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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re

**Curtis Vale Womelsdorf &
LaVonne Mae Womelsdorf,**

Debtors.

Case No. 12-62075-fra7

MOTION FOR RECONSIDERATION OF
ORDER DISMISSING EMERGENCY
MOTION TO VACATE *EX PARTE* ORDER
FOR FRBP 2004 EXAMINATION

The undersigned certifies that counsel for the Trustee and the Umpqua Indian Development Corporation (“Corporation”)¹ made a good-faith effort via telephone conference to resolve the dispute and have been unable to do so. The Corporation files this Motion for Reconsideration Of Order Dismissing Emergency Motion To Vacate *Ex Parte* Order For FRBP 2004 Examination.

¹ The Corporation reiterates its Special Appearance, which it makes for the limited purpose of moving this Court to vacate the Fed. R. Bankr. Proc. 2004 Order and without waiver of any objections to the jurisdiction of the Court. The Corporation does not hereby waive its sovereign immunity, in any form, as to counterclaim, process, service, suit, or otherwise, or otherwise consent itself or any affiliate or agent to the jurisdiction of this Court or any tribunal.

MOTION FOR RECONSIDERATION
OF ORDER DISMISSING EMERGENCY MOTION
TO VACATE *EX PARTE* ORDER
FOR FRBP 2004 EXAMINATION - 1

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This Motion is supported by the accompanying Memorandum and Declaration and all pleadings and papers on file herein.

DATED: April 7, 2015.

GALANDA BROADMAN, PLLC

s/Anthony S. Broadman

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re

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Debtors.

Case No. 12-62075-fra7

MEMORANDUM IN SUPPORT OF
MOTION FOR RECONSIDERATION

I. INTRODUCTION

The Umpqua Indian Development Corporation (“Corporation”) ¹ seeks reconsideration of the Order Denying Emergency Motion To Vacate Order For Fed. R. Bankr. Proc. (FRBP) 2004 Examination. Doc. #305. Respectfully, the Court erred when it ruled that a Section 17 corporation constitutes a “governmental unit” as that term is defined at 11 U.S.C. § 101(27); and further, that the holding in *Krystal Energy Company*

¹ The Corporation reiterates that its participation here is a Special Appearance for the sole purpose of asking the Court to vacate the Fed. R. Bankr. Proc. 2004 Order without waiver of any objections to the jurisdiction of the Court. By specially appearing to object to the Court’s Order, the Corporation does not waive its sovereign immunity, in any form, as to counterclaim, process, service, suit, or otherwise, or otherwise consent itself or any affiliate or agent to the jurisdiction of this Court or any tribunal.

v. Navajo Nation, 357 F.3d 1055 (9th Cir. 2004), waives immunity for a FRBP 2004 examination. The Court also erred by declining to vacate the *ex parte* FRBP 2004 Examination Order given the Trustee's failure to name the real party in interest thereto.

Reconsideration will permit the Court to correct these manifest errors of law and vacate the *ex parte* FRBP 2004 Examination Order.

II. FACTS

The Corporation is a federal corporation that is owned by a non-party, the Cow Creek Band of Umpqua Tribe of Indians. Declaration of Carol McKinney In Support Of Motion For Reconsideration ("McKinney Decl."), at ¶3. In particular, the Corporation is a "Section 17 corporation," having been chartered by the Secretary of the U.S. Department of the Interior pursuant to Section 17 of the Indian Reorganization Act of 1934 (IRA), 25 U.S.C. § 477. *Id.*, at ¶2; *id.*, Ex. A.

On March 3, 2015, the Trustee obtained an *ex parte* Order For FRBP 2004 Examination against "Seven Feathers Casino Resort." Doc. #287. "Seven Feathers Casino Resort," however, is merely a trade name—a d/b/a. McKinney Decl., at ¶¶4-5.

