

**Testimony of the Klamath Tribes
Before the Joint Interim Committee on Gambling Regulation**

July 20, 2022

This written testimony is being submitted by Clayton Dumont, Jr., Chairman of the Klamath Tribes (“Tribes”) and Keith Hescock, Chairman of the Klamath Tribes Gaming Regulatory Commission. On behalf of the Tribes, we would like to thank co-Chairs Gelser Blouin and Lively and members of the Joint Interim Committee on Gambling Regulation for the opportunity to provide testimony regarding the Klamath Tribes, the importance of gaming for funding Tribal governmental programs, the regulatory oversight that is necessary for carrying out such gaming, as well as our concerns about various concepts for expansion of non-Tribal gaming in Oregon.

I. Background of the Klamath Tribes

The present-day Klamath Tribes are comprised of three historic tribes: the Klamath Tribe, the Modoc Tribe, and the Yahooskin Band of Paiute Indians. Our three constituent tribes possessed over 20 million acres of land in South-Central Oregon and Northern California as their aboriginal territory since time before memory.

Our people have always relied upon the resources of the Klamath Basin to sustain our livelihood and our culture. In the old times, we believed everything we needed to live was provided for us by our Creator in this rich land east of the Cascades. We still believe this. Our legends and oral history tell about when the world and the animals were created, when the animals and gmok’am’c—the Creator—sat together and discussed the creation of man.

For thousands upon countless thousands of years, we survived by our industriousness in utilizing the natural resources the Creator gave us. When the months of long winter nights were upon us, we survived on our prudent reserves from the abundant seasons. Toward the end of March, when supplies dwindled, large fish runs surged up the Williamson, Sprague, and Lost River. At the place on the Sprague River where gmok’am’c first instituted the tradition, we still celebrate the Return of c’waam¹ Ceremony.

Our presence here and the presence of our Treaty resources has been, and always will be, essential to the economic, cultural and spiritual well-being of our homeland and our people.

In 1826 Peter Skeen Ogden, a fur trapper from the Hudson’s Bay Company, was the first white man to leave his footprints on our lands. Those footprints multiplied into the thousands, each leaving their marks on the lands and the Klamath Tribes. The incursion of European people substantially changed the landscape and impacted our people. The invaders sought to take and use our land and resources. Our people eventually signed the

¹ Also known as the “Lost River Sucker.”

Treaty of 1864 with the United States. Like many tribes across the United States, the Klamath Tribes agreed to give up vast tracts of our aboriginal land in exchange for promises of peace, and a much smaller reservation that would serve as our permanent homeland and our resource base.

In our 1864 Treaty with the United States (“Treaty”),² we ceded over 20 million acres of aboriginal lands in exchange for the exclusive rights to live on a smaller plot of land, called the Klamath Indian Reservation (“Reservation”), located within our aboriginal territory. In the Treaty, we reserved the rights to hunt, fish, trap, and gather on the lands of the Reservation. For nearly 100 years, our people resided on the Reservation, during which time we maintained a self-sufficient economy and subsisted on the rich and diverse resources of the Reservation.

From the first, Klamath Tribal members demonstrated an eagerness to turn new economic opportunities to our advantage. Under the reservation program, cattle ranching was promoted. In the pre-reservation days horses were considered an important form of wealth and the ownership of cattle was easily accepted. Tribal members took up ranching, and were successful at it. Today the cattle industry still remains an important economic asset for many of us. The quest for economic self-sufficiency was pursued energetically and with determination by Tribal members. Many, both men and women, took advantage of the vocational training offered at the Agency and soon held a wide variety of skilled jobs at the Agency, at the Fort Klamath military post, and in the town of Linkville. Due to the widespread trade networks established by the Tribes long before the settlers arrived, another economic enterprise that turned out to be extremely successful during the reservation period was freighting, in August of 1889, there were 20 Tribal teams working year-round to supply the private and commercial needs of the rapidly growing county. A Klamath Tribal Agency – sponsored sawmill was completed in 1870 for the purpose of constructing the Agency.

