

# Ecotrust

## TRANSCRIPT

### ***Breaking the Chains: Transformative Federal Legislation and Tribal Peoples***

Speakers: Robert Miller (Easter Shawnee) and Dave Tovey (Cayuse/Joseph Band Nez Perce)

Held on March 16, 2022

Presented by the Ecotrust Indigenous Leadership Program

This is the final of four briefings that address the theme, *Indigenous Leadership: Ensuring a Future for Native Peoples, Cultures, and Lands*. Here is the recording:

<https://vimeo.com/690384094>

#### **Lisa Watt 00:00**

Good morning everyone. On behalf of the board and staff of Ecotrust, I'm delighted to welcome you to the inaugural Indigenous Leadership Briefing Series and to this, the fourth and final briefing, *Breaking the Chains: Transformative Federal Legislation and Tribal Peoples*.

#### **Lisa Watt 00:17**

We'd like to open our time together with a moment of silence and recognition of the horrific events happening in Ukraine. Please keep Ukrainians and all victims of war in your prayers and thoughts today and in the uncertain weeks ahead. May the Creator watch over us all.

#### **Lisa Watt 00:59**

Thank you.

#### **Lisa Watt 01:01**

Good morning. Again, my name is Lisa Watt and I am the director of the Indigenous Leadership Program here at Ecotrust. I am also a citizen of the Seneca Nation, Six nations from the Allegany reservation in western New York State. I am joined today by three Ecotrust colleagues, Megan Foucht, who is my co-host and our senior communications manager, our Indigenous storytelling fellow and citizen of the Confederated Tribes of Siletz, Jessica Douglas, as well as our administrative associate Marissa Correa, both of whom are driving our tech support.

#### **Megan Foucht 01:34**

At this point in a program, a land acknowledgement is usually cited but not here Ecotrust. While land acknowledgments are intended to be respectful, they oversimplify complex tribal histories and fail to recognize the ongoing impacts of colonization that tribal communities continue to live with to this day. In place of a land acknowledgement, Ecotrust staff, and especially Native staff are asking you to support Indigenous communities by taking action.

**Megan Foucht 02:09**

We ask that you,

1. Give land back to tribes.
2. Protect the environment and salmon, tribal cultures depend on them.
3. Insist that the United States respect tribal sovereignty and uphold its trust responsibility to tribes, which includes appropriate levels of federal funding to support tribal needs. Many promises to tribes still need to be kept.
4. Elect officials and judges who understand tribal governments relationships and law.
5. Invest in tribal economies.
6. Challenge and reject all stereotypes about Indigenous peoples.
7. Insists that your children and grandchildren are taught accurate information about the histories, cultures and contemporary lives of Indigenous peoples in your school systems and,
8. Inform yourself about issues impacting Indigenous communities and speak up.

**Megan Foucht 03:11**

The well being cultures and languages of Indigenous peoples are born of their homelands, and that makes these lands and waters precious to Native communities. All of us have the responsibility to treat them with the respect and care they deserve, and to steward them carefully for future generations. We need to do more. Please do your part. And thank you.

**Megan Foucht 03:35**

We have received considerable interest in this [call to action for Indigenous communities](#), which is now posted in the chat. Please feel free to share it and or use it as inspiration for your own statements. There is no need to cite the Indigenous Leadership program or Ecotrust. We will be posting a blog that provides our rationale for moving away from a land acknowledgement and really appreciate your interest.

**Megan Foucht 04:02**

So what is Ecotrust? Ecotrust is a 31-year-old triple bottom line nonprofit organization located in Portland that works to advance social equity, economic opportunity and environmental well being for all. Few people know Ecotrust was founded among Indigenous peoples, specifically the Haisla First Nation and the protection of the Kitlope Heritage Conservancy, which is located on the central coast of British Columbia. If you'd like to learn more about our founding and how we approach our work, we encourage you to watch Ecotrust founder [Spencer Bebee's 2011 TEDxPortland](#) video on YouTube, and we've put the link in the chat.

**Lisa Watt 04:47**

Thank you, Megan. The Indigenous Leadership Briefing Series is the lead-in to the Indigenous Leadership Awards or as we know them the ILAs. The ILA is a celebration of the determination, wisdom and continuum of Indigenous Leadership across our region. At its heart, the ILA is about Indigenous survival. Today 56 Native leaders throughout our region have been recognized for their unwavering dedication to uplifting the environmental, cultural, economic, and social conditions of their communities

and homelands. And now we are very pleased to introduce the Indigenous leadership award recipients for 2022.

**Lisa Watt 05:28**

Julie Kitka, who is the current president of the Alaska Federation of Natives, the largest statewide Native organization in Alaska, that works to ensure and advance the rights of Alaska Native peoples. As the leader of AFN, Julie's tireless commitment to Native lands, children, subsistence rights and health care for more than 30 years, has made her a prominent and effective advocate for Alaska Natives.

**Lisa Watt 05:55**

Paul Lumley, a citizen of the Yakama Nation, Paul is being recognized for his wide ranging experience from protecting treaty guaranteed fishing rights along the Columbia River, as a former executive director of the Columbia River Inter Tribal Fish Commission, to his leadership of the National American Indian Housing Council. Paul is currently the executive director of the Portland based Native American Youth and Family Center, a center that serves the ninth largest urban Native community in the United States.

**Lisa Watt 06:27**

Spring Alaska Schreiner. Spring is the owner and principal agriculturalists of Sakari farms, an Indigenous food production and education farm and seed bank located near Tumalo, in Central Oregon. Spring is a recognized advocate for healthier and more equitable food systems and shares her knowledge and services generously with many tribal communities regionally and nationally.

**Lisa Watt 06:51**

Michelle Week. Michelle is the founder and owner of ǵast sǵit which translates to Good Rain Farm in Gresham, Oregon. The farm's principles are grounded in Indigenous food sovereignty, empowerment, concern for the community and honorable stewardship. As a Sinixt descendant, Michelle is focused on practical and actionable avenues for increasing access to First Foods that provide vital and tangible cultural connections to the people and history of the Pacific Northwest. A public award ceremony will be held on Thursday, June 23, here in Portland at the Redd, our regional food hub and event space. Please watch your email for more information. We hope you will join us

**Megan Foucht 07:39**

Now about the Indigenous Leadership Briefing Series. This series examines the achievements of Indigenous leaders and communities by looking at moments in American history and showing how Indigenous leaders responded when the odds were against them. And there have been many times in American history when they were and are even now. How did tribal leaders respond? The events described in this four-part series are stories of vision, courage and determination. The primary goal is to elevate Indigenous voices and perspectives and demonstrate the power, influence and impact of Indigenous leadership. We believe Indigenous leadership and knowledge are around all of us every day, we just need to look.

**Megan Foucht 08:25**

Our next step after this final briefing is to package all the videos and give them to you. The package will contain the videos, transcripts, along with citations, suggested readings from our speakers, short videos and maps you can reference as you continue on your journey to learn more about Indigenous peoples. If you find this resource valuable, we hope you will share it with everyone, and watch for it in your inbox in about four weeks.

**Lisa Watt 08:53**

Today, we have two esteemed leaders with us. Each will speak for 25 minutes. Both will have PowerPoints and a Q&A will follow, please be sure to drop your questions and comments into the Q&A function. And we'll answer as many as we can. As a heads up, we will go over the one hour mark. The recording of the entire session will be posted next Monday, March 21, on our briefing series website.

**Lisa Watt 09:19**

Together today we're going to explore federal legislation passed in the 1970s and 1980s that transformed the relationship between Native American tribes and the US government, shifting from a colonialist and paternalistic approach to one that recognizes the sovereignty of tribal nations and the importance of tribal cultures. First, Robert Miller will recount this era with a special focus on the Indian Self-Determination and Education Assistance Act of 1975. A citizen of the Eastern Shawnee Tribe of Oklahoma, Bob is a professor of law at the Sandra Day O'Connor School of Law at Arizona State University in Tempe. His areas of expertise include federal Indian law, American Indians and international law, American Indian economic development, Native American natural resources and civil procedure. He is a noted author of numerous books that deepen the understanding of American Indian relations, history and law from colonial times to the present.