On March 13, 2015, the Corporation made a Special Appearance to file an emergency motion to vacate the March 3, 2015, *ex parte* Order. While finding that "[t]he Corporation is the real party in interest to the Court's March 3, 2015 *ex parte* Order," the Court denied the Corporation's motion, declining to vacate the March 3, 2015 *ex parte* Order. Doc. #305.

III. STANDARD OF REVIEW

A motion for reconsideration is governed by Fed. R. Civ. Proc. 59(e) and FRBP 9023. *Prudential Ins. Co. v. Farley*, 158 B.R. 48, 52 (E.D. Pa. 1993); *McDowell Oil*

Serv., Inc. v. Interstate Fire & Cas. Co., 817 F.Supp. 538, 541 (M.D. Pa. 1993). “The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence.” *In re Scotto-DiClemente*, 463 B.R. 308, 310 (Bankr. D.N.J. 2012), *aff’d sub nom.*, No. 11-28230, 2012 WL 3314840 (D.N.J. Aug. 13, 2012); *see also In re Lustig*, No. 07-3267, 2008 WL 5831708, at *1 (Bankr. D. Or. Dec. 11, 2008) (same).

Here, reconsideration is warranted to correct manifest errors of law, particularly the Court’s rulings of April 2, 2015: (1) that “the governmental unit waiver in Section 106(a) extends to the Corporation”; (2) that “the holding in *Krystal Energy* . . . extends to Fed. R. Bankr. Proc. 2004”; and (3) vacating the Court’s March 3, 2015, *ex parte* Order against “Seven Feathers Casino Resort,” given that “[t]he Corporation is the real party in interest” thereto, was incorrect. Doc. #305, at 2-4.

IV. LAW AND ARGUMENT

Despite their independent status, Section 17 corporations are immune from both suit and process.² *Navajo Tribal Util. Auth. v. Arizona Dep’t of Revenue*, 608 F.2d 1228,

² Indeed, as a creature of federal legislation, the authority exercised by the Corporation is derived from the federal government via 25 U.S.C. § 477, rather than the Tribe itself. That statute provides in relevant part:

The Secretary of the Interior may . . . issue a charter of incorporation to such tribe Such charter may convey to the incorporated tribe the power to purchase, take by gift, or bequest, or otherwise, own, hold, manage, operate, and dispose of property . . . , including the power to purchase restricted Indian lands and to issue in exchange therefor interests in corporate property, and such further powers as may be incidental to the conduct of corporation business, not inconsistent with law”

See also Md. Cas. Co. v. Citizen Nat’l Bank of W. Hollywood, 361 F.2d 517, 520 (5th Cir. 1966) (“[T]he powers granted to the [Section 17] corporation were only those which the Secretary of the Interior, by the terms of the charter, conveyed to them”); *Seaport Loan Products, LLC v. Lower Brule Cmty. Dev. Enter. LLC*, 981 N.Y.S.2d 638 (N.Y. Sup. Ct. 2013) (“The power to confer Section 17 privileges rests exclusively with the Secretary of the Interior.”); *Uniband, Inc. v. C.I.R.*, 140 T.C. 230, 261-62 (2013) (“[A] section 17 charter will confer only powers that the Secretary of the Interior is willing for the corporation to possess.”); *Atkinson v. Haldane*, 569 P.2d 151, 171 (Alaska 1977) (“[S]ection 17 permits the Secretary to grant incorporated tribes far-reaching powers with respect to the conduct of business activities.”); *Keifer &*

1231 (9th Cir. 1979); *American Vantage Companies v. Table Mountain Rancheria*, 292 F.3d 1091, 1099 (9th Cir. 2002); *see also Amerind Risk Mgmt. Corp. v. Malaterre*, 633 F.3d 680, 685 (8th Cir. 2011); *Memphis Biofuels v. Chickasaw Nation Indus., Inc.*, 585 F.3d 917, 920 (6th Cir. 2009).