By 1873, Tribal members were selling lumber to Fort Klamath and many other private parties, and by 1896 the sale to parties outside of the reservation was estimated at a quarter of a million board feet. With the arrival of the railroad in 1911, reservation timber became extremely valuable. The economy of Klamath County was sustained by it for decades. By the 1950’s the Klamath Tribes were one of the wealthiest Tribes in the United States. We owned and judiciously managed for long term yield, the largest remaining stand of Ponderosa pine in the west. We were entirely self-sufficient. We were the only tribes in the United States that paid for all the federal, state and private services used by our members.

In the 1950s, however, the Tribes were subjected to Congress’s ill-considered policy of “termination,” through which Congress unilaterally deemed that certain tribes would no longer be recognized as Indian tribes by the federal government and set in motion a process for the dismantling of reservation land. During the process of termination, the

² Treaty between the United States of America and the Klamath and Moadoc Tribes and Yahoskin Band of Snake Indians, Oct. 14, 1864, 16 Stat. 707, *reprinted in* 2 Charles J. Kappler, INDIAN AFFAIRS: LAWS AND TREATIES 865 (1904) (1864 Treaty).

elected Tribal representatives consistently opposed termination. There was, in addition, a report from the Bureau of Indian Affairs (BIA) which concluded that the Klamath Tribes were NOT ready for termination and recommended against it. Despite this consistent official opposition from the Tribes and the BIA, congress adopted the Klamath Termination Act (P. L 587). Not only did we see the end of federal recognition and supplemental human services, but tragically our reservation land base of approximately 1.1 million acres was taken by condemnation. This single act of Congress had devastating effects on the Klamath Tribes and several other tribes across the country.

Termination was disastrous for the Klamath Tribes. Tribal lands were transferred to private parties and to the U.S. Forest Service. The State, taking its cue from the federal termination of the Tribes' recognition, began to restrict the Tribes' members exercise of their ancient hunting, fishing, trapping, and gathering ways. The Tribes were thus stripped of our land, our economy, our means of subsistence, and our cultural traditions by the ill-considered actions of the Federal and State governments.

We did not, however, give up our identity as the Klamath people or our sovereignty as a Tribe. Our elders fought against termination for decades, and in 1986 were at last successful in obtaining restoration to federal recognition by an Act of Congress.³ However, while the Tribes' federal recognition was restored, we did not receive any of our Tribal lands back. Our ability to generate revenues to fund governmental services and economic development was and remains hampered by the lack of a true land base.

II. Gaming in Indian Country

Indian gaming became a judicially recognized industry when the Supreme Court confirmed tribal sovereignty over gaming on tribal lands in *California v. Cabazon Band of Mission Indians*.⁴ This case involved two federally recognized Tribes who were operating bingo and card games on their reservation land within Riverside County, CA.⁵ The Tribes were offering these games to both Indian and non-Indians.⁶ Because the Tribes were offering gaming to non-Indians, both California and Riverside County wanted to apply state and local gambling laws respectively to the Tribes' gaming operations.⁷

The Court's decision relied on the principle that absent explicit permission from federal regulation, states can only enforce laws on reservations if their interests outweigh those of the federal government and the Tribe.⁸ The Court found in favor of the Tribes, concluding that the federal government's interest in ensuring Indian self-government outweighed state concerns regarding unregulated gaming on tribal lands.⁹ This decision confirmed that tribal sovereignty expands to Indian gaming and has become the

³ Klamath Indian Tribe Restoration Act of 1986, Pub. L. No. 99-398, 100 Stat. 849.

⁴ 480 US 202 (1987).

⁵ *Id.* at 204-205.

⁶ *Id.* at 205.

⁷ *Id.*

⁸ *Id.* at 222.

⁹ *Id.*

cornerstone of Indian gaming law.