**Lisa Watt 10:21**

As far as second speaker, if you attended our very first briefing, which occurred on December 15, you heard Bobbie Conner, Executive Director of the Tamástslikt Cultural Institute and a citizen of the Confederated Tribes of the Umatilla Indian Reservation, vividly discuss the period leading up to the Walla Walla treaty Council and the signing of their Treaty of 1855. Our next speaker, Dave Tovey, also comes from the Umatilla tribes and follows in Bobbie's footsteps, and that is by design. His task is to discuss the tribes in the 21st century, and show how one law, the Indian Gaming Regulatory Act changed the economic and social landscape of their community.

**Lisa Watt 11:06**

Dave, who is Cayuse and Joseph Band Nez Perce, and enrolled at Umatilla has a wealth of experience in tribal economic development and governmental operations. He is currently the executive director of the Nixyáawii Community Financial Services, a Native-led CDFI on the Umatilla reservation that provides loans, home ownership guidance and financial management assistance. In addition, Dave has served in top executive roles with the Siletz tribal Business Corporation, Cayuse Technologies and the Coquille Indian tribe. He currently serves as the board president of the Affiliated Tribes and Northwest Indians Economic Development Corporation. We welcome you both. Bob, we hand it over to you. Thank you.

**Robert (Bob) Miller 11:52**

Thank you, Lisa. Thank you, Megan. And thank you, Ecotrust, for inviting me to be involved with this program. I'm delighted to speak here today. I have a lot to say and I believe I was told 25 minutes. So I'm going to talk really fast. I'm going to try to share my screen now. I hope I've been made a co host and we'll get this PowerPoint on. Oh. Please don't read my password as I'm typing it in there. So I'll try to talk while I'm working. I'm going to be talking about the federal trust responsibility. Is my screen shared, Lisa?

**Lisa Watt** 12:44

Yeah, yeah, it is. Screen is shared.

**Robert (Bob) Miller** 12:52

My theme today is the federal trust responsibility and paternalism. Federal paternalism in its 250 year history of dealing with Indian nations, versus what the tribal goals are of independence and self governance. As Lisa said, we're going to be speaking today about primarily the 1970s and 1980s, and how tribal governments caused and forced the federal government to recognize and treat them as fully independent, constitutionally recognized governments and independent peoples, in partnership still with the United States. So we're going to see this tug and pull between the federal trust responsibility which has helped tribal peoples and Indian nations over the decades, over the hundreds of years. But then how federal paternalism and its 'oh, we'll take care of you, I'll stroke your hair,' as opposed to tribes standing on their own two feet and so that's the contrast that is really going on at this time.

**Robert (Bob) Miller** 14:01

Now, what I want to start with is where are tribes? How do they fit into our federalism of what the Supreme Court talks about as our Federalist Society of government with a Supreme Federal Government with limited powers and the state governments. But what the Supreme Court has forgotten is that the constitution includes Indian nations in our federalism. There are three forms of governments in the United States, there are three forms of court systems and what you learned in school and what most college and law school classes teach, is wrong. There are not just two governments in the United States. I want you to see what's called the 'Interstate Commerce Clause'. Those of us that practice Indian law call this the 'Indian Commerce Clause.' Our founding fathers, they understood and they had always dealt with Indian nations as sovereign governments that you deal with politically on a sovereign basis, sovereign to sovereign, and through treaty making. Here's what the Constitution says, the US Supreme Court has cited this provision probably hundreds of times. For the principle I am saying, tribes are governments, they are sovereigns, they rule their own peoples, they rule their own territories, and the United States deals with them in a diplomatic, sovereign to sovereign relationship.

**Robert (Bob) Miller** 15:24

Second, Indian peoples are mentioned twice in the Constitution. Our founding fathers realized that Indian peoples were citizens of their own nations, their own political bodies. They were not US citizens, or federal citizens, they were not state citizens. Here's the infamous provision where people talk about the enslaved peoples in the United States that were counted as three fifths of a person in determining the citizenship of each state. But notice, Indians were not counted at all as federal or state citizens, unless they pay taxes. This provision was of course amended after the Civil War in the 14th Amendment, but look what Congress in 1868 still thought: Indian peoples are citizens of their own

nations not to be counted in the population of a state or the federal national government. The Supreme Court agreed with this. Nearly 20 years later, they held in *Elk vs. Wilkins* that Indians are not US citizens and not state citizens. It took an act of Congress in 1924 to make all Indians US citizens, and eligible to vote. But many states resisted this for many decades and would not allow Indians to vote in state elections, because they said 'you're not a state citizen.'

**Robert (Bob) Miller 16:45**

Anyway, what about treaties? You've heard a lot of discussion in a couple of these episodes about treaties and treaty rights that the Umatilla tribes have and other tribes in the Pacific Northwest. Treaties are the supreme law of the land. Now tribes are not expressly referenced here, but there is no question and everyone accepts that this provision impliedly refers to Indian treaties. Notice what I've underlined. This is also called the Supremacy Clause, folks, you've probably heard that. So this is the treaty clause of our Constitution and the Supremacy Clause. All treaties made that in statutory language is a past tense reference, it's a ratification of the treaties that our national governments had signed from the fall of 1777, with the Continental Congress, and the fall of 1781, with the formation of what's called our Articles of Confederation Congress, and then the United States. Notice that reference 'all treaties made,' that's referring to the treaties that the Continental Congress had signed, and the Articles of Confederation Congress had signed with foreign nations and with Indian nations. I've counted these treaties. I've researched these treaties. By the date our constitution became effective, and George Washington and John Adams were sworn in as our first president and vice president, we had signed 23 treaties with foreign countries and nine treaties with Indian nations. So that reference 'all treaties made' is a past tense ratification. And then the next clause is a prospective future looking clause, 'or any treaty which *shall be* made,' that encompasses the 360 some treaties that the United States signed within Indian tribes, are the supreme law of the land.

**Robert (Bob) Miller 18:46**

So we were asked to talk about this 1960s-1970s era of federal Indian policy, but I very quickly want you to see what the other six eras of federal policies were towards Indians. As Megan and Lisa were discussing, the federal government has often been an absolute enemy of Indian Nations. Well, that's no surprise to Indian people, but historians give these six policy eras. These are not my dates or my titles, these are widely accepted. The 'trade and intercourse act era,' is a statute that Congress passed July 22, 1790, when the federal government took control of trade with Indian peoples, tried to prevent the private sector from dealing with tribal governments, and wanted to maintain federal power vis-a-vis Indian nations to the exclusion of state governments. Well, that became a different policy when the Federal Congress passed the Removal Act in 1830. I call that ethnic cleansing. Anyone can try to debate that or dispute that with me, but they're going to lose that debate. The entire goal of the Removal Act was to move all Indian nations that were east of the Mississippi to the west. My tribe was removed to what's now Oklahoma in 1832. You probably all know the most famous example is the Trail of Tears and the Five Civilized Tribes that were moved from the American southeast also to what's now Oklahoma.

**Robert (Bob) Miller 20:21**

Reservations began being established to smaller and smaller and smaller areas of land in 1850. The Allotment Act was passed and look how I characterize it. That was Congress's attempt to confiscate

even reservation lands. That was federal policy until 1934. Finally, Congress under Franklin Delano Roosevelt and a Democratic control, Congress enacted a very favorable statute that still applies in Indian Country today to many tribes, the Indian Reorganization Act. Congress was attempting to assist tribes and bring them from the worst poverty, the worst conditions of any peoples in the United States. That didn't last very long, though. But I want to remind you of the IRA, that act still applies today, about two thirds of tribes organize under that act. So it is still a federal policy, a federal law. But the overall goal of federal policy changed after World War Two. And the United States adopted what became the termination policy, to end that constitutionally mandated political relationship between the feds and the tribes. It led in Oregon to the termination of the Klamath tribe, and its 800,000 acre reservation in Southern Oregon, and the Menominee tribe in Wisconsin, and its 250,000 acre reservation. 107 other tribes and bands across the United States were terminated. What does that mean? They were still Indian people when Congress got done with it. But what Congress was ending was the political recognition of those tribes as governments that the United States would have a sovereign to sovereign relationship with. That's what brought us into what I'm going to talk about now.

