. As a result, the state adopted a major course change in dealing with games of chance.

In 1985, Oregonians approved Scratch-it, the state's first foray into legalized gambling. Only three years later, Oregon helped launch Lotto America (renamed Power Ball in 1992). In 1989, Oregon added Sports Action to its venues with parlay games betting on football and basketball. And in 1991, the State Lottery Commission approved keno and in 1992 the state began using Video Lottery Terminals (VLTs), and specifically authorized each bar in Oregon to have five VLTs in operation at any time.

These changes were duly noticed by the Cow Creeks who in 1989-90 were laying plans for a bingo



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Cow Creek Bingo Hall prior to casino development.

hall in a metal shed on their 11.6 acre rural reservation in Canyonville, Oregon. Tribal legal counsel opened discussion in 1990 with the Oregon Attorney-General's Office by presenting a draft gaming compact. To no surprise, the constitutional prohibition of casinos immediately arose. The tribal attorney, however, made an astute and deal-changing observation. Although the Oregon Constitution prohibited the legislature from authorizing casinos, it nowhere defined the term "casino."

Due to the "5 VLT" provision, in the face of a "casino" prohibition, it seemed clear that Cow Creek could offer five of the authorized machines as a matter of state law. With that, the tribal team decided on a plan for proposal when it met with the Governor and her "gaming legal team."

The tribe opened Compact negotiations with an obvious threshold question: "At what point of machine count beyond five VLTs at a given site become a 'casino.'" The discussion then dealt with the following questions: Does a given facility become a "casino" if it offered VLTs on 70% of the gaming floor space? Is it a casino if its VLTs occupy 60%, 50%, 40%, 30%, or 20%? No one knew the answer since there was no legal definition for "casino." With this awareness and cognizance of the rapidly changing attitudes toward gaming in Oregon where taxpayers were delighted that hundreds of millions of dollars of gaming revenues were voluntarily flowing into the state treasury, the negotiating team finally agreed that a facility was not a casino if it occupied only 15% of the gaming floor space, with bingo occupying the other 85%. In addition to the gaming floor, the facility would be free to offer food services, lobby, hallways, hotel rooms, convention center, gift shop, and other use areas commonly found in a recreational destination.

In 1991, the Cow Creek Band of Umpqua and Governor Roberts consummated Oregon's first tribal-state gaming compact. Both the tribe and the state waited for the "shoe to drop," in the form of a legal challenge to the concept that 15 percent of the floor space devoted to gaming constituted a "casino." Somewhat surprisingly, no legal challenge was forthcoming. Both the state and the tribe were satisfied with the agreement and, apparently, so was the public.

Legal counsel for the Cow Creeks cleverly factored into the compact a highly consequential clause which today is somewhat common, but apparently unknown at that time for an Indian Gaming Compact. The Compact included what was even then called the "most favored nation clause," which consisted of a provision stating that should any other Oregon tribe at a future date secure gaming provisions not in the original Cow Creek compact, the tribe would be entitled to return to the state and secure a Compact amendment containing those new provisions. The importance of this clause was soon recognized, because in January, 1997, the Confederated Tribes of Grand Ronde obtained state permission to add roulette, craps, and other table games to its entertainment venues. The Cow Creek compact thus entitled the tribe to expand its gaming activities in the Cow Creeks' Seven Feathers Casino in Southern Oregon.

Subsequent to 2004 when the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw opened the Three Rivers Casino and Hotel in Florence, Oregon, the legal challenge feared during the Cow Creek Compact negotiations materialized. An anti-gaming group calling itself "People Against a Casino Town," challenged the tribal-state compact on the basis of the constitutional ban on

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casinos in Oregon. The case, known as “*State ex rel. Susan Dewberry, et al. v. Governor Theodore R. Kulongoski, et al. and the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw*” was in court for five years.

The Coos Compact challenge was rejected, and Circuit Court Judge Karsten H. Rasmussen ruled: “To the extent that Article XV, Section 4(12) of the Oregon Constitution might prohibit the legislature from passing a law authorizing any Oregon official to negotiate in good faith a compact approving a casino on Indian lands, it is preempted since it clearly ‘interferes or is incompatible’ with IGRA.” The decision was taken to the Oregon Court of Appeals and then to the Oregon Supreme Court, which remanded the case back to the State Court of Appeals where the complaint was dismissed. Thus, despite Oregon’s constitutional ban on casinos, the state-tribal gaming compacts are legal and today govern the gaming operations of nine tribes in Oregon.

The Cow Creek Compact proved to be the “door opener” to Indian Gaming in Oregon, which today is robust and generating badly-need revenue for the tribes which prior to 1992 had little hope for significant economic development.