Following the *Cabazon* decision, Congress passed the Indian Gaming Regulatory Act (IGRA) on October 17, 1988.¹⁰

IGRA's stated purpose is to provide a statutory basis for the operation of gaming by Indian tribes as a method for promoting tribal economic development, self-sufficiency and strong tribal governments.¹¹ Further, IGRA aims to provide a legislative basis for the regulation of Indian gaming such that the Tribe is the primary beneficiary of the gaming operation, the operation is conducted fairly and honestly, and to prevent nefarious influences such as organized crime from impacting Indian gaming operations.¹² Lastly, IGRA created the National Indian Gaming Commission (NIGC) with the purpose of establishing an independent Federal regulatory authority and enforcing Federal standards for Indian gaming.¹³

IGRA established an extensive regulatory scheme that includes various aspects of federal, tribal, and state oversight. IGRA defined three classes of gaming with a different regulatory scheme enacted for each one. Class I gaming is defined as traditional forms of Indian gaming and social games played solely for prizes of minimal value.¹⁴ Class II gaming is defined as the game commonly known as bingo and card games that are explicitly authorized by State law, or are not explicitly prohibited by State law but also played within the State.¹⁵ It does not include banking card games or electronic versions of any of the games, nor slot machines.¹⁶ Class III gaming is broadly defined as any gaming that is not defined under Class I or Class II gaming (such as slot machines, banking card games, craps, etc.).¹⁷

Class I gaming operations on Indian lands are operated under the exclusive regulatory jurisdiction of the Indian Tribe facilitating the operation.¹⁸

Class II gaming operations may be carried out by an Indian Tribe on Indian lands within the Tribe's regulatory jurisdiction as long as gaming is permitted by State law and the governing body of the Tribe adopts an ordinance or resolution approved by the NIGC Chairman.¹⁹ The NIGC also has regulatory oversight over Class II gaming. The state has no regulatory role with regard to Tribal Class II gaming.²⁰

Class III gaming activities have the most extensive regulatory oversight. Such gaming is

¹⁰ Pub. L. No. 100-497, ch. 29, 749 Stat. 763 (1988) (codified as amended at 25 U.S.C. § 2701 *et seq.*).

¹¹ 25 U.S.C. §2702(1).

¹² 25 U.S.C. §2702(2).

¹³ 25 U.S.C. §2702(3).

¹⁴ 25 U.S.C. §2703(6).

¹⁵ 25 U.S.C. §2703(7)(A).

¹⁶ 25 U.S.C. §2703(7)(B).

¹⁷ 25 U.S.C. §2703(8)

¹⁸ 25 U.S.C. §2710(a)(1)

¹⁹ 25 U.S.C. §2710(b)

²⁰ 25 U.S.C. §2710(b)(3).

lawful on Indian lands if it is authorized by an ordinance or resolution adopted by the Tribe and approved by the NICG Chairman, located in a State that permits gaming for any purpose, and is conducted under a Tribal-State compact.²¹ In compliance with the regulatory requirements for Class (III) gaming operations, operating tribes must enter into Tribal-State Compacts pursuant to 25 U.S.C. §2710(d)(3). An Indian Tribe must request to enter into negotiations with the State in which the Indian lands are located prior to performing Class (III) gaming operations within them. The State must partake in these negotiations in good faith to eventually enter a Tribal-State Compact.²² Upon entering the Tribal-State Compact, it must be approved by the Secretary of the Interior and published in the Federal Register prior to taking effect.²³

A Tribal-State Compact must include provisions relating to: 1) the application of criminal and civil laws and regulations of the Tribe or the State as necessary for the licensing and regulation of the gaming activity; 2) the allocation of criminal and civil jurisdiction between the State and the Tribe necessary for the enforcement of those laws and regulations; 3) the assessment by the State of the gaming activities as necessary to defray the costs of regulations; 4) taxation by the Tribe of such activity in comparable amounts to those assessed by the State by comparable activities; 5) remedies for breach of the contract; 6) stands for the operation of the activity and maintenance of the facility and its licensing; 7) and any other subjects related to the operation of the Class (III) gaming activities.²⁴

The Cabazon decision and the IGRA provided Indian Tribes with the opportunity to utilize gaming as a tool of economic development, employment, and governmental revenue. Many tribes, including the Klamath Tribes, have taken advantage of this opportunity.