**Robert (Bob) Miller 22:18**

What happened? Well, because of termination tribes literally banded together and created the National Congress of American Indians in 1944. It's located in DC, maybe 200 tribes are members, and there are 574 federally recognized tribes in the United States. So you can see that a minority belong to NCAI, but it is a well known leader that lobbies in DC, and fights for Indian country. Because of termination and this new policy era that Congress enacted in 1953, NCAI called an emergency conference in 1954 where 43 tribal Nations attended and denounced termination. In 1951, maybe you've never heard of this, the Bureau of Indian Affairs, and I want to make a joke here. Some Native say the BIA, Bureau of Indian Affairs, it stands for 'bossing Indians around.' They started handing.. I can't hear anybody laughing. Come on. That's a funny joke. Okay. The BIA assumed that if Indians didn't live on the reservation anymore, they had no obligations to them. So they started handing out one way bus tickets to families saying 'go to the city, don't come back.' This is one reason there are enormous populations of Indian peoples in Portland, Seattle, Denver, Chicago, LA, San Francisco, etc. This was part of the removal thinking, 'get rid of Indian peoples, get rid of the federal obligations.'

**Robert (Bob) Miller 23:56**

I knew a lot of this already. But of course, I did research preparing for this talk and I want to give a big plug right now to this book by Charles Wilkinson, Blood Struggle. I wrote a book review on this for the Oregon Historical Society. It came out in '05, I believe, and the Rise of Modern Indian Nations. I thought this book was exciting. I knew some of the people he was writing about. I knew the events. I read the book on planes, I'd look out the window and think about it. It was thrilling to me to read it. I encourage people to read that. So I reviewed that again and other materials for what I'm talking about today.

**Robert (Bob) Miller 24:39**

Charles Wilkinson credits the leading Indian intellectual I believe, Vine Deloria Jr., who became prominent in the 60s. He was the executive director for the National Congress of American Indians for a few years. But in 1961, there was a major conference of intellectual leaders, Indian political Leaders in Chicago and they rejected termination, they demanded to choose our own way of life. And this lobbying started to impact the federal government.

**Robert (Bob) Miller 25:12**

In 1964, there's another conference in DC and we lobbied President Johnson for direct funding for Indian Country. To stop giving the money to federal bureaucracies who are wasting it, like the BIA, and directly fund tribes. And Lyndon Johnson began doing that. More lobbying, more activism that pretty much grew out of Martin Luther King, the civil rights era, Black Power. Indian people started talking about red power. I believe the two groups and Vine Deloria, purposefully stayed separate and thought that it would be better if tribal peoples pursued their own independent goals because we have a different position, we're sovereigns recognized in the Constitution. The feds owe us responsibilities that they don't owe the average American citizen.

**Robert (Bob) Miller 26:06**

So lobbying and activism. The American Indian Movement, if you've never heard of it, formed in about 1968. Russell Means and Dennis Banks are the two most leading well known names. They occupied Mount Rushmore and Plymouth Rock or I don't mean occupy, they had big demonstrations there that made the press but you probably all know about the occupation of Wounded Knee in 1973 for 71 days. This is a small town and village in South Dakota. The military surrounded it, the FBI surrounded it, 1000s of rounds of bullets were fired. They attempted to starve the AIM people out, two FBI agents were separately killed, but at the same time and the name Leonard Peltier, he is still in federal prison for those convictions, for those murders. Other Indian groups, but I don't think AIM was involved, was the occupation of Alcatraz for 18 months where Native peoples went ashore there and said, 'Hey, this lands vacant. We're going to claim this the way the United States and Europeans claim our lands.' 71% of Americans, there was a poll that supported the Indian people. A separate movement. Again, I don't think this was just completely AIM but AIM was involved, was this caravan of the trail of broken treaties. Motorcade cars started heading towards DC crossing reservations trying to pick up more advocates and more than 400 people ended up in DC and literally took over the building of the BIA in 1972, I think is what I say there. It's blocked by my own photo.

**Robert (Bob) Miller 27:54**

Charles Wilkinson and others credit the salmon treaty cases out of the Pacific Northwest. In the district of Oregon, Judge Robert Belloni and his decision in United States v Oregon in 1969 and then everyone knows the Boldt decision in 1974, Billy Frank and others that drove this litigation, Billy Frank was arrested, I believe about 100 times it's that kind of activism, that kind of struggle. And then we won those cases, based on Article Six of the Constitution and the promises the United States made to Indian peoples.

**Robert (Bob) Miller 28:30**

The Menominee Restoration Act was the first of the terminated tribes to be restored to federal recognition. And Charles Wilkinson in his book gives Ada Deer a lot of credit for this. She later was Assistant Secretary of Indian Affairs. Now what I've read in several places is that Indians themselves, individual Indians, and maybe even tribes, did not take a direct role in drafting and fighting for the Indian Self Determination Act itself. But very significantly, these two Indigenous attorneys were on the relevant Senate and House committees. And Forrest Girard literally became the first Native person to be the



assistant secretary for Indian Affairs in 1976. So I don't know, have I talked too much already? You can't stop me. I got the microphone!

**Robert (Bob) Miller 29:25**

The Self Determination Era. So I'm now back to the seventh of the federal Indian policy eras that historians talk about. It began, people say historians say, in 1961, when President Kennedy made this statement, but his administration also undertook no new terminations of tribes. He said, 'Unless a tribe requests to be terminated, we will not do it.' So People show this as a change in federal thinking and the end of the termination era. Lyndon Johnson in 1968, literally delivered the first live message to Congress about Indian Affairs practically since George Washington and he said self determination is the new goal. But it is President Nixon that is credited with really jump starting and using this name, and so gave the name to this era. He gave a speech in 1970. He wrote a law review article, don't forget, he was a lawyer, he graduated from Duke in the top three in his class. He said that Washington DC should let Indian people, tribal nations and Indian leaders tell DC how to help, not the reverse. Again, what I've researched, the writing of this act and helping push it through Congress was really some advisors of Nixon and some staffers. Nixon, of course, ran into that little problem we know about and so he was not in office when Congress passed the bill. And so President Ford signed it into law. It's known as the Indian Self determination Act, the ISDA. Its full title is The Indian Self Determination and Education Assistance Act. It adopted that idea that tribes had been arguing about for 20/40/50 years. What I say happened in '64, at that conference in DC, the tribes lobbied the Johnson administration to fund tribes directly, stop using the BIA or the IHS, the Indian Health Service. And so this is exactly what the ISDA allowed. Tribes contract with the United States to take away federal programs, take away federal Indian programs and take away those dollars and operate them themselves. Studies have proven that they do this more efficiently, more cost effective and get a lot more bang for the buck than when the federal bureaucracies do it.

**Robert (Bob) Miller 32:14**

The bureaucrats fought back, as you might not be surprised to hear there were no regulations for over 13 years because the BIA and the IHS were dragging their heels. Senator John McCain from the state I live in now Arizona, stood up in Congress, I think he beat his shoe on the desk. And a law was passed in 1988, that said, that gave the Bureau 18 months to draft regulations or there would be not. So Congress saw who the obstructionist was and stopped it. They knew that because tribes told them because tribes, tribal leaders that we know today, fought about it.

**Robert (Bob) Miller 32:54**

Lisa asked me, she listed some of the laws that were on that opening slide, Congress passed. So this idea of self determination and tribes doing this themselves is now just federal policy, it's in Acts left and right, Education Act of '72, financing acts in '74 and '78, the Indian Health Care Improvement Act, I'm not even going to read all those to you. You can read them. I went beyond the 70s and 80s. You have the Language Act in 1990. You have the Native American Graves Protection and Repatriation Act. You have a bill I worked on. I did work on the bill. I helped write the regulations. And I worked for tribes with their housing programs, Native American Housing and self determination act of 1996.

**Robert (Bob) Miller 33:39**

So how did this come about? And what has happened since then? Well, tribes didn't stop pushing. The ISDA was great, but it could be better. Tribes are proving their competency to run these federal programs. There's the Federal Audit Act, folks, tribes are audited when they assume federal programs and when they assume federal money, so you and I as federal taxpayers, our dollars are protected. Of course, the valuable thing is, it's being stretched further. If a tribe can take a federal ISDA grant and operate its own dental clinic, let's just use that as an example, using the same amount of federal monies if they can get two dentists instead of just the one that BIA or IHS was doing, they're allowed to do that. And now under self governance, which became permanent in what's called the TI SGA in 1994, tribes are allowed to reprogram dollars, make decisions on their own. Who pushed for this? Well 10 tribes in 1986 and I just mentioned the ones there that are from the Pacific Northwest really, the Quinault Indian reservation with Joe Dela Cruz, who was elected chair in 1971. So he was even heavily involved in the ISD and lobbying early on and activism. Ron Allen the longtime chairman of Jamestown S'Klallam tribe is just identified with the self governance movement, Hoopa tribe leaders, Tlingit and Haida and others.

