

## House committee testimony of Tribal Council Chairman Ron Suppah

(The following is excerpted from the testimony of Tribal Council Chairman Ron Suppah before the U.S. House of Representatives Committee on Resources, during a Nov. 9 hearing on draft legislation, the 'Pombo bill,' regarding off-reservation Indian Gaming.)

Good morning, Chairman Pombo and members of the Committee. I am appearing today to express our tribe's very serious concerns with the second discussion draft of legislation regarding off-reservation Indian gaming. As explained in further detail in our testimony, Warm Springs believes that the second discussion draft, if enacted into law, would unfairly terminate our tribe's very costly and years' long effort to pursue vitally necessary financial self-sufficiency through a gaming facility on our aboriginal, treaty-reserved lands in a small, rural community that shares our hope for future economic security.

### Introduction

The Warm Springs tribe is now engaged in the process of seeking federal approval of a tribal gaming facility at a location within our treaty ceded lands 38 miles from our reservation and 17 miles from a parcel of Warm Springs trust land that is eligible for gaming. Our actions are based on unique circumstances, and we are well along in the process. In our efforts, all the parties have been diligent, open and fair, and have scrupulously abided by all established laws and guidelines. Although we do not know whether we will succeed in this effort, we believe we have been following a model process for pursuing gaming on after-acquired land and ask that, as the Resources Committee considers the second discussion draft, you make appropriate changes to the draft to allow us to complete the process as it is currently written.

The second discussion draft (legislation) would almost certainly deny our tribe the opportunity to establish a gaming facility on new trust lands because it is very unlikely Warm Springs will be able to have our Compact "in effect" by the draft's date of enactment, nor will our tribe, which has had a government-to-government relationship with the United States since our Treaty of June 25, 1855, qualify within the limited exception for "newly recognized, restored, or landless" tribes on that date.

Before examining the second discussion draft in more detail, I would like to provide some background on the dire financial circumstances that have led us to pursue this project, how we gained the support of Oregon's governor and the local community for the project, and the costly and time-consuming efforts we have been making to pursue the project to this late stage in the existing IGRA process.

### Declining Tribal Revenues

The dramatic decline in our

timber revenues illustrates the problem we are facing. In 1994, timber revenues contributed \$23.8 million toward our total tribal revenues of \$37.6 million. By 2002, timber revenue had plummeted to just \$5.7 million, bringing total tribal revenues down to \$25.3 million. Thus, over this recent eight-year period a 74 percent drop in tribal timber revenue resulted in a 33 percent decline in total tribal revenues.

The long-term outlook for timber income continues to be pessimistic as our tribal forest resource adjusts to conservative sustained yield forest management practices and the national and global wood products markets continue to remain depressed. As a result, the decade-long decline in the tribe's revenue picture is projected to only worsen in the years ahead.

### Consequences

As tribal revenues decline over time, essential services and needs go unmet and additional needs accrue. In addition, while essential governmental needs go unmet, tribal enterprises are deprived of capital to grow their enterprises and provide on-reservation job and training opportunities. Because of the shrinking job base and high unemployment, a sizable portion of the reservation population depends entirely on federal and tribal social service programs, which have experienced budget cuts in each of the last ten years.

As the tribe's membership grows and its revenues decrease, needs continue to go unmet and increase in number and magnitude. This is an unsustainable cycle that the tribe seeks to remedy with revenues from the Cascade Locks gaming facility. Increased tribal income is needed to provide services and infrastructure to help reverse this negative trend, especially in the areas of education, health care and economic opportunity programs.

### Our Current Casino

In an effort to address this growing financial crisis, in 1995 the tribe opened a small Class III casino on the reservation as part of the tribe's existing Kah-Nee-Ta Resort. However, the Kah-Nee-Ta casino is isolated from Oregon's major population centers, and its revenues have done little to span the growing gap between our tribe's income and our governmental requirements. As a result, our tribal budgets have continued to decline and we have been forced to cut services as well as draw upon our limited emergency reserve funds.

Under the terms of our Compact with Oregon's governor, we are required to close the casino at Kah-Nee-Ta if we open a facility at Cascade Locks.

### The Columbia River

To address the tribe's increasingly difficult financial circumstances, in the late 1990s we conducted a survey of potential alternative gaming sites, and in 1999 the tribal membership approved a referendum by a wide margin

directing the Tribal Council to pursue development of a casino on our traditional lands along the Columbia River. We initially focused on a 40 acre parcel of pre-IGRA tribal trust land, which is eligible for gaming, on a wooded hillside overlooking the Columbia River just outside the City of Hood River.