As described above, Tribal gaming is a very heavily regulated industry, with three different governmental entities (tribal, federal and state) having some oversight over various aspects. As the legislative history to IGRA notes, this regulatory framework was developed out of the desire to ensure the fairness, safety, integrity and honesty of such gaming, as well as the desire to keep organized crime out of Indian Country. Such regulation, lead by the efforts of the tribes themselves, has led to the development of a tribal gaming industry that meets high standards for fairness, safety, integrity, and honesty, and which has a strong record of keeping organized crime away.

III. Importance of Gaming to the Klamath Tribes

The Klamath Tribes are serious about achieving economic self- sufficiency which means controlling our own destinies. With characteristic energy, determination and vision, and a commitment to the larger community, the Tribes have created a modern corporate identity and an efficient Tribal organization. At present, with current enrolled

²¹ 25 U.S.C. §2710(d)(1).

²² 25 U.S.C. §2710(d)(3)(A).

²³ 25 U.S.C. §2710(d)(3)(B).

²⁴ 25 U.S.C. §(d)(3)(C)(i-vii).

membership around 5,800, the Klamath Tribes contribute about \$50 million per annum to Klamath County's economy in the form of payroll, direct expenses and goods and services. The Klamath Tribes Mission Statement gives clear direction to tribal government and its organization:

The mission of the Klamath Tribes is to protect, preserve, and enhance the spiritual, cultural, and physical values and resources of the Klamath, Modoc, and Yahooskin Peoples, by maintaining the customs and heritage of our ancestors. To establish a comprehensive unity by fostering the enhancement of spiritual and cultural values through a government whose function is to protect the human and cultural resources, treaty rights, and to provide for the development and delivery of social and economic opportunities for our People through effective leadership.

The Klamath Tribes opened the Kla-Mo-Ya Casino in Chiloquin, Oregon in 1997. The Tribes opened the Crater Lake Junction Travel Center (a gas station/convenience store adjacent to the Casino) in 2010, and in 2018 opened the Kla-Mo-Ya Sleep Inn Hotel on the property. Kla-Mo-Ya Casino currently employs over 130 people, both Tribal and non-Tribal. The Casino provides \$8,000,000 annually in good wages and full benefits to its employees and spends \$5,600,000 on goods and services supporting a rural Oregon county. Since Chiloquin is not near a major metropolitan area, we largely rely on travelers for our customer base. The Casino is not a large operation, as are some casinos closer to urban areas. The market we work in only supports video lottery terminal games (i.e., slot machines). We do not have any card or dice gaming. As a result, our net revenues are tight and are very sensitive to any market fluctuations. Nonetheless, despite the relatively small size of the Casino, the Klamath Tribes are still the second-largest employer in Klamath County, and the revenues from the Casino are relied upon by the Tribes to fund critical governmental services for our Tribal members, including education, housing, social services, child protective services, and general welfare payments. Without this critical funding, the Tribes' ability to provide such essential services would be severely constrained.

The Klamath Tribes General Council, by virtue of its inherent sovereignty as an Indian tribal government and the Constitution of the Klamath Tribes, adopted the Revenue Allocation Plan, Klamath Tribal Code Title 7 Chapter 50. That Plan, as required by the Indian Gaming Regulatory Act, has been approved by the United States Department of the Interior. The adoption of this law establishes the manner through which the Klamath Tribes will use excess net gaming revenues generated by the Kla-Mo-Ya Casino to strengthen tribal government, tribal self-sufficiency and to support tribal economic development. The Klamath Tribes, through the Plan, are committed to providing for the future of the Tribes and its members. The revenues per this Plan are aimed at investments, programs and projects that strengthen the Tribal Government and meet the current needs of all Tribal members as well as anticipating and providing for the future needs of its members.