**Robert (Bob) Miller 35:15**

By 1988, Congress passed and amends the ISDA and adds a demonstration project. I think 20 tribes were allowed in at first. So Congress moved carefully. Let's see how this will work giving tribes even vastly more responsibility and powers. And Congress then made that permanent and included all programs of the Department of Interior in potential compacting and now it's called compacting. If a tribe is operating under the tribal self governance program, it's called compacting with the feds not contracting. So that's one way to tell the two apart. It's controversial when tribes try to contract other programs away from the feds that aren't in the Bureau of Indian Affairs and the Indian Health Service. Very controversial. Okay, I have no idea how long I've been talking. I'm on the last act that I had been asked to cover.

**Robert (Bob) Miller 36:13**

So gaming, one of the biggest economic engines in Indian country today. The Seminole tribe out of desperation began bingo in 1977. My own tribe paid attention to that and out of desperation, we began bingo in 1984. By the mid 80s, Seminole was making \$100 million a year. The states were jealous, they didn't like that. The County, the county that's where Seminoles are located at, I think it's called Broward County, the sheriff arrested customers and tribal peoples. And the Fifth Circuit at that time, it was the Fifth Circuit struck down what he had done. There were bills in Congress starting from 1983 onwards, Senator McCain here from my state was part of this. And the states wanted Congress to protect their interests. But then the tribes won one of the greatest tribal sovereignty victories there's ever been in the US Supreme Court. The court said that states have no voice, no role in deciding what tribal governments do in Indian country. And that includes gaming. Of course, the state detested this. So what happens the next year, one of these bills that had been pending in Congress becomes the igr, the Indian Gaming Regulatory Act. And that's Dave Tovey's going to talk far more about the impact at Umatilla and elsewhere, I think I have just two more points.

**Robert (Bob) Miller 37:49**

The primary factor of the bill was the definition of three classes of gaming, and some state control and input is allowed in class two gaming, which is bingo and assorted games like that. And a lot of state

control is allowed in class three gaming, all the other games you might equate with casino gambling, and maybe the big money things. But Congress thought of a remedy, Congress very carefully thought it was passing a balanced Bill. Protect state interest but we know tribes are trying to make money off this so they can raise their living standards. Don't forget Indian peoples even still, to this day, folks are the poorest people in the United States with the most health disparities and the most social welfare issues of any racial or ethnic group in the US. Do not forget that. And so this is what Congress is doing. So it tried to protect tribes. It allowed tribes to sue states, if the state was negotiating in bad faith. It did not last very long. The states won a Supreme Court case in 1996. And that remedy is gone. Tribes cannot sue states for bad faith negotiations unless the state consents and that's the sovereign immunity principle. I think I'm done. So this is where IGRA is. This is where we are today. And this is what Dave I think's going to talk about. So take it away, Dave.

**Lisa Watt 39:22**

Thank you very much. Thank you. That was a lot of ground. Many years you covered there. Thank you so much. Dave?

**Dave Tovey 39:34**

You see me okay?

**Lisa Watt 39:36**

Yeah. Welcome.

**Dave Tovey 39:38**

Thank you. Yeah. I cannot start my video because the host has stopped, what does that mean? We're having a hard time getting in here.

**Lisa Watt 39:57**

Dave, we can see the PowerPoint.

**Dave Tovey 40:00**

Yeah, can you hear me? but just can't see you.

**Dave Tovey 40:07**

oh did I come up?

**Lisa Watt 40:10**

oh, there we go. Yes. Welcome

**Dave Tovey 40:13**

I was joking with Lisa when she talked me into doing this and believe me she had to talk me into it that I was following the esteemed professor Miller, I feel like carrot top following George Carlin or Robin Williams on on a comedy stage and man, he's just outstanding and what a great transition for me. I'm happy to be here. The name's Dave Tovey with the Umatilla tribes and I'm talking about Indian Gaming Regulatory Act.

And just a little context. Next slide puts us where we are. We're about we're in the central central portion of the Pacific Northwest, right there near Pendleton, about three and a half hours east of Portland. Boise is about the same distance to the southeast and Spokane too. We kind of consider ourselves the hub of the Pacific Northwest here. So we were sort of lucky as you might remember, Bobbie Conner noted, that we had to fight and argue for our separate reservation as the treaty signers had us delegated out to other places but we got to keep our place here where we're from. So anyway, next slide.

**Dave Tovey 41:34**

I think Professor Miller covered this pretty well, and I appreciated his background of where the Indian Gaming Regulatory Act came from, but probably the toughest thing when that came out was we had to negotiate compacts between the state and the tribes for gambling activities that were allowed in that state. So for us even at that time, it wasn't very much, we felt it was and most of Indian Country I think too, felt it was really an affront to tribal sovereignty, making us go and do that with the state. But ultimately, for us, I think we viewed it as a means to an end. Namely, we just knew we needed a lot of discretionary revenue, where we could replicate a tax base for all the various functions and features of a small government that had to provide for its citizens. So that was really I think, our bottom line objective, as well as jobs and income.

**Dave Tovey 42:44**

So next slide, please. Our situation in 1988, and I always say, talk about dumb luck, I got hired in September of '86 and the Gaming Regulatory Act was approved in '88, how stupid lucky is that? So anyway, what we had at the time was one night per week bingo program in the community gym. It was always a challenge, because there's other users of that gym and sometimes we had to discuss operations with others but we had an operational enterprise at that time, bingo. And then we had Indian Lake Campground, Lake Hiyúumptipin was actually its formal name, but then it became Indian Lake and that was on the restored tracks of the southern reservation.

For enterprise administration, which was my department, it was me as a new economic planner, and two clerical staff. I was lucky there were a lot of people in my generation, that there was already a cadre of really top Indian professionals in tribal governments across the country, by way of that act, and for us, I think, it's largely representative in the tribal Development Office, the TDO, there was a predecessor to our Department of Natural Resources. And one of them, they were planners, what they did was, in 1979, the state of Oregon, adopted its land use planning, and they did pretty much the same pathway for that, establishing our zoning map, and developing an extensive comprehensive plan in 1979. That plan really became the touchstone of our organization for a number of years. The TDO talents at that time were in the way of Mike Farrell, a great mentor of mine who everyone knows. Antone Minthorn was with that group, Jim Lavador, the famous artist. People are always amazed he was in that role, but he was with the TDO crew. And of course, a lot of folks know that great Tom Hamsun.

**Dave Tovey 44:54**

I mean that that was an all star crew that was really kind of thinking outside the box and into the future. The tribe about that time hired Gary George, who is now our chief executive officer for Wildhorse as the tribes General Manager, and roughly at that time, our enrollment was about 1200 members. Our unemployment rate at that time was 42%, with high poverty, and we really had no discretionary revenue, except for a little bit of descent from farm grazing and our new grade elevator.

**Dave Tovey 45:29**

Next slide, please. One of the things that struck me was we are really overrun with those 51/49% business deals that were just coming in from external opportunists, if not carpetbaggers, interested in, 'okay, go ahead and do the financing, we'll do the minority set aside and so forth. We'll come to operate and manage it for you and take our respective shares.' So we had plastic bullets, caskets, resorts, precision casting, just a long list and overwhelming because even at that point, I didn't know how to effectively analyze those. Even if we did, we didn't really have the means to do any of them. So one of the things we've developed is our first capital improvements plan (CIP) and we saw the municipalities do it in 1988. To accomplish those CIP objectives, I just concluded that staff was needed. And in terms of a general perspective on Indian economic development, I see so many tribes hire a single economic development professional, but it needs horsepower if you're going to get it done. There's just too much work to be done. So one of the sources that we went after was Administration for Native Americans, and secured our first grant. Our legal accounting financial staff for enterprise administration was an attorney from Portland who is a really nice guy Ray Sherwood, Jim Wallace is a retired CFO for the tribal government and for Yellow Hawk, and he's on our board of directors now today, and then Bill Tovey, my younger brother, who's now the director of Economic Development. Anyway, we had these disciplines and all I did, not that we had a great plan, I just knew there's certain disciplines we need to have to march forward. We also launched our new nation lamb project, and that was funded by Northwest Area Foundation, and that provided staffing for the pathway we were on. So in effect, we've kind of set up a three legged stool. We kind of felt like we're shotgunning everything to some degree, but the three legged stool was really gaining land and culture, and history, which, looking back on that, geez, were kind of naive and sort of youthfully arrogant about that, because those are three things that deeply are concerning to Indian folks. Next slide.

