

# Federal Judge Rules in Favor of Cowlitz



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A U.S. District Court judge on Friday sided with the Cowlitz Indian Tribe in its long-running quest to establish a reservation along Interstate 5 west of La Center and build a casino. She dismissed a lawsuit filed by opponents.

U.S. District Judge Barbara J. Rothstein in Washington, D.C., issued a 57-page opinion outlining her reasons for denying the plaintiffs' challenge of the Department of Interior's decision to acquire 152 acres on behalf of the tribe.

The plaintiffs included Clark County and the city of Vancouver.

Another of the plaintiffs, the Confederated Tribes of the Grand Ronde, immediately announced plans to appeal to the U.S. Court of Appeals for the D.C. Circuit.

That came as no surprise to William Iyall, the chairman of the Cowlitz Indian Tribe.

“There are always avenues of appeal no matter how you do it,” Iyall said. “I know there’s legal wrangling around all this, but it’s certainly a huge victory for the Cowlitz people.”

The decision upholds the rights of the tribe’s ancestors to have land of their own, he said. Construction on the 134,000-square-foot casino the tribe plans to build on the site likely won’t get started for quite a while, depending on how the appeals process unfolds, he said.

In the meantime, the tribe is celebrating what Iyall considers a long and hard-fought victory.

“The land going into trust will be a huge milestone, a historic milestone 150 years in the making,” he said. “It’s taken a long time to get here. It is justice served.”

Plaintiffs questioned the Cowlitz Tribe’s historical ties to the area west of Interstate 5. The tribal offices are 24 miles north of the site, in the Longview-Kelso area, and plaintiffs argued the Cowlitz Tribe just wanted their reservation to be an easy 16-mile drive from Portland to attract casino customers.

But the Indian Reorganization Act of 1934, Rothstein wrote, gives the Secretary of the Interior the authority to take land into trust for a reservation.

And while the Indian Gaming Regulatory Act of 1988 generally prohibits gambling on lands acquired after 1988, there are exceptions, she wrote.

“Of particular relevance here, the IGRA allows gaming if ‘lands are taken into trust as part of ... the initial reservation of an Indian tribe acknowledged by the secretary under the federal acknowledgement process, or the restoration of lands for an Indian tribe that is restored to federal recognition,’” Rothstein wrote.

The judge also addressed the 2009 U.S. Supreme Court ruling known as *Carcieri*, in which the high court said the government can put land into trust only for tribes that were under federal jurisdiction in 1934.

Since the high court ruling focused on the phrase “now under federal jurisdiction” and not the word “recognized,” she wrote that she was rejecting plaintiffs’ arguments that the word “recognized” should be read in conjunction with “now under federal jurisdiction.”

Rothstein also rejected arguments that the tribe's current plans inadequately mitigate stormwater, traffic, light and noise issues and that a supplemental environmental impact study needs to be completed.

The ruling was met with an immediate announcement to appeal by the Grand Ronde, which draws customers from the Vancouver-Portland area to its Spirit Mountain Casino approximately 65 miles outside of Portland.

"We need to do more analysis of the court's reasoning, but the Grand Ronde Tribe strongly disagrees with its opinion," said Grand Ronde Tribal Council Chairman Reyn Leno. "We think the court missed many of the salient issues and facts. Our tribe has remained vigilant throughout this process. We have always believed this case would be decided at the appellate level and we are prepared to appeal it."

Christine Cook, a Clark County deputy prosecutor, and Brent Boger, an assistant Vancouver city attorney, both said Friday afternoon they needed time to thoroughly review Rothstein's opinion and discuss it with their clients, the Board of Clark County Commissioners and the Vancouver City Council, before deciding whether to join the appeal.

Attorneys from the Washington, D.C., office of Perkins Coie, who represented other plaintiffs, could not be reached for comment.

## Long legal fight

The Cowlitz were federally recognized in 2000; that ruling was challenged and reaffirmed in 2002.

That year, the tribe applied to take the land into trust. A Record of Decision was issued in 2010 by the Bureau of Indian Affairs and appealed by plaintiffs.

In addition to Clark County, the city of Vancouver and the Confederated Tribes of the Grand Ronde, plaintiffs include nearby property owners Al Alexanderson and Greg and Susan Gilbert; Citizens Against Reservation Shopping, a group that includes Scott Campbell, publisher of The Columbian; Oregon Dragonslayer Inc. and Michels Development, operators of La Center cardrooms.

In March 2013, a federal judge threw out that 2010 Record of Decision, and a new one was issued and appealed.

On Oct. 22, the federal government issued a notice of their intent to take the land into trust by Jan. 21, 2015, or 30 days after a ruling granting summary judgment to the Cowlitz.

In a Nov. 18 filing, attorneys for the tribe said no more studies are needed and the judge needs to issue a favorable decision.

“It bears repeating that for over 100 years the tribe has held together its people, its traditions, and its government without the benefit of a single acre of reservation land,” wrote Heather Sibbison and Suzanne Schaeffer of Dentons US in Washington, D.C.

“The agency decisions here at issue would remedy this historic injustice. Prior to making those decisions, Interior spent more than a decade preparing an (environmental impact statement), reviewing and responding to public comments, and carefully re-evaluating its environmental analyses. The administrative record demonstrates that this exceptionally thorough, public process resulted in a full and fair evaluation of all relevant environmental issues. There is no just reason for further delay. Summary judgment should be entered in favor of the tribe and the federal defendants.”

Friday’s ruling marks a big win for the Cowlitz at the federal level, and the tribe has been clearing state hurdles as well.

In April, a tentative tribal-state compact was released by the state gambling commission.

The compact allows for two gaming facilities. One could have as many as 75 gaming tables, and a second could have up to 50 tables.

Initially, the wager limit would be set at \$250, but after a year the limit could increase to \$500.

The tribe could also have as many as 3,000 “tribal lottery player stations,” which to gamblers resemble slot machines, with as many as 2,500 in one facility.

Any terminals beyond the tribe’s allotted 975 terminals would have to be leased from other tribes, however.

In addition to the casino, the tribe intends to have space for shopping, dining and a 250-room hotel. The tribe plans to share more revenue with the surrounding cities than other casinos of its size in the state, Iyall has said.