Since time immemorial, the Columbia River has been the home of our people. Its salmon, eels and other foods have nourished untold generations, and when we agreed in our 1855 Treaty to move from our traditional homes along the Columbia River and its Oregon tributaries to our current reservation south of the Columbia, our forefathers were careful to reserve our rights to continue to fish on the river as well as hunt, graze and gather traditional foods throughout our Treaty ceded lands. Fishing on the Columbia River remains at the core of our culture, and many of our people continue to fish today for ceremonial, subsistence, and commercial purposes. Indeed, many of our tribal members live year-round on the Columbia's banks, and thousands of acres of individual Indian and tribal trust allotments are scattered along the Columbia.

### Hood River and Cascade Locks

As the tribe moved forward with preparations to develop a casino on the Hood River trust land, the City of Hood River and others in the area expressed concerns about locating a casino there. At that time, 1998 and 1999, the struggling community of Cascade Locks, 17 miles to the west, approached the tribe about the possibility of locating a facility in the mostly vacant Cascade Locks Industrial Park, which was created in the 1970s along the banks of the Columbia River out of fill material from construction at nearby Bonneville Dam. The Cascade Locks site is within the tribe's Treaty ceded lands along the Columbia River in which Warm Springs holds federally protected off-reservation treaty reserved fishing, hunting and gathering rights. The Cascade Locks site is also within the area determined by the Indian Claims Commission in *Confederated Tribes of the Warm Springs Reservation of Oregon v. United States* (Docket No. 198) to be CTWS aboriginal lands exclusive of the claims of any other tribe or tribes.

Shifting the tribe's Columbia River casino development plans from the gaming-eligible Hood River site to the Cascade Locks Industrial Park site will be beneficial for both the Cascade Locks and Hood River communities as well as the State of Oregon.

### The Compact and Other Agreements

Informing the Oregon governor's office and the Department of the Interior of the tribe's intention to develop a casino at the Cascade Locks site in lieu of the Hood River trust lands site, in

1999 the tribe initiated what became years-long discussions with Cascade Locks and the state that resulted in a series of agreements signed earlier this year between Cascade Locks, the tribe and the state. These agreements include a Class III gaming Compact with the State, a separate agreement with the State regarding preservation of the Hood River trust lands and a Memorandum of Agreement with the City of Cascade Locks and Hood River County addressing impacts of the casino on the local community. Our approach of entering into these agreements before taking the land into trust for gaming was intended to address any local concerns about developing a casino in the Cascade Locks Industrial Park and to secure the governor's commitment to concur in the Secretary's two-part determination... regarding environmental protection, working conditions, the Community Benefit Fund and revenue sharing as set out in the Compact. This approach has led to near unanimous acceptance of the Cascade Locks site, as indicated by the thirty-two federal, State and locally elected officials who have endorsed and embraced the Cascade Locks site in an April 29, 2005 letter to Interior Secretary Norton.

Regarding the Compact, in March of 2004, we entered into formal negotiations with the state that concluded over a year later when the governor and the tribe signed the Compact on April 6, 2005. The Compact is unusually comprehensive and fair, and is supported by the local counties, nearby cities and towns in Oregon and Washington, Congressman Greg Walden who represents Cascade Locks and Hood River, and state legislators from the area, in addition to the governor, Cascade Locks, and our tribe.

### Compact Disapproved by Interior Policy Change

On April 8, 2005, the tribe and the governor submitted the Compact to the Secretary of the Interior for the 45-day review provided under IGRA. As usual, the Secretary's review team asked for clarification regarding several sections of the Compact. When the governor and Warm Springs submitted a response, we requested a meeting to go over the questions and responses. On the afternoon of May 17, four days before the end of the 45 day review period, we met with personnel from the Office of Indian Gaming Management, the Secretary's Office and the Solicitor's Office. In the meeting, we proceeded through our responses to the department's questions, and while not all issues were resolved, there were no significant objections. Then, in the final ten minutes of the meeting, the Director of the Office of Indian Gaming Management informed us that the Secretary's Office had a fundamental concern about approving the Compact before the land was taken into trust, and was considering whether to disapprove the Compact on that basis.