The lesson of the Cow Creek compact of 1992 is worth considering. Even when insurmountable odds such as a constitutional ban on casinos may appear to thwart Indian gaming, there may be a way for the tribe to achieve its economic goals. That achievement, however, is often dependent on the creativity of the lawyers who explore the obstacles, assess a way to achieve the goal, and are able to work with state officials to find resolution.

PART II — FINANCING THE COW CREEK CASINO: The Tribal Route to Economic Success

Indian gaming is a gamble for the tribe and for the lenders who invest in the project. Multiple factors play significantly into the success or failure of these enterprises. They include location, tribal leadership, business planning, legal advice and scrutiny at each step of development, scoping of facilities and offerings, and financing to make things happen. A successful project is the sum of these many parts.

In 1853, the Cow Creek Band of Umpqua of southwestern Oregon entered into a treaty with the United States. Congress ratified the agreement in 1855, but that year the Rogue River Indian War broke out, leading to the removal in 1856 of some Cow Creeks to the distant Grand Ronde Reservation. Others hid in the hills. Several had married into the French-Canadian métis community during the region’s fur trade of the early 19th Century and became subsistence farmers in the South Umpqua country.

The Cow Creek Band was terminated as a federally-recognized Indian tribe in 1956 by the Western Oregon Termination Act. This Congressional termination was reversed by Congress in 1982 restoring the Cow Creek Band to federal recognition and a federal government-to-government relationship.

Between 1979 and 1983 the tribe litigated in the U.S. Claims Court seeking monetary damages from the federal government in the form of an equitable financial award for the value of its lands taken in 1855. The Tribe ultimately won a judgment of \$1.3



million. This token payment was for approximately 800 square miles of land with no interest allowance, a restriction imposed by Congress in enacting the Indian Claims Commission Act of 1946. The tribe rejected a *per capita* distribution in favor of a lump sum paid to the Tribe, which invested the money in an endowment held by the Bureau of Indian Affairs, and which began drawing from the annual interest to fund several programs. Important among these was economic development.


In 1988, Congress enacted the Indian Gaming Regulatory Act (“IGRA”) which opened the prospect for the Cow Creeks to transform their newly-purchased reservation, an eleven acre tract in their treaty cession area, into a bingo hall. That property was home to a derelict motel and trailer park in Canyonville, Oregon, and was adjacent to an interchange on Interstate 5, the primary north/south corridor of the West Coast. Canyonville, however, had a population of only 1,200 residents and was 203 miles south of the Portland, Oregon major metropolitan area. The small town was at the mouth of a deep canyon and was 377 miles from Sacramento, the nearest important city in California.

In spite of the tribe’s small enrollment (approximately 800 members), lack of business experience, and isolated location, IGRA was the key to the future for the Cow Creeks and for several hundred of the more than 500 federally-recognized tribes in the United States. Gaming, however, was the luck of the draw when it came to location. Initially it appeared the Cow Creeks had no trump cards.

In the 1990s, tribes faced multiple challenges. They needed to secure tribal-state Class III Gaming Compacts so their operations were within the regulatory apparatus of gaming as permitted in the state where they resided. They had to develop business plans to assess the viability and scope of what they hoped to accomplish. They had little experience in running businesses and had to attract either talented tribal members or contract for personnel to set up and run their gaming operations. They had to plan for added income from food, lodging, and retail sales and develop these adjunct enterprises.

For many tribes a monumental challenge was to persuade lenders they could attract gaming clients to rural locations. The majority of the nation’s reservations were located in rural areas. The question evoked a “field of dreams” scenario: *if we build it, will they come?* Lenders demanded proof that tribes could meet all of these challenges. The consequence was that many tribes confronted almost insurmountable obstacles in securing start-up capital to drive their projects.

The Cow Creeks led by Tribal Chair Susan Crispin Shaffer, an astute businesswoman who owned a restaurant and a small retail



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clothing store, took several steps. Working with Washington, D.C., legal counsel, the tribe chartered the Umpqua Indian Development Corporation, an entity consisting of five tribal and four non-tribal members. The non-tribal people brought unique talents to the board. One was a Douglas County Commissioner and experienced building contractor; another was head of a major electrical utility company; the third was a well-connected business leader; and the fourth was a history professor who had served as the tribe’s expert witness in its successful land claims case and possessed a wide network of contacts.

The tribe and UIDC hired a business consulting firm in Boston to examine comparative East Coast and West Coast tribal gaming options and develop an analysis of what could be done with gaming under then existing Oregon law. The consultants also mounted a population and traffic study and found that more than 625,000 people resided within 1.5 hours of Canyonville. Of greatest significance, however, was that the projected casino was fully visible from and immediately adjacent (by virtue of the aforementioned interchange) to the heavily traveled Interstate 5 at a place where travelers were hungry, needed fuel, and were seeking lodging.