This is so even where the parent tribe itself has attempted to waive the Section 17 corporation's immunity. *See, e.g., id* at 922 (holding that "acts of tribal officials are insufficient" to waive the immunity of a Section 17 corporation, as "without board approval, [a Section 17 corporation]'s sovereign immunity remains intact"); *Native Am. Distrib. v. Seneca-Cayuga Tobacco Co.*, 546 F.3d 1288, 1295 (10th Cir. 2008) (holding that representations of "[t]he Tribe's officials" cannot affect a tribal corporation's "immunity from suit"); *Sanderlin v. Seminole Tribe of Fla.*, 243 F.3d 1282, 1288 (11th Cir. 2001) (same).

A. The Court Committed A Manifest Error Of Law: Section 106(a) Does Not Waive The Corporation's Immunity.

1. The Corporation Is Not A "Governmental Unit."

Title 11 U.S.C. § 106 waives sovereign immunity only for "governmental units." *In re Kaiser Grp. Int'l, Inc.*, 302 B.R. 814 (D. Del. 2003). Title 11 U.S.C. § 101(27) defines a "governmental unit" as follows:

The term "governmental unit" means United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or **domestic government**.

Keifer v. Reconstr. Fin. Corp., 306 U.S. 381, 389 (1939) ("Congress may, of course, endow a governmental corporation with the government's immunity."). Indeed, the Section 17 Certificate of Good Standing and Compliance confirms that the Corporation "is duly authorized to transact business and to exercise the powers, privileges **and immunities granted by said Act**," meaning 25 U.S.C. 477. McKinney Decl., Ex. B (emphasis added).

11 U.S.C. § 101(27) (emphasis added). Although the term “tribe” is absent from this definition, in *Krystal Energy Co. v. Navajo Nation* the Ninth Circuit Court of Appeals held that “the category ‘Indian tribes’ is simply a specific member of the group of **domestic governments**, the immunity of which Congress intended to abrogate.” 357 F.3d 1055, 1058 (9th Cir. 2004), *as amended on denial of reh’g* (Apr. 6, 2004) (emphasis added); *but see In re Whitaker*, 474 B.R. 687, 695 (8th Cir. 2012) (“We hold that in enacting § 106, Congress did not unequivocally express its intent by enacting legislation explicitly abrogating the sovereign immunity of tribes. . . . [H]olding otherwise requires an inference which is inappropriate in this analysis. The Tribes are, therefore, protected from suit here by their sovereign immunity.”).

Here, the Court has been asked to determine whether the Corporation—a federal corporate entity organized under Section 17 of the IRA, 25 U.S.C. § 477—is an “Indian tribe” and therefore a “domestic government” as that term is used in 11 U.S.C. § 101(27). In making this determination, the Court “‘must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose.’” *In re Rinard*, 451 B.R. 12, 19 (Bankr. C.D. Cal. 2011) (quoting *Park ‘N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 194 (1985)); *see also In re Ramey*, 266 B.R. 857, 860 (Bankr. S.D. Iowa 2001) (“The well-settled rule is that courts must apply the plain meaning canon of statutory construction when interpreting the Bankruptcy Code.”) (quotation omitted); *Rodriguez v. Holder Jr.*, 619 F.3d 1077, 1079 (9th Cir. 2010) (“In interpreting a statute, we look to its plain

language.”); *Coronado-Durazo v. I.N.S.*, 123 F.3d 1322, 1324 (9th Cir. 1997) (“In interpreting statutes, we begin with the language of the statute itself.”).

In addition, any ambiguities must be construed in favor of sovereign immunity and for the benefit of the Corporation. *See United States v. Nordic Village, Inc.*, 503 U.S. 30, 34 (1992) (any waiver of sovereign immunity “must be construed strictly in favor of the sovereign”); *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766 (1985) (“statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit.”); *Artichoke Joe's California Grand Casino v. Norton*, 353 F.3d 712, 729 (9th Cir. 2003) (same); *Peterson v. California Dep't of Corr. & Rehab.*, No. 06-0349, 2006 WL 3349519, at *6 (E.D. Cal. Nov. 16, 2006) (“[T]he ‘sovereign immunity canon’ . . . requires all waivers of sovereign immunity to be read narrowly in favor of the sovereign.”); *Cherokee Nation of Oklahoma v. United States*, 73 Fed. Cl. 467, 474 (2006) (“[A] basic canon of construction requires that the ambiguity be resolved in favor of the Indians.”).