The tribe and the governor's office filed written responses within two days noting that we had acted in good faith on Interior Department representations that doing the Compact first was acceptable, that the Compact specifies it becomes effective only when the subject land is taken into trust for gaming, and that IGRA does not require that the land be in trust at the time the Compact is approved. We also noted that the Secretary has, in the past, approved a number of compacts before the subject land has been taken into trust for gaming. Unfortunately, two days later, the Department disapproved our Compact due to the new procedural requirement, previously unknown and unpublished and representing a reversal of previous practice...

### Land into Trust Request

Coming at the eleventh hour of our Compact's consideration, the Secretary's surprise policy announcement of course disappointed us. However, as a result of this decision, and as recommended in the Secretary's disapproval letter, we are proceeding forward with our application to take the land into trust under 25 C.F.R. Part 151 and IGRA Section 20(b)(1)(A). On April 8, 2005 the Tribe formally submitted Tribal Council Resolution No. 10,500 to the BIA's Northwest Regional Office and to the BIA Office of Indian Gaming Management in Washington, D.C. requesting the initiation of land-into-trust proceedings for the Cascade Locks casino site. The request seeks 25 acres in the Cascade Locks Industrial Park to be taken into trust for the proposed casino and accompanying hotel. Once that process is completed, we will resubmit the Compact for the Secretary's 45 day review.

### "Two-part determination"

On June 15, 2005, the BIA Northwest Regional Office initiated the Secretarial "two-part determination" pursuant to IGRA Section 20(b)(1)(A) by sending our tribe a consultation letter requesting information and responses to thirteen specific questions. At the same time, BIA Northwest Regional Office solicited information and responses from appropriate State and local officials, nearby Indian tribes, and surrounding communities regarding the Cascade Locks project. On August 15, 2005, as that comment period concluded, Warm Springs formally submitted our 45-page response, with hundreds of pages of supporting exhibits.

### National Environmental Policy Act (N.E.P.A.)

Having completed the Compact agreement with Oregon's Governor and having executed agreements with the local governments to accommodate impacts, and pursuant to our April 8, 2005 land-into-trust application, we have moved into the very costly N.E.P.A. environmental review process required by the BIA's decision on our fee-to-trust applica-

tion. The process will generate a full environmental impact statement (EIS), and not just an environmental assessment. From September 15, 2005 to September 28, 2005, the BIA Northwest Regional Office hosted five public scoping meetings on the EIS, with meetings in Hood River, Cascade Locks, Portland, and Stevenson, Washington. The scoping comment period concluded October 15, 2005. We anticipate a draft EIS late this winter or spring, with a final EIS to follow. This process, which is the last major step leading up to the Secretary's "two-part determination" and the Governor's concurrence, requires the tribe to pay for the BIA's environmental contractor hired to prepare the EIS on the project...

We wish to emphasize that Warm Springs is paying for these efforts ourselves.

### Second Discussion Draft

As described above, our tribe, the Oregon Governor, Cascade Locks and many surrounding communities and jurisdictions have invested great amounts of time, energy and scarce resources in fully complying with established processes thus far. Moreover, and perhaps unique among tribes, Warm Springs has followed this costly and time-consuming process relying solely on our own funds in an effort to produce a model partnership between the tribe, state and local communities. As Congress this Session began to consider possible amendments to IGRA that might alter the Section 20 process we have been following, we have hoped that we would be permitted to see these processes through to the end, and that Congress will not deliver us a last minute fatal blow.

The second discussion draft completely terminates the Section 20(b)(1)(A) process we have been following and relying upon for years. The statutory construction provisions in Section 2 of the draft appear to permit the continuation after the date of enactment of only those compacts that are "in effect" on that date. With no provision for continuation of any Section 20(b)(1)(A) process after that date, the draft places us in an impossible race to secure the Secretary's approval of our Compact, placing it into effect, before the draft's enactment. Interior has already changed the rules on us to preclude our Compact's consideration until the subject land is in trust. Given the potentially long time periods involving the EIS and completing the land-into-trust process, that is a race we would almost certainly lose. Such a change would be unfair and almost punitive. We ask that our treatment at the hands of Congress not be so harsh, and that legislation include a "grandfather" clause allowing projects such as ours, which is in our state, in our aboriginal and Treaty-reserved territory, and based on a signed Compact with Oregon's governor, to finish the process it started several years and many millions of dollars ago.

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