
Federal and State Laws and Policies that Affect the Sovereignty of the Cow Creek Band of Umpqua Tribe of Indians

Introduction

The Cow Creek Band of Umpqua Tribe of Indians, or Cow Creek Tribe, is one of nine federally recognized tribes in Oregon. The Cow Creek Tribe, located in Southwestern Oregon, has more than 1,800 members who are governed by an elected 11-member council known as the Tribal Board of Directors. The Cow Creek Tribe has a rich history in southern Oregon that reflects hard work, perseverance, and self-determination. The following are some of the relevant federal and state laws related to the Tribe's exercise of self-governance.

Northwest Ordinance (1787)

The United States declared its independence on July 4, 1776. About a decade later, the early Confederation Congress chartered rules for government beyond the 13 original states. The Northwest Ordinance, also known as The Ordinance of 1787, is a piece of legislation that had a dramatic effect on what would become the United States we know today. In 1787, the United States had not yet expanded west of the Mississippi river. The Ordinance dictated that the United States would expand westward not by expanding the existing states but by creating new ones. It also included direction on how the United States should treat the Indian tribes as it expanded westward. It states, “[t]he utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and, in their property, rights, and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity, shall from time to time be made for preventing wrongs being done to them, and for preserving peace and friendship with them.” As history shows, these dictates were rarely followed.

U.S. Constitution (1789)

The United States Constitution delegates powers to the various branches of government. Article I, Section 8, clause 3, commonly referred to as the “Indian Commerce Clause,” delegates to Congress the power “... to regulate commerce with foreign nations, and among the several states and with Indian Tribes.” From this brief mention, Congress has been given what is called “plenary power” over Indian tribes, meaning Congress is the final decision maker when it comes to governing the relationship between the federal government and Indian tribes. The U.S. Constitution also defines where treaty rights fit in the hierarchy of U.S. laws. Article VI, Section 2 states, “[t]his constitution and the laws of the United States which shall be made in pursuance thereof and all treaties made, or shall be made under the authority of the United States shall be the Supreme law of the land.” This clause puts treaties on the same footing in the American legal system as other acts of Congress.

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Inherent Sovereignty (1831-1832)

The U.S. Supreme Court is responsible for giving us much of the language we use in talking about the status of Indian tribes in the U.S. legal system. The U.S. Supreme Court deemed Indian tribes “domestic dependent nations” in its early Indian law decisions (*Cherokee Nation v. Georgia*, 1831; *Worcester v. Georgia*, 1832). This status recognizes that Indian tribes are distinct political entities while still subject to some general laws of the United States. This status also recognizes that as independent nations, Indian tribes retain sovereign powers over their members and land. This power is not delegated to tribes from the U.S. government but rather a power retained by tribes since before the establishment of the U.S. government. These limited powers of sovereignty have never been extinguished by the U.S. and have been repeatedly upheld in courts.

Cow Creek Treaty (1853-1854)

In the Cow Creek Treaty, Cow Creek ceded more than 800 square miles of Southwestern Oregon to the United States. (Treaty with the Umpqua-Cow Creek Band, 10 Stat. 1027. The “Cow Creek Treaty.”) The Treaty did not explicitly establish a reservation, rather it outlined a temporary occupation by Cow Creek of part of the ceded lands, and it anticipated the establishment of a reservation later. The Tribe is unique in that it was one of the first two tribes in Oregon to secure a treaty with the U.S. government. This treaty, ratified by the U.S. Senate on April 12, 1854, established the government-to-government relationship between two sovereign nations. As a result of the treaty, the Cow Creek Tribe became a landless tribe. The Tribe was paid 2.3 cents an acre for its land. The U.S. government was selling that same land, through the Donation Land Claims Act, for \$1.25 an acre to pioneer settlers.

Indian Reorganization Act (1934)

The Indian Reorganization Act (IRA), enacted in 1934, authorizes the secretary of the interior to acquire land and hold it in trust “for the purpose of providing land for Indians.” 25 U.S.C. § 465. The IRA also provided a mechanism for some tribes to organize into tribal governments. Using part of the IRA, the Cow Creek Tribe adopted a tribal constitution in 1991.