It is important to understand that a tribal government operates in much the same manner as a state, county, or city government. The government is responsible for providing

services to their citizenry and, with only a few exceptions, the Tribes fulfill the majority of those functions for their membership and the community that surrounds their governmental space. The revenue helps support the employment of not only the staff at the Casino but the entire Tribal Government system so helps to uplift the economy in whatever area they are located. As you may know, Klamath County has one of the highest poverty rates in the State which would undoubtably be more dire without the jobs and personal income the Tribal employment provides for not only Tribal members but the public at large.

The following are some of the major areas toward which Kla-Mo-Ya Casino's net excess revenues are directed:

- Tribal governmental operations
- Water rights protection
- Economic Self-Sufficiency Trust Fund
- General Welfare payments for Tribal members in financial need
- Payments for personal health, safety and welfare for Tribal members
- Energy assistance for elders
- Support for Tribal cultural activities
- Support for the Tribes Public Information department
- Funding for fencing at a tribal cemetery
- Improvements and maintenance projects for community facilities
- Filling gaps in funding for Tribal Court system (which provides judicial services through the Klamath Tribal Court, Klamath Juvenile Court and Klamath Peacemaker Court)
- Standing up and operating a Public Safety Department that currently employs a Chief of Police and Emergency Manager
- Sole source of funding for the Klamath Tribes Members Benefits Department, which provides enrollment assistance and oversees trust fund accounts for tribal minors

In addition, as I mentioned in my oral testimony, I said the Tribes were working to reacquire our forcibly taken Reservation land. As many on the Committee no doubt know, last year's Bootleg Inferno burned 25 percent of that land. As I also noted, the

massive fire burned around and not through land cared for by the Klamath Tribes. Many of you also know that rivers, streams, springs, wetland meadows, and lake shores in our treaty lands have been severely degraded by unsustainable agricultural practices.

Consequently fish that were once a staple of our diet are now all but extinct. The Klamath Tribes have and expect again to support our Natural Resource Restoration Crews with Gaming Revenue. Anyone interested in seeing an end to catastrophic wildfires should not support policies or legislation that will impact our Tribal gaming and thus our ability to manage our forest the way we did before it was taken from us. Similarly, if you wish to see an end to endless legal battles (which the Klamath Tribes struggle to afford), please do not choke off a revenue stream that helps us heal our aquatic resources.

Finally, the Tribes have also used this revenue to fund local community organizations such as the Chiloquin Little League, Chiloquin Visions in Progress, Smartees Reading Program, Chiloquin Food Pantry and CASA. Chiloquin Public Schools has received funds to support athletic events and student activities. We have also partnered with Oregon State University to provide the summer lunch program for the local community.

IV. Negative Impacts of Expanded Non-Tribal Gaming

For many Tribes in the United States and in Oregon, including the Klamath Tribes, gaming is usually the most important source of tribal governmental revenue, and in many instances is the only source. It is also often the major source of employment for tribes and their surrounding communities.

By contrast, state governments have a wide and deep variety of resources that they can call upon. States have a large land base from which they can derive revenues in the form of resource extraction and user fees; they can assess property taxes on any land within the state's jurisdiction; they can assess income taxes on all employers and employees within the state; they can assess taxes on sales and other transactions. Tribes do not have such resources to call upon. The Klamath Tribes in particular (as with a number of other Tribes in Oregon), lost its land base as a result of termination. Those lands were not returned upon restoration. These stark disparities make the Tribes' reliance on its gaming revenues all the more critical.