Without analysis of the text of 11 U.S.C. § 101(27) or paying service to the applicable canons, the Court has incorrectly answered the inquiry as follows: “the governmental unit waiver in Section 106(a) extends to the Corporation.” Doc. #305, at 3. In so holding, the Court committed a manifest error of law.

First, in both this District and in the Ninth Circuit Court of Appeals there is on-point law in this regard: “**tribal corporations are legal entities distinct from the tribe**,” *Roberson v. Confederated Tribes of Warm Springs of Oregon*, No. 79-546, 1980 WL 18759, at *2 (D. Or. Feb. 4, 1980) (emphasis added). In other words, “**Native**

corporations are not tribes.”³ *Navajo Tribal Util. Auth.*, 608 F.2d at 1231 (quotation omitted; emphasis added); *see also Boe v. Fort Belknap Indian Cmty.*, 455 F. Supp. 462, 464 (D. Mont. 1978), *aff’d sub nom.*, 642 F.2d 276 (9th Cir. 1981) (“[T]he [Section 17] corporate organization and the tribal organization are not the same entity.”); *Robinson v. Salazar*, 838 F. Supp. 2d 1006, 1028 (E.D. Cal. 2012) (“[A] tribe does not include . . . semi autonomous tribal entities.”) (citation omitted); *Veeder v. Omaha Tribe of Nebraska*, 864 F. Supp. 889, 899 (N.D. Iowa 1994) (holding that a tribe and a Section 17 corporation “are legally distinct entities”); *Ogden v. Iowa Tribe of Kansas & Nebraska*, 250 S.W.3d 822, 826 (Mo. Ct. App. 2008) (“[I]f a tribal corporation is organized [under Section 17], it is an entity separate from the tribe itself.”); *S. Unique, Ltd. v. Gila River Pima-Maricopa Indian Cmty.*, 674 P.2d 1376, 1381 (Ariz. Ct. App. 1983) (“[Tribal] governments and section 17 corporations are different entities.”).

Second, “the legislative purpose,” *In re Rinard*, 451 B.R. at 19 (quotation omitted), of 25 U.S.C. § 477 was clearly to segregate Section 17 corporations from their parent tribes:

A study of the legislative background of the Indian Reorganization Act makes clear the distinction between the organization of an Indian municipal government . . . and that of a business corporation under Section 17 The purpose of Congress in enacting Section 17 of the Indian Reorganization Act was to empower the Secretary to issue a charter of business incorporation to such tribes to enable them to conduct business through this modern device, which charter cannot be revoked or surrendered except by Act of Congress. **This corporation, although**

³ In *Montoya v. United States*, 180 U.S. 261 (1901), the Supreme Court defined the term “tribe” as “a body of Indians of the same or a similar race, united in a community under one leadership or government, and inhabiting a particular though sometimes ill-defined territory” *Id.* at 266. In *United States v. Candelaria*, 271 U.S. 432 (1926), the Court interpreted the term “tribe” as being “a body of Indians of the same or a similar race, united in a community under one leadership or government, and inhabiting a particular, though sometimes ill-defined, territory.” *Id.* at 442 (quotation omitted). Clearly, the Corporation does not meet the terms of either definition.

composed of the same members as the political body, is to be a separate entity

Opinion of the Solicitor of the Department of the Interior, *Separability of Tribal Organizations Organized Under Secs. 16 and 17 of the I.R.A.*, No. M-36515, 65 I.D. 483 (Nov. 20, 1958) (emphasis added).⁴