Western Oregon Indian Termination Act (1954)

The United States ignored the Cow Creek Treaty for nearly a century until the Western Oregon Indian Termination Act of 1954. This act, advertised as legislation to “set the Indians free,” caused federal relations with more than 60 tribes and bands in Western Oregon to cease to exist. The Cow Creek Tribe had never received services or “recognition” since shortly after 1855. Ironically, however, they were “recognized” for

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the purpose of their involuntary termination in 1954. The Cow Creek Tribe received no prior notification of the Termination Act, as required by law, and because of that were able to obtain presidential action in 1980 to take a land claims case to the U.S. Court of Claims. The Court of Claims case was subsequently litigated by the Tribe to a negotiated settlement of \$1.5 million, which was invested on behalf of the Tribe.

Indian Child Welfare Act (1978)

Congress enacted the Indian Child Welfare Act (ICWA) in 1978 pursuant to the national policy “to protect the best interests of Indian children and to promote the stability and security of Indian tribes” (25 U.S.C. § 1902, 1988). To promote this policy, Congress established “minimum Federal standards for the removal of Indian children from their families” and sought to ensure “the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture.” The Tribe relies, in part, on ICWA to ensure that Cow Creek children’s best interests are protected.

Cow Creek Band of Umpqua Tribe of Indians Recognition Act – P.L. 97-391 (1982)

Despite termination of sovereign status by the federal government, Cow Creek tribal members continued to work together to protect the environmental integrity of their homeland and to fight for their rights as a sovereign nation. This effort was rewarded when the federal government restored recognition of the Tribe’s sovereign status on December 29, 1982. This act restored Cow Creek as a tribal government and was the result of tribal efforts. Today, the act, as amended, recognizes the Tribe’s authority to rebuild its land base and its government-to-government relationship with the United States.

Indian Gaming Regulatory Act (1988)

Congress passed the Indian Gaming Regulatory Act (IGRA) in 1988 in order to provide a statutory basis for the operation and regulation of gaming by Indian tribes (25 U.S.C. § 2702). The act divides gaming on Indian lands into three classes—I, II, and III—and provides a different regulatory scheme for each class. IGRA requires that “an Indian tribe have the ‘sole proprietary interest’ in any Indian gaming activity authorized by the act, as well as the exclusive control and responsibility for it.” IGRA recognizes the sovereignty of Cow Creek and all federally recognized tribes to regulate gaming in their jurisdictions. Tribal governmental gaming, as governed by IGRA, is one of the most powerful economic drivers for many tribes, including Cow Creek. It has allowed Cow Creek to diversify and support itself through economic development.

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Indian Self-Determination and Education Assistance Act and Tribal Self-Governance Act (1994)

The act authorizes tribes to enter into agreements with the United States to administer programs otherwise directly administered by the federal governments. The amendments made such provisions permanent and expanded them to the Indian Health Service. Self-governance aims to give tribes control over formerly federal programs in their jurisdictions. Under these laws, Cow Creek is a “self-governance compact tribe” and administers what were once programs administered by the federal government to members of the Tribe.

Executive Order 13175 (2000)

Executive Order 13175 was issued by President William J. Clinton in 2000. It applies to rules, policies, and guidance with tribal implications. Federal agencies are charged with engaging in regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications and are responsible for strengthening the government-to-government relationship between the United States and Indian tribes. The Tribe exercises its sovereign right to be consulted on a government-to-government basis when required by federal law, to protect the interests of the Tribe and its members.

Oregon Senate Bill (SB) 770 (2001)

The 2001 Oregon State Legislature enacted SB 770 formalizing the government-to-government relationship that exists between Oregon’s Indian tribes and the State of Oregon. The bill requires state agencies to develop and implement policies on tribal relations. Agency managers and others who communicate with the Tribes are to be trained in tribal matters, participate in annual meetings, and prepare annual reports. The bill was used to establish a process to “assist in resolving potential conflicts, maximize key inter-governmental relations, and enhance an exchange of ideas and resources for the greater good of all of Oregon’s citizens.” Provisions of the statute also include annual meetings, require key contact designation, and encourage inter-governmental agreements. <https://www.oregon.gov/DHS/ABOUTDHS/TRIBES/Pages/ICWA.aspx>

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Conclusion

Today, Indian tribes, the federal government, and states share a unique relationship. Because tribes are independent sovereign nations, they are responsible for the health, safety, and welfare of their citizens. Tribes are on equal footing with states in many ways. Indian tribes and the federal government have a government-to-government relationship. Tribes and states also often function in a government-to-government way, but the relationship is typically more complicated due to jurisdictional issues around non-tribal members on tribal land or criminal jurisdiction over Indians. Lastly, as city and county ordinances are subdivisions of a state, their ordinances do not apply to Indian tribes. Indian tribes sit higher in the political hierarchy than municipalities.