The market for gaming activity in South-Central Oregon is relatively limited and already heavily-saturated. Yet the Oregon Lottery has contemplated plans for expanding lottery gaming across the State, which expansion would directly undercut the market for Klamath Tribal gaming and reduce our main source of governmental revenue. While we understand the struggles of the needs of a government to find additional sources of revenue, the State of Oregon has many options to do so, and expanding the Lottery at the direct expense of the main source of revenue for Tribes is not an appropriate option.

Moreover, and of even more concern, over the past couple of years the Oregon Racing Commission (ORC) has attempted to expand into mobile gaming (through the Luckii app) and into casino-style gaming with slot machine equivalents (the Historic Horse Racing machines). Unlike the Oregon Lottery and certainly unlike the heavily-regulated

tribal gaming industry, the ORC has no experience and no expertise in regulation of the casino-style gaming it was moving into. While the ORC's efforts in this direction have so far been curtailed by the actions of the Legislature and the advice of the Oregon Attorney General, we are concerned that ORC's appetite to expand into such gaming continues, and will be justified (as have its past attempts) as a necessary measure to save the horse racing industry. The Klamath Tribes certainly support horse racing, and the attendant wagering on live races (either at the track or via off-track betting). But the expansion by ORC into these other areas will also directly cut into our revenues, and, as a consequence of ORC's lack of regulatory experience and know-how, would very likely allow for activities that would have a negative impact on the fairness, integrity, security and honesty of gaming in the State.

Finally, there has for years been an understanding, affirmed by the people of the State of Oregon, that Tribal gaming ought to be protected against adverse impacts to its revenues by the expansion of non-tribal gaming. In 2010, there was an initiative on the Oregon ballot that would have allowed the development of a private casino in the Portland area,²⁵ a project that would have severely compromised the revenues of several Oregon casinos, including that of the Klamath Tribes. The measure was opposed by all nine Oregon Tribes. The tribes aired an advertisement noting that, by allowing such a casino, the State would be breaking a "promise" to the tribes not to undermine their main source of governmental revenue. The measure was overwhelmingly defeated by 68% of Oregon voters voting "no."²⁶ A similar effort was started in 2012, but withdrawn by the backers who, after spending \$6 million in advertising, learned from polling that Oregon voters were not changing their minds.²⁷ During that effort, then-Governor Kitzhaber aired an advertisement noting that the Oregon tribes had kept up their end of the bargain (by negotiating and adhering to the terms of Class III gaming compact) and that the state should keep its promise to the Tribes that private casinos are not allowed within its borders.²⁸

The adverse impacts to the Klamath Tribes from the expansion of gaming into our already-saturated local market would be significant and severe.

Thank you, Co-Chairs and members of the Committee for your attention to our history, the importance of our gaming enterprise, and our concerns about expanding state and private gaming.

²⁵ Brent Walth, *Voters Weigh Costs, Benefits of Portland Casino Under Measure 75*, The Oregonian, Oct. 02, 2010, https://www.oregonlive.com/politics/2010/10/voters_way_costs_benefits_of_p.html.

²⁶ Luke Hammill, *Private Casino Backers Trying Again in Wood Village*, The Oregonian, Aug. 05, 2016, https://www.oregonlive.com/business/2016/08/private_casino_backers_trying.html. See also, *Oregon Job Growth Education And Communities Fund Act, Part II, Measure 75 (2010)*, Ballotpedia, 2010, [https://ballotpedia.org/Oregon_Job_Growth_Education_And_Communities_Fund_Act,_Part_II,_Measure_75_\(2010\)](https://ballotpedia.org/Oregon_Job_Growth_Education_And_Communities_Fund_Act,_Part_II,_Measure_75_(2010)).

²⁷ *State Measures 82 and 83: Casino Measures Fail After Supporters Suspend Their Campaigns*, The Oregonian, Nov. 07, 2012, https://www.oregonlive.com/politics/2012/11/no_casino_measures_82_and_83_1.html.

²⁸ *Id.*