Third, the plain text of 11 U.S.C. § 101(27) *categorically rejects* the notion that any Section 17 corporation can constitute a “governmental unit.” In the text of the statute, **the term “governmental unit” does not include in its definition a “department, agency, or instrumentality of” a “domestic government.”** 11 U.S.C. § 101(27). These entities qualify as “governmental units” in regard to “a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state” only. *Id.* Because, per *Krystal Energy*, 357 F.3d 1055, tribes only qualify as “domestic governments” (and “domestic governments” only) a “department, agency, or instrumentality” of a tribe cannot meet the statutory definition of a “governmental unit” as that term is defined in the plain text of 11 U.S.C. § 101(27).

Fourth, this Court has found that whether the Corporation qualifies as an “Indian tribe,” and therefore a “domestic government” as that term is used in 11 U.S.C. § 101(27), poses a “difficult question.” Doc. #305, at 3. While the Corporation disagrees with this evaluation—again, the plain text of 11 U.S.C. § 101(27) *categorically rejects* the notion that a Section 17 corporation can constitute a “governmental unit”—to the extent that 11 U.S.C. § 101(27) presents an ambiguity the Court committed a manifest error of law by failing to apply the pertinent canons. Again, if there is any ambiguity in a statute that waives sovereign immunity, it *must* be construed in favor of the sovereign.

⁴ This comports with the general rule that a corporation is treated as distinct from its shareholders. *See, e.g., Moline Props., Inc. v. Commissioner*, 319 U.S. 436, 438-39 (1943).

See *F.A.A. v. Cooper*, 132 S. Ct. 1441 (2012) (overturning the Ninth Circuit Court of Appeals for failing to apply the “sovereign immunity canon”). And if there is any ambiguity in a statute as applied to tribal entities, the Court *must* construe the statute “in favor of the Indians.” *Cherokee Nation*, 73 Fed. Cl. at 478 (citing *Chickasaw Nation v. United States*, 534 U.S. 84, 93-94 (2001)). Here, by failing to apply these canons, the Court committed manifest error. See *In re Smale*, 390 B.R. 111, 114 (Bankr. D. Del. 2008) (“If the statute is ambiguous, the Court *must* use other canons of statutory construction”) (emphasis added).

In sum, *Krystal Energy* did not involve a Section 17 corporation or a nonparty subject to a FRBP 2004 expedition; it involved a “domestic government” sued in an adversary action under 11 U.S.C. §§ 505 and 542. 357 F.3d at 1055-56. It is settled law in this jurisdiction that “[t]ribal corporations are legal entities distinct from the tribe.” *Roberson*, 1980 WL 18759, at *2. And the Court must “assume that Congress knows the law.” *United States v. Staggs*, 152 F.3d 931, 931 (9th Cir. 1998) (citing *Albernaz v. United States*, 450 U.S. 333, 341 (1981)). If Congress wished to waive immunity for Section 17 corporations or other tribal corporations, it needed to do so clearly and unequivocally. *In re Mayes*, 294 B.R. 145, 156 (10th Cir. 2003). Because it did not, however, this Court is prohibited from exercising jurisdiction over the Corporation.⁵

2. *Even If The Corporation Is A “Governmental Unit,” Section 106(a)(1) Does Not Waive The Corporation’s Immunity for FRBP 2004.*

Section 106(a)(1) reads as follows:

Notwithstanding an assertion of sovereign immunity, sovereign immunity is abrogated as to a governmental unit to the extent set forth in this section

⁵ Yet another canon that the Trustee cannot overcome is that “statutory jurisdictional doubts are to be resolved against federal jurisdiction.” *Assiniboine & Sioux Tribes v. State of Mont.*, 568 F. Supp. 269, 278 (D. Mont. 1983).

with respect to . . . Sections 105, 106, 107, 108, 303, 346, 362, 363, 364, 365, 366, 502, 503, 505, 506, 510, 522, 523, 524, 525, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 722, 724, 726, 744, 749, 764, 901, 922, 926, 928, 929, 944, 1107, 1141, 1142, 1143, 1146, 1201, 1203, 1205, 1206, 1227, 1231, 1301, 1303, 1305, and 1327 of [Title 11].