**Dave Tovey 47:53**

Now, let's see. So first steps, as the Indian Gaming Regulatory Act was approved, we knew we had a lot of catching up to do to learn. So we had a little bit of bingo earnings but it wasn't a great deal and we had our bingo manager John Barclay, who has since been on the tribal Board of Trustees and is currently our TERO manager. But we sent him on the road to infiltrate these conferences and events and find out what the word is, how we can play in this game, and be effective at what we're doing. With Oregon laws at that time being fairly limited in terms of gambling options, the initial plan we had was really just building a little Quonset hut for about \$250,000 we'd put up our bingo program, couple card tables, non bank card tables, and it was fairly modest, but we knew it would be an opportunity, we couldn't get so much as a meeting with local banks. We just didn't have the credibility or balance sheet I'm sure.

We observed though, that when States approved video poker and other states, that really opened the door for video slots, slot machines, which are kind of the cornerstone of revenue for most casinos. So

really, that opened the opportunity up and we knew we had to start getting serious at that point. And they did that in 1992. As we're going through all these community meetings with our General Counsel and other public meetings and so forth, my boss Gary George kind of chewed me out because we were taking some of these extra steps to make sure we had everybody's support, and didn't want too much for too fast and at a certain point Gary just said hey, 'like Nike, just go do it.' So okay, I guess that's the word that comes down on high. So that's what we did. Next slide.

**Dave Tovey 49:48**

Oh, local reaction, let me talk about local reaction. Tribal leadership at the time, Antone Minthorn was chairman of the general Council and Elwood 'Woody' Patawa was Chairman of the Board of Trustees. One of my first weeks on the job, they took me to town. I had to go meet with a Pendleton Chamber with them, Round Up city Development, Greater Eastern Oregon Development Corporation, other city and county government officials, and their instruction was pretty clear. 'Dave, go tell them what we're planning because one day we're going to need their support,' which was just a really, really freeing kind of direction for me. As we're starting to have those meetings and some of those public gatherings, trying to gather input and support, there's a regional reporter for The Oregonian and after the meeting, kind of challenges me and says, 'you guys have community support?' And I go 'Oh, yeah we have community support.' And he goes, 'Well, how do you know?' Oh, it just made me mad. They said, 'Well, we're gonna do a survey.' So I kind of fell into his trap and popped off at him.

So the next thing we did was figure out how to do a survey. So luckily, we had a good connection over with Eastern Oregon University, El Ablesim for some of you that might know, as part of the state, and we contracted with her organization to do a survey of both our tribal population with the best list we could come up with, as well as with Pendleton citizens, it was kind of a random survey, and we found 67% in favor. It was a strong mandate we felt. So as we started negotiating our compact, the compact team under Governor Barbara Roberts came out to visit us and it was testing, we were kind of wanting to get some more expanded gaming opportunities so we went down to our famous fine dining location by Nez Perce tribal member Phil Hoffman and had lunch there one day with the city mayor, the president of the city council, former Mike Kilkenny. Anyway, they were sitting down with us and our negotiating team and the compact team was asking the local officials so 'geezen aren't you guys worried about the crime, prostitution,' and some of these kind of rumors that were floating around about Indian gaming. But those folks who were there were funny and they said 'Do you know anything about Pendleton's history?' And of course if you know, Pendleton's right on the Oregon Trail and had kind of a raucous early, early years here. So, gambling, prostitution, a lot of other things going on. So, I think the point was made and a mistake, kind of worked through with us.

**Dave Tovey 52:52**

Next slide. Let's see some partners – potential and actual. Without us being able to do it independently on our own, and like I said, we didn't have the balance sheet or capability really, to do much, we had to start considering contract or management contract partners and firm quarters pretty heavily. It was the Barry group, if I remember, and as they were working with us, they helped us organize and they actually initiated as well as our staff to say 'let's try to pull together with the Oregon tribes.' We were seeing that other tribes, I think in Arizona and others, where they had a statewide coalition of tribes negotiate collectively with their state government and always had a better, stronger stance. So that was

where we kind of wanted to go. But at the time, most tribes in Oregon had not made the decision yet to go into gaming. So it's just really us and Cow Creek that committed to enter the industry at that time. So we kind of had to ship that, we knew we're on our own. So we started interviewing firms. British American bingo came in and we inked the management contract with them. I always suspected it was because of their cool accents that really got our folks warm to those people. But then they were later acquired by Capital Gaming and Capital Gaming was pretty much mostly New Jersey gaming executives who were from Donald Trump's organization. These guys were top top casino executives all right, but I always have to decide, and I was kind of cautious about saying this, but one person that worked with Donald Trump, they just couldn't stand him, he said, every day was a new, new challenge. You get yelled at for stuff you didn't know. So they were pretty happy to be free of that regime and doing stuff for us, although they're pretty amazed that we're out here in the middle of a wheat field in Eastern Oregon.

**Dave Tovey 55:10**

Next slide. So implementation. As we did the compact and contract and got everything all lined up, we have project delays, which project delays are common. So, we were trying to shoot for '94 to be completed, but it got pressed and pushed out into '95 in March, when we finally did the main facility. So anyway, one of the things that as we're doing that one of the things that other tribes have done is temporary casinos. And I was pretty much the one standing in front of that and saying, 'Now, no, our market will be unforgiving. If they come a little, little double wide, they'll never want to come back.' I was pretty naive about that as well. But we had it, we did bring in a double wide, we had 100 slot machines and 78 employees. And I think virtually, except for maybe one or two, we're all tribal members. So as they say, at Wildhorse, those are the first day-oners which was just to us a remarkable thing. And in so many ways, it gave us a chance to walk before we had to run, gave our gaming commission time to do the licensing, and get their processes set and it launched a number of careers for that initial 78 that moved on to the main facility when it opened in March of '95.

Capital Gaming course had gaming experts in every operational field, but they also did and one of the things they did, they beat Trump to the rights to do riverboat gambling in New Orleans. And they did a big junk bond that funded our project as well as a couple others along with these two, about half the junk bond was for these other riverboat casinos and it failed, they just totally misread the market. So with that mass downsizing, our own staff, mostly tribal members who were kind of coming up in their own career, had to step into various roles of security, facility maintenance, marketing, human resources, I mean, all levels. I gotta say at that time, I was just really concerned that they weren't ready. But each individual, they just, they just achieved and grew in their roles. I think today, as you look at Wildhorse, we have more tribal members in top management roles than most other tribal casinos. It's led by the likes of Gary George, my other brother Hayl is casino general manager, top notch professionals at Wildhorse and I got to work over there in the early stages of this project. So I got to see him on the inside. They really have done something and especially during this COVID period when they've had to pivot on a weekly basis, for closure, partial closure, how to stay open and an operational.

**Dave Tovey 58:14**

Next slide. So impacts, let's see, we are all proud that we figured out, okay, we did some estimates on the industry and we figured, okay, probably maybe about 1.5 million the first year, well, that just got

blown out of the water with 5 million. The other thing we did, the tribes attorney Dan Hester, and I had to go and negotiate the contract with Capital Gaming and one thing we just insisted upon was a \$50,000 a month guaranteed payment. We were so proud, we thought we really did something amazing that day, we never even came close to that number. But it was just like I said, as a matter of where we come from, in terms of revenue. One of the things we did fairly early on was we went into a process of retro budgeting, and we kind of phase that in over three years to where we would, instead of budgeting projections, we want to budget real dollars. So we kind of easily and gradually kind of shifted over to where we make money one year and then budgeted for the following year. So that really does some amazing things to your balance sheet, to your security, your confidence, your cash flow. I mean, up and down, it was just really a brilliant move on tribal governments' part.