The consultants arranged for the UIDC and Tribal Council to visit Indian gaming operations in other states to gain understanding of potentials and learn about pitfalls and successes in tribal business development. Missing, however, was funding. For a year, the Tribe’s Chair and the business plan consultants visited every major bank and savings and loan in Oregon to discuss potential funding through their minority business start-up programs. None would lend. Moreover, none would lend even after the Bureau of Indian Affairs agreed to seed the project with a direct loan of \$825,000.

At this point, the business consultants decided to go outside the United States. Observing the activities of the Bass Group, a British company making beer and ale and running off-course betting parlors for race tracks, it found a potential investor. Bass had in 1985 created a small spin-off, British American Bingo, and joined Isleta Pueblo in New Mexico and the Muckleshoot Tribe in Washington to fund and manage bingo/keno gaming. John O’Neill of BAB agreed to visit Canyonville, meet with tribal leaders and the UIDC, and study the business plan.

Although no commercial lender in Oregon was willing to risk putting up dollars for the Cow Creek project, British American Bingo did so following Mr. O’Neill’s report. The UIDC started with a bootstrap project: a metal shed housing a bingo hall, a coffee bar, and a gravel parking lot. Money was so limited that to meet fire requirements without funds to build a storage tank, the tribe buried inflatable rubber reservoirs filled with water in a ditch along

the site’s frontage road. This became the on-site emergency water supply. And this was the birth of the Cow Creek Seven Feathers development.

Seven Feathers opened in April, 1992, the first Indian gaming business in Oregon, and rose from the gravel and remnants of the old Evergreen Motel property to become a destination casino, hotel, and spa offering hospitality and entertainment to hundreds of thousands of travelers and residents of western Oregon. Its convention facility can seat 1,050 dinner guests. Its four story hotel has 298 rooms and enjoys a 99 percent occupancy rate. The casino has 1,356 Video Lottery Terminals (“VLTs”) and 20 table games. The Cow Creeks reclaim all gray water and that of the City of Canyonville through a state-of-the art processing plant to irrigate acres of grounds at the hotel, casino, RV park, and truck and travel center.

Today, the small Cow Creek Band of Umpqua is the second largest employer in Douglas County, Oregon, surpassed only by a major forest products corporation. The tribe has over 1,610 employees and operates clinics, dental offices, a pharmacy, a mental health facility, tribal housing, and provides educational benefits for all of its members. The tribe owns and operates the Seven Feathers Casino and Resort, K Bar Ranches (5,000 acres with 4,500 head of cattle), Seven Feathers Truck & Travel Center with RV park, Riverside Lodge, Anvil Northwest (design and advertising company), Canyon Cubbyholes (self-storage units), and Umpqua Indian Utility Cooperative (electric company). The tribe has purchased its own reservation of 1,830 acres which has been taken into trust by the Department of Interior.

In 1997, the tribe established the Cow Creek Foundation. That Foundation today is a major player in philanthropy in southwestern Oregon. It has funded cultural organizations, social welfare programs, education, environmental awareness, and assistance to the elderly.

The tribe’s success was contingent on its demonstrated stewardship of its \$1.3 million judgment fund, close working with legal counsel, creation of the UIDC, securing a rigorous business plan laying out opportunities and options, and ultimately finding a lender who saw the possibilities of Indian gaming at the mouth of a canyon in the forested hills of southwestern Oregon.

In 2016, the tribe’s net income from its Canyonville complex was generating millions of dollars in revenues, a significant portion of which its leaders reinvest in diversified enterprises in its tribal service area. The Cow Creeks pride themselves on “Investing in People.”

This remarkable success was sparked by a tribal leader and a British lender who saw the potential for a site in remote Canyonville, Oregon. The rest is history. ✨

Stephen Dow Beckham earned his M.A. and Ph.D. at UCLA in history. He taught college students for forty-three years, and for many years was the Pamplin Professor of History at Lewis & Clark College, Portland, Oregon. He is the author of numerous books and articles, is a former “Oregon Professor of the Year,” and winner of the American Historical Association’s Distinguished Teaching Award. He has been retained as an expert witness in thirty-seven cases. Most of his legal work relates to Indian gaming, treaty rights, and land claims. His consulting has involved the Delaware Nation, Eastern Pequot, Duwamish, Cowlitz, Chinook, Cow Creek Band of Umpqua, Quapah, Ottawa Nation, Karuk, Mechoopda, Chemehuevi, three bands of Pomo of California, Chinook, and other tribes and bands.