11 U.S.C. § 106(a)(1). The Trustee has argued that “the breadth of Section 106(a) includes 11 U.S.C. § 105(a), which gives bankruptcy courts the powers to implement and enforce its ‘rules,’” including FRBP 2004. Doc. #299, at 3. The Court has agreed. *See* Doc. #305, at 3 (“Sovereign immunity is waived . . . pursuant to Section 106(a) of the Bankruptcy Code.”). Respectfully, the Court has committed manifest error by adopting the Trustee’s interpretation.

While it is true that the Court “may issue any order, process or judgment that is necessary or appropriate to carry out the provisions” of Title 11 per Section 105(a), “that authority is not limitless.” *In re Idaho Agriquipment, Inc.*, 54 B.R. 114, 115 (Bankr. D. Idaho 1985). No bankruptcy court in the Nation has held that FRBP 2004 or any other FRBP constitutes one of the “process[es] . . . that is necessary or appropriate to carry out the provisions” of Title 11. 11 U.S.C. § 105(a). This is because Section 105(a) refers only to the Court’s “inherent power,” not power derived from the FRBP. *Chambers v. NASCO*, 501 U.S. 32, 50 (1991). The FRBPs are promulgated by the U.S. Supreme Court, pursuant to authority granted to the Court in 28 U.S.C. §2075. They do not reflect any power delegated to federal bankruptcy courts. Indeed, in *Chambers* the Supreme Court explicitly distinguished between the Court’s inherent power and the powers derived from the FRBP, cautioning that bankruptcy courts “must exercise restraint and discretion in using [their] powers under § 105(a).” *In re Yates*, No. 04-5619, 2007 WL 7147271, at *4 (Bankr. S.D. Cal. Jan. 26, 2007) (citing *Chambers*, 501 U.S. at 44).

Because “Section 105(a) cannot . . . provide the court with an independent basis on which to issue orders outside the scope of title 11,” there must be an independent “statutory hook in the Bankruptcy Code.” *In re Sindram*, No. 08-0559, 2010 WL 1611104, at *3 n.5 (Bankr. D.D.C. Apr. 20, 2010); *see also Matter of Kelvin Pub., Inc.*, 72 F.3d 129 (6th Cir. 1995) (“The ‘provisions of this title’ simply denote a set of remedies fixed by Congress. A court cannot legislate to add to them.”). In other words, while Section 105(a) does “give[] the bankruptcy court broad equitable powers *a court may exercise its equitable power only as a means to fulfill some specific code provision.*” *In re Canino*, 185 B.R. 584, 592-93 (9th Cir. 1995) (citing *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988)). And FRBP 2004 is not a “specific code provision”; nor did it create one. *Id.* Nor could it:

[A] Bankruptcy Rule cannot create an exception to the Bankruptcy Code. The Supreme Court is authorized under 28 U.S.C. § 2075 to prescribe rules of bankruptcy procedure, but the rulemaking power under § 2075 is limited in the same way as the rulemaking power under the Rules Enabling Act, § 2072(b). Both sections provide, “**Such rules shall not abridge, enlarge, or modify any substantive right.**”

In re Jastrem, 253 F.3d 438, 441-42 (9th Cir. 2001) (citing *Hanna v. Plumer*, 380 U.S. 460, 463-66 (1965)) (emphasis added).⁶

Section 105(a), as incorporated into 11 U.S.C. 106(a)(1), was not intended to subject nonparty governmental units to the panoply of bankruptcy rules. *See* H.R. REP. No. 103-835, 103rd Cong., 42 (1994), *reprinted in* 1994 U.S.C.C.A.N. 3340, 3351

⁶ Fed. R. Civ. Proc. 1’s stated intention to apply to parties in all civil actions has been held sufficient to waive sovereign immunity for the purpose of those federal rules. *In re Graham*, 981 F.2d 1135, 1140 (10th Cir. 1992) (citing *Mattingly v. United States*, 939 F.2d 816, 818-19 (9th Cir. 1991)). But because “[t]he Bankruptcy Rules have no provision comparable to Rule 1,” there is therefore “no waiver of sovereign immunity sufficiently explicit in the Bankruptcy Rules.” *Id.* at 1140. If Congress wanted to create a waiver of sovereign immunity in the Bankruptcy Rules, it could have—but it chose not to. Again, the Court must “assume that Congress knows the law” and should not second-guess Congress’s clear intent in this regard. *Staggs*, 152 F.3d at 931 (citation omitted).

(Section 106(a) was intended to provide a waiver of sovereign immunity by governmental units in order to realize “*monetary recoveries as well as declaratory and injunctive relief*” against them) (emphasis added). The statute merely made explicit the bankruptcy courts’ inherent authority to, for example, control their dockets and impose sanctions. *Hernandez v. City of El Monte*, 138 F.3d 393, 398 (9th Cir. 1998). It did not create a cause of action against nonparties or otherwise subject nonparties to the Court’s jurisdiction.

But even if, arguably, Section 105(a) *could* be read in such a manner as to create “some specific code provision” to enforce (it cannot) the Court must restrain from interpreting the statute as such, in light of the canons discussed above. *Dellmuth v. Muth*, 491 U.S. 223, 230-31 (1989); *Nordic Village*, 503 U.S. at 34; *Blackfeet Tribe*, 471 U.S. at 766; *Artichoke Joe’s*, 353 F.3d at 729; *In re Canino*, 185 B.R. at 593; *Peterson*, 2006 WL 3349519, at *6; *Cherokee Nation*, 73 Fed. Cl. at 474.

C. The Court Committed A Manifest Error Of Law: The Order Failed To Name The True Party In Interest.

An order failing to name a real party in interest should be set aside. *See In re Williams*, 277 B.R. 78, 83 (Bankr. D. Md. 2002). Here, the Court found that “[t]he Corporation is the real party in interest to the Court’s March 3, 2015 *ex parte* Order.” Doc. #305, at 2. But, instead of vacating the Order, the Court ordered the Trustee to “serve process of the Court’s March 3, 2015 *ex parte* Order issued against **the Casino**” by “mailing that prior Order to the chief executive officer of **the Corporation.**” *Id.* (emphasis added). Again, “Seven Feathers Casino Resort” is merely a d/b/a of the Corporation. *Id.* (emphasis added); McKinney Decl., at ¶¶4-5. Accordingly, the Court

committed manifest error by refusing to vacate the invalid *ex parte* Order and instead ordering the Trustee to serve the same Order on the Corporation.

V. CONCLUSION

The Corporation has met its burden for reconsideration under Fed. R. Civ. Proc. 59(e) and FRBP 9023 by demonstrating “manifest error of law.” *In re Lustig*, 2008 WL 5831708, at *1. Section 17 corporations do not constitute a “governmental unit” as that term is defined at 11 U.S.C. § 101(27); and the sovereign immunity as applied to Indian tribal governments by *Krystal Energy*, does not extend to FRBP 2004. In addition, the Court committed manifest error by refusing to vacate the FRBP 2004 Examination Order for failure to name the true party in interest.

THEREFORE, the Corporation’s Motion for Reconsideration of the Order Denying Emergency Motion To Vacate Order for Fed. R. Bankr. Proc. 2004 Examination should be GRANTED and the *ex parte* Order should be VACATED.

DATED: April 7, 2015.

GALANDA BROADMAN, PLLC

s/Anthony S. Broadman

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CERTIFICATE OF SERVICE

I, Anthony S. Broadman, hereby certify as follows:

1. On April 7, 2015, the attached document was served on the persons shown below by depositing a true copy thereof, in a sealed envelope with First-Class postage prepaid and addressed as shown below, in the U.S. Mail, at Seattle, Washington.