**Dave Tovey 59:38**

Revenue from Wildhorse and our gaming operation was allocated among tribal departments programs, tax base, and set up a base budgeting process to where those departments could plan longer term and grow. Of course that balance sheet again, gave us an opportunity to start building out the rest of the resort masterplan, which we did for Tamasilkt originally, again, that's the second leg, where Bobbie Connor has led that organization with the hotel, golf course and RV park. The third leg, as we always stayed focused on, was land acquisition. And since that time, the tribe has acquired over 90,000 plus acres. Today, the tribal government and its multiple entities, including us, Wildhorse, Cayuse holdings and Yellow Hawk tribal health center, have over 1,900, almost 2,000 employees, and just over 3,000 tribal members. Next slide. I'm almost done.

**Dave Tovey 1:00:47**

In conclusion, one of the things that's just always amazed me year in year out is we see more and more college and advanced degree graduates in all fields, in healthcare, education, legal, it's really astounding to see that kind of growth. Economic data indicates there's a higher personal household income across the table, you could see tribal members moving up the chains, into the organization's, into more responsible fields. The challenge is, it used to be kind of easy to kind of characterize our situation in grant applications, but it's getting a little bit tougher because of those achievements. With those resources, we've been able to provide and build a brand new Yellow Hawk tribal health center, Nixyaawii school and education center and multiple Wildhorse expansions. Just an amazing number of things that have happened.

**Dave Tovey 1:01:20**

I think when they say Renaissance, it might be overused, a little bit, to me at least where I sat, it really unleashed creativity and a strong community. I think we've always had a strong work ethic and pride, but it really puts that on display. Our economic and political power just keeps growing year in and year out. We're having more and more influence. I mean, geez look at tribal member, Chuck Sam's is now the Director of the National Park Service. It's an amazing thing to me. One of the things I did for Indian Country Today, I penned an article on talking about early stages of gaming, and, of course, trying to address that issue of fear of organized crime and other kinds of problems, and kind of made the comment in there that kind of got the headline, that it was I said, 'you guys were more afraid of organized Indians.' And that's kind of where we've come to be.



**Dave Tovey 1:03:15**

Probably the last thing I want to say. We're 27 years old. We just had our anniversary celebration, which is a big choreographed fireworks display, the biggest in Eastern Oregon, as we like to say about everything. For 20 something years we've been in business here and I harken back to the very first one back there '95, we had family and friends gathered and at the time, I was so busy running around on on things that you just didn't give yourself enough time to stop and consider and then the fireworks the music started playing and then you kind of do and, and it just came washing right over me that,

**Dave Tovey 1:03:50**

My tribe will never be the same. I have, excuse me, for better or worse, I guess that could always be debated. But I knew suddenly, all the once that we were going to be forever changed and again, you just hope it's for all the best possible reasons. So I think that's the end of me and better get out of here. I didn't mean to give you guys a big baby.

**Lisa Watt 1:04:29**

No, Dave Oh, thank you so much. That was a true privilege and delight to hear. It's amazing how far your community, see even I get teary, has come in 27 years. Just congratulations to all of you. So I turn it over to Megan.

**Megan Foucht 1:04:52**

You Lisa, and thank you Dave. Thank you, Bob. As a non native person, these presentations have been such a huge gift to me, and I think I can speak for many other staff members of Ecotrust as well as, so many people have given us feedback across all of the events. So we're going to jump into a Q & A. And I want to invite folks who have questions or comments to please add those via the Q & A function, which you can find at the bottom of your screen. We have a few questions that have come in, and I want to invite folks to keep adding them. I think I'd like to invite, I see we got Bob back on screen and I see we have Dave here. So Bob, I'm going to hand the first question to you. There was a quick question here from Clark, who is interested in if you 'can list the five Civilized Tribes that were relocated?' I thought this was kind of a quick one we could touch on.

**Robert (Bob) Miller 1:06:10**

Yes, the famous Indian nations that were mostly Confederacy's of towns, they were true Federalists, governments themselves, they are the Cherokee, Choctaw, Chickasaw, the Seminole and the Muscogee Creeks, and they were all removed on the infamous Trail of Tears. But I want to repeat that my tribe from South Central Ohio, we were removed to what's now what was then the Indian Territory and became the state of Oklahoma. Those five tribes, I think, don't like being called Five Civilized Tribes anymore. So it's just called the five tribes.

**Megan Foucht 1:06:49**

Thank you. And I think I'd like to pass a question to Dave, I actually think, well, this is really for both of you. But it might, I guess, vary from state to state. We have this question from Michelle. 'The State Tribal compact now has a certain percent of revenue to go to the States from the tribes implementing IGRA. The rate can vary by state from eight to 40%, it seems, who started that first trend to get their compact done? It seems like it opened a Pandora's box now for tribes to give a portion of its gaming

funds to states to obtain compact approval. The irony is that state lotteries don't give a percentage of money to tribes.' And Michelle notes 'a real mess as this is per capita to the states from IGRA and not agar up from what I recall.' So seems like a very, very informed question. Certainly not something I have a lot of knowledge about. So which of you would like to take that first? I think there's a question about the difference between states and the difference in certainly that part and that transfer of money that's so interesting to consider.

**Dave Tovey** 1:08:05

I can try and go real quickly, just that we don't have a revenue agreement with the state of Oregon. But talking with some of the past state negotiators, a good friend Chip Lazenby was with Governor Kitzhaber and he noted, years later as we kind of trade war stories, that there's enormous pressure on them and the governor because the governor has that executive right to negotiate these compacts and the legislature always wanted to dip it in there for revenue purposes. He always said, there's enormous pressure on him to do some kind of agreement like that. So in Oregon here, we settled on a set aside, or charitable giving. So all the tribes here in Oregon have set up foundations that in turn, kind of reinvest back into the community and that's been a great thing for small nonprofits in our local communities, but also for goodwill.

**Robert (Bob) Miller** 1:09:12

I can make a few comments on that. The case that I mentioned from 1996 Seminole Tribe versus Florida, in which the Supreme Court held that tribes cannot sue the state over their IGRA negotiations because of state sovereign immunity, it caused a Earthquaker, or what we call a sea change in the relationship of the compacting that had been going on regularly until then. It was two and a half years after that seminal case before there was another tribal state compact. The states learned they had all the power and they could demand that tribes give concessions.

**Robert (Bob) Miller** 1:09:53

If you all remember when Governor Arnold Schwarzenegger ran for office, what did he say, Dave's laughing already because he knows. He said 'it's time for the tribes to give their fair share.' Well, if you know anything about Indian history that would probably make you throw up. (It's) the most ignorant, stupid statement I've ever heard in my life. But he extracted, he extorted concessions from the tribes in California. Now, with the IGRA itself, Congress said that Indian gaming that this act was not designed to give states money, it's not designed to provide tax dollars for states. It's to help tribes do the wonderful things Dave described and how the economic benefit this has been at Umatilla. So but you just can't help it. This is a result of the Supreme Court decision in 1996. So I wrote a chapter on Indian gaming in my 2012 book, it's called *Reservation 'Capitalism'* quotes around the word capitalism and I discussed these compacts briefly, I discussed Schwarzenegger, and the concessions the tribes have to make. Quite a few tribes, though, have gotten states to say we'll give money. So like Dave says, in Oregon, the tribes negotiated in an interesting way to do this, but the state still wanted some share of monies, didn't they Dave? And I'm not gonna try to put words in your mouth. But in other states, it's been far worse. The Bureau of Indian Affairs and the National Gaming Commission in NIGC, National Indian Gaming Commission, have realized that if tribes get agreements like exclusive rights to offer the only gaming in the state, then that's a valid contractual exchange for doing whatever the state might

have demand. So we still have gotten through that, compacts are done now, the states have more power than Congress meant them to have.

**Megan Foucht** 1:11:53

Thank you. I have my own kind of add-on question there, if you don't mind, which is kind of the first time I've heard about that difference between compacts and contracts. And, also considering Dave, you mentioned, one of your three legs of your stool is about lands, and you've done a lot of land acquisition. And, Bob, you mentioned that there is a big push back, again, from the federal government, on any other branch, really to extend other compacts, to tribes and Native people. So I'm wondering about, there's some models now of shared agreements about land use on state and federal lands, there's interest around like, Indigenous guardianship for natural resources. And I'm just kind of wondering like it with this experience you have in negotiating these other kinds of legal and structural models for economics, like, what about land management? And how is that kind of coming up for you all right now?

**Robert (Bob) Miller** 1:13:07

Dave, I don't know. Do you have any thoughts first? Because, Megan, I don't quite remember what you're saying I said about federal pushback on compact. So I don't quite know the question.

**Dave Tovey** 1:13:19

Well, I could just really quickly chime in for the primacy of authority is always how we've kind of viewed it. There's certain laws, EPA, Oregon's Department of Environmental Quality, we knew that those are things we started to follow in terms of outcomes we want to be under our control. Same with the state fire marshal, same with our gaming commission, we didn't want to turn over, we still want to be the primary enforcer, if you will, of those things. Even if we have to kind of mirror somebody else's rules. I kind of envisioned it was like slowly clipping all the ribbons of all the agencies, federal and state that were controlling us. And, to do that effectively, I think we had to make sure we had enough horsepower ourselves, we just couldn't demand that authority without having the capacity and capability to stand up and do it. So I think to us, that was always the challenge and the objective. I always say, when I was developing Wildhorse, the other thing I got yelled at by my boss, Gary George, was for popping off saying I used to think I hated regulators. Now, I know I do. And it was all of our own departments that kind of crushed my head for me to do this and the ever soiled task. Okay, well, I had to have you guys help me do my job. I'd be better at it than 20 of you sitting there watching me do it.

**Robert (Bob) Miller** 1:14:51

Well, thank you and Gary George used to be my boss on a board of directors. I know Gary very well. Let me just throw in a couple things, because in that tiny little list of laws that I mentioned that Congress passed in the 80s, is that Congress amended every single federal environmental law to involve tribal governments and to give tribal governments primacy over environmental decisions in Indian country. And that has been part of this self government movement, self-governance. As Dave said, building capacities of tribes, that's the wonderful story, and I repeat Charles Wilkinson's book, the points he makes. So this paternalism I talked about earlier, we're not interested in that anymore. We want the feds to be our partner. We have treaty rights. We of course, will accept any federal dollars and demand those federal programs but what we're afraid of is Congress may be thinking in the back of its mind that

one day it can get rid of these federal programs and doesn't have to pay. So that's the tension I mentioned. My talk is about these eras of federal Indian policy, but state law does not apply in Indian country. The Supreme Court has held that since 1832, so tribes are the government's, the feds are our partners. Let's work together. And that's what self governance and self determination is about. And Congress is fully on board.

**Robert (Bob) Miller 1:17:10**

I forgot to say this earlier, folks, but various historians and law pros will tell you that Congress has not passed a law that tribes' resisted since 1968. Where did the tribes get that power? Well, one, they finally got some money. They got some discretionary spending that Dave was also talking about. They could send tribal leaders to Washington, DC to go to the offices of senators and congressmen and women. My old law firm's main office was in DC. We had three people we called legislatents, their sole job was lobbying the federal government, helping our clients come to town, set up appointments, and then go talk to these people. There's a quote I have in a book in the 60s, some senator said, 'Well, we never see tribal leaders, I guess they got no money, and they can't afford to come here.' So that's why laws used to be passed that we didn't objected to. That's why the termination era got passed. When we were vociferously against it. That's never going to happen again. Let me give you just one example, the United Nation of New York gave \$5 million dollars to the Clinton Gore campaign in '94. They gave \$5 million to the building of the American Indian museum on the mall in DC. That is influence Dave, I was taken by the photos of some of your slides, the influence your tribes now have in Eastern Oregon as the number one employer, how can the city? How can the county? How can the state ignore you anymore? Never again. So that gives us a seat at the table. The old joke: if you're not at the table, you're on the menu. Well, we are now at the table. That's the self governance era.

**Megan Foucht 1:18:24**

Awesome. Yeah. And I see the thumbs up from Dave. And actually, we have some questions that are building on this. Unless Dave, do you want to continue there? I can move on to the building on that. Okay. Yeah. Because questions about the move to place a full time lobbyist in Salem, Today a viewer talking about your early experience of going going around and like building relationships with state county city agencies when you were working on the first developing Wild Horse and this influence and and I wanted to tie it back also to Bob, what you mentioned about the National Congress of American Indians. President Fawn Sharp is like, very inspiring to me. But what is, uh, can you talk more about that both of you mentioned, like, there's this horse power that needs to happen around political influence and power. What is it like, where is that going now? We just saw a huge movement in the last voter turnout among Native communities. So many incredible Native electors. Deb Holland, what do we hope? What are we hoping for in the next kind of phase of this or the next push around? That kind of power and influence?

**Dave Tovey 1:19:54**

One thing I can say is, like partley when I was working for the Coquille Tribe and I spent time on the west side of Oregon with tribes, and at one end, it seemed like the attitude here locally anyway, changed, where it kind of went from patronizing saying 'oh, you cute little Indians out there. You keep doing your little sovereignty thing and you'll be fine.' To where it's kind of fearful, like, 'You guys are so big and powerful, you can crush us,' and I gotta say, I hated both equally. Just treat us straight up with

respect, we've always tried to stand up as an organization and individuals, we don't need to be feared or pitied. We're trying to do our job just as you're trying to do your job, and make it make the world better. And, and I think that's, at least for me, that's what I think we try to do all the time.

**Robert (Bob) Miller** 1:21:06

Yeah, I echo that. And Dave, what you said earlier, I interviewed Antone back in '09 for my book, and this is what he preached all the time. Dave repeated that your tribe didn't keep your plans secret. You weren't sneaking around, you were talking to people. I think I have a quote from Antone in my book. He said, 'Well, you can resist this if you want, or you can support us if you want. But here's what we're going to do.' And that's exactly what Dave just said, I support him 100%. We're talking about trying to raise all votes. We're trying to make our reservations places where families can live with adequate wage jobs, adequate middle class housing, if you want to call it that. Educational Facilities. I love the school system that the Umatilla tribes are starting the language program, like Dave said, the health clinic. There's just, this is building a community that's going to last for the next seven generations. This is what tribal leaders have always done. How do we perpetuate ourselves? What is the best way to do it? So the state gets out of the way, Feds you get out of the way too. But of course, we want to partner with you and we're stronger if we work together. So Dave, that's what your message has been and what the Umatilla tribes did, and so I applaud you all.

**Robert (Bob) Miller** 1:22:25

I just have my own tribe folks, too. We're in Oklahoma, we have no land. The feds gave us 52 acres in the night in 1937. That's all the Eastern Shawnee tribe had. We have purchased maybe, maybe up to 1000 acres since then, we have our casino, a great big hotel with two towers we built, we did the same kind of development that Dave has described at Umatilla. But under this new McGirt decision from July of 2020, our reservation will be re recognized from 1888. It's only 14,000 acres Dave, but that will be a new world for my tribal people, my government, my tribal government. Now you have jurisdiction and your ruling over land. Before we had no lands to really be sovereign over or to have a court system or police force, etc. Now it's a different story. So this is what Umatilla faces. This is what the Navajo Nation here in my state with the largest reservation in the United States, 300,000 people living there, you have to be a nation. I listened to the Ron Allen talk that he gave from Ecotrust, we are trying to build a nation and a community that functions and is viable into the future. So that is a laudable goal. That is the goal of tribal leaders and tribal communities. That's what we're talking about today.

**Megan Foucht** 1:23:58

Absolutely.

**Megan Foucht** 1:24:00

Um, the title of this briefing is described as breaking chains, and what are the next chains that need to be broken? What is the direction of future legislation not just IGRA, but all of Indian Affairs and what more needs to be done? And this question comes from our esteemed Lisa Watt.

**Robert (Bob) Miller** 1:24:26

I'll start because, well, the law aspect of it then. So what is next? I'm not much of a visionary and I hate to make predictions because my predictions are always wrong. Do people know what the United

Nations Declaration on the Rights of Indigenous Peoples is? The UN spent 30 years and Indigenous peoples from around the world, including many tribal representatives here from the United States, were there for 30 years drafting this declaration. Now I do want to say this to be fair to the United States, folks. I've done a fair amount of work in Australia now and gotten to know New Zealand, a little bit about Canada. The United States is a model in the world on how to deal with tribal peoples. Most countries did not sign treaties with their Indigenous peoples, and even Australia and New Zealand today do not recognize sovereignty of the Maori tribes. They're called IWI, the IWIs in the Maoris or New Zealand, Aboriginal groups, I'm not sure what bands or tribes groups. So the United States may be, and Canada to somewhat, the view of tribal sovereignty. Well, that's because it's in our Constitution. That's why it's so crucial that Article One, Section Eight, clause three, I showed you at the start, and the defining of Indian individuals, as citizens of their own politics, their own policies. So there's a big push now to get the United States to adopt the DRIP Declaration on the Rights of Indigenous Peoples as federal law.

**Robert (Bob) Miller** 1:26:13

A few countries are like Bolivia and Ecuador. Now they're led by Indigenous peoples, the population is heavily Indigenous in those two countries. Evo Morales was the President of Bolivia for a decade or more, an Indigenous person, and a few other countries are considering adopting the DRIP. And so far, the United States is 'no way.' If you guys don't know this, the only four countries in the UN that voted against the Declaration on the Rights of Indigenous Peoples in September 2007, guess what four authoritarian, evil empire countries, those were: the United States, Canada, New Zealand, and Australia, the four allegedly most liberal democracies in the country or in the world. But anyway, first Australia, then New Zealand, then Canada, and then the US under Obama, in 2010, all begrudgingly adopted the DRIP and said we will comply with it. But Canada, and President Obama said the same thing, we will comply with it as much as it meets federal Indian law already, so no real meaning to it. So that is a big argument. When you asked me about the future, are we going to free ourselves of some of the chains that still exist in federal Indian law? Adopting the DRIP? Wow, that would be kind of revolutionary, because now the United States would be looking to an international body to adopt various standards.

**Megan Foucht** 1:27:48

Dave, do you want to build on that at all?

**Dave Tovey** 1:27:50

It's a tough one. I think we always get inspired by other tribes and Indigenous cultures hanging on. One thing I would I would note, I had a meeting in DC recently and got invited over by National Park Service, Chuck Sams, I like to brag on about him, and got to sit in his office and he said one of the most remarkable things happened to him recently and Interior Secretary Haaland had a kind of all their top agency hats sitting around the table and of course, Chuck being one of them, and here it is the Department of Interior here and six out of the 11 folks around the table were Indian people, and he goes, 'Wow, this is where change can happen.' So I don't know. In terms of the vision, I don't know that I have the vision anymore. I think I got way too much credit for doing it early on. And I think it's for the next generation of leadership coming up. But I think and I just keep hoping and praying that things are going to keep getting better and better for us.

**Lisa Watt** 1:29:12

Thank you, Bob. And Dave, thank you so much. I can't say thank you enough. We have one final question here and thanks to everybody who submitted questions we greatly appreciate it in the time that we've had. We have a number of nonprofit organizations and just interested parties that are looking to create relationships with tribal communities, and granted a lot of these are new relationships or a new desire to reach out to tribes. What recommendations would you have to help these people and organizations to develop those relationships with tribes?

**Dave Tovey** 1:29:59

Thank you. Wanna go first? I think the big thing is to make sure you get invited in. I think everybody's feelers go up in any country when somebody is coming in to take care of us or save us. I know there's always those good intentions, but I think if you can kind of find that champion that knows how to make those introductions, and it might be, kind of a lower kind of manager like I've mostly been, who could be trying to get you to the Antone Minthorns or your Cat Brighams, that kind of that level of leadership. But, I think also, if you have empathy and understand truly what our situation is, and really try to identify those things that might be of importance to our organization or community, I think that sure helps. Because, it's better responding to that kind of opportunity, rather than getting a sales pitch. You'll notice managers here never take vendor calls? But I know sometimes it can be hard to get inside the door.

**Lisa Watt** 1:31:24

Yeah, for sure.

**Robert (Bob) Miller** 1:31:26

Well, I have like, four quick points. But I'm delighted to hear that the awareness of both the power and influence and perhaps even resources of tribal governments are coming to the attention of nonprofits. I think that's both fair and wonderful. First off, you have to show respect, I think Dave sort of alluded to that already. Secondly, I recommend this to attorneys who may litigate with a tribe or litigate against a tribe or want to work with a tribe, you need to learn a little bit about the history of that tribe. Read that tribe's constitution, who has the authority to do so, who can exercise the tribe's political authority, maybe know something about their laws. But one thing I always tell people, and so Dave, you just alluded to this, is you can't pick up your phone and talk to the chairperson at the Confederated Tribes of the Umatilla Indian Reservation, that's like calling the governor of Oregon, or the chair of the county commission and think you're going to get that person on the phone and be in their ear for an hour, are you kidding? They have so many balls in the air and issues and community. And like Ron Allen's talk for Ecotrust, so many things going on, so many things to deal with, and here comes a call from a nonprofit or even from a federal agency, folks, it's a big issue.

**Robert (Bob) Miller** 1:32:52

I wrote an article about consultations in 2015. There's too many consultations today, tribal leaders are pulled in so many directions to show up and help the Feds decide whether they should buy number two pencils, or number 2.5 pencils, and so it's become ridiculous. So someone that's asked this question, if you're approaching a tribal leader, then like Dave said, you start out with someone on your level in a tribal department and maybe they'll get you introduced, maybe they'll get you on the tribal agenda of a tribal council meeting someday. But there's protocols and timing and understanding. It's like you're

trying to talk to the governor, how do you do that? So show that kind of respect, that kind of knowledge. And that can help you.

**Lisa Watt** 1:33:40

Okay, thank you. Thank you both. Bob, I really appreciate your comment about knowing the history, that people really do have to understand that history because it always I'm always kind of surprised when, for example, talking about the Trail of Tears, talking about what happened to the Cherokee over there. And you said it happened to your tribe as well. Well, a Trail of Tears happened for all nine Oregon tribes as well. It wasn't something over there. It happens in your backyard. It's the same thing with boarding schools up in, up in Canada and First Nations. We sit here in America and say, 'Oh, Canada is awful, look what they've done to Indigenous First Nations people, their boarding schools.' You don't have to look too far to find the same story or a very similar story that's happened here in the United States.

**Robert (Bob) Miller** 1:34:32

Lisa, my mom, went to the Seneca Indian School in Wyandotte, Oklahoma from kindergarten to the ninth grade, so you don't have to look very far.

**Lisa Watt** 1:34:41

Right. Exactly, exactly. I'm going to do two quick things. Again. 'Blood Struggle' by Charles Wilkinson. Great book. Be sure to pick that one up. This book will be listed in the suggested reading list.

**Robert (Bob) Miller** 1:35:01

And Wilkinson is not giving me a kickback for promoting.

**Lisa Watt** 1:35:09

I would also like to recognize our esteemed leader Antone Minthorn, who has joined us for this briefing today. Thank you for being here. And, um, before we close, we'd like to offer a few more remarks in addition to profusely thanking the both of you today. It has been a really wonderful experience. We'd like to call your attention to a few excellent nonprofit organizations Bob and Dave support, we hope you will consider learning more and supporting them. The links will be placed in the chat for Bob is the [American Indian Graduate Center](#) in Albuquerque. And the [National Indian Child Welfare Association](#), which is located here in Portland. For Dave is the [Nixyaawii Community Financial Services](#), of which he is the executive director. Also the [Tamástsiht Cultural Institute](#), which is located on the Umatilla reservation in Eastern Oregon. You heard Bobbie Connor speak earlier, and she's a director there. Also the Indian land [Tenure Foundation](#), as well as the [Affiliated Tribes Northwest Indians Economic Development Corporation](#). Again, all of the links are placed in the chat. Please, please, please learn more about these wonderful organizations that are native led and offer your support.

**Megan Foucht** 1:36:28

And as always, we would appreciate your feedback about this final briefing. A five minutes survey will be sent to you immediately following this gathering. Please do take a moment to complete it, even if you have provided feedback in a past briefing or briefings please do it again. And for those of you who have attended all four briefings, there are three questions for you at the end, your feedback about the



entire series will be most helpful as we begin designing next year's events. And we thank you very much for your time on that. And to follow Ecotrust work with Indigenous communities, please consider signing up for our bi weekly newsletter. There is a lot more good work with indigenous communities from across the organization coming up. And the link to sign up is in the chat.

**Lisa Watt** 1:37:15

Thank you, Megan. Again. Thank you, Dave. Thank you, Bob. Thank you very much. This concludes our inaugural Indigenous Leadership briefing series. We thank each of you for sharing your time with us and for the valuable feedback that you've provided. We hope we've deepened your understanding or raised your awareness or provided a new appreciation for Indigenous leadership, determination and knowledge. And we hope you will join us here in Portland on June 23 to celebrate the Indigenous Leadership awards. Sorry, and four remarkable Native leaders. Watch your inbox for more information, until next year. Thanks everyone.

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