Terry Hanscom Oregon Land and Wildlife LLC 1245 Casino Rd Medford, OR 97501	Krista Lacis 4088 Hampshire Ln Eugene, OR 97404
ODR Bkcy 955 Center St NE Salem OR 97301-2555	Gary Rhinehart, MBA, LTC Jackson County Accounting & Tax Svc Inc. 1128 W Main St Medford OR 97501
Ronald C. Becker on behalf of Plaintiff US Trustee, Eugene 405 E 8 th Ave #1100 Eugene OR 97401	

2. Based on the Bankruptcy Court's Electronic Case Filing records, the following person(s) will be served electronically when the attached document is filed with the Court:

John Blackhurst jwb@roguevalleylaw.com, kmv@roguevalleylaw.com

Keith Y Boyd ecf@boydlegal.net, arnold@boydlegal.net

Melisa Button mab@roguevalleylaw.com, kmv@roguevalleylaw.com

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s/Anthony S. Broadman

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re

**Curtis Vale Womelsdorf &
LaVonne Mae Womelsdorf,**

Debtors.

Case No. 12-62075-fra7

DECLARATION OF CAROL
MCKINNEY IN SUPPORT OF
MOTION FOR
RECONSIDERATION

I, Carol McKinney, declare as follows:

1. I serve as executive secretary to the Umpqua Indian Development Corporation (the "Corporation"). I have personal knowledge of the matters set forth in this Declaration. I offer this Declaration without waiver of the Corporation's sovereign immunity, in any form, as to counterclaim, process, service, suit, or otherwise, or otherwise without consenting the Corporation or any of its affiliates or agents, including myself, to the jurisdiction of this Court or any tribunal.

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2. Attached as **Exhibit A** is a true and correct copy of the Federal Charter of Incorporation for the Umpqua Indian Development Corporation (“Charter”), which was issued by Assistant Secretary of Indian Affairs Kevin Gover on behalf of the U.S. Department of the Interior Secretary, on May 12, 1998, pursuant to Section 17 of the Indian Reorganization Act of 1934 (IRA), 25 U.S.C. § 477 (“Section 17”).

3. As the first page of the Corporation’s Section 17 Charter explains, the Corporation is solely owned and separately held by the Cow Creek Band of Umpqua Tribe of Indians, a federally recognized Indian tribe.

4. The Corporation operates a number of businesses, or what we term “divisions.” The Corporation’s divisions are not separate or stand-alone entities; nor are they subsidiaries of the Corporation. We typically register the various trade names associated with the Corporation’s divisions, with the Oregon Secretary of State, in order to protect those trade names from being pirated. We originally named one those divisions the “Seven Feathers Hotel & Casino Resort Division.” Some people still refer to that division as “Seven Feathers Casino Resort,” which is a trade name that dates back to the 1990s and still appears on the Internet. We have most recently renamed that division of the Corporation to “Seven Feathers Hotel & Casino Corp.,” and in turn registered a d/b/a of that division as “Seven Feathers Hotel & Casino Resort.”

5. In all, for all times material to this matter, the Corporation has conducted its gaming and hospitality business as “Seven Feathers Hotel & Casino Resort.”

6. Attached as **Exhibit B** is a true and correct copy of an Application for Authority to Transact Business—Business/Professional-form that the Corporation completed and filed with the Oregon Secretary of State, on May 18, 2009. Subjoined to

that filed Application is a Certificate of Good Standing and Compliance for “the Seven Feathers Hotel & Casino Resort Division of the Corporation,” which the Bureau of Indian Affairs Northwest Region Director Stanley Speaks issued on behalf of the Interior Secretary on February 20, 2009.


7. Attached as **Exhibit C** is a true and correct copy of a completed Application for Amendment/Withdrawal – Foreign Business/Professional-form that the Corporation filed with the Oregon Secretary of State on August 31, 2010, to signify the name change of “Seven Feathers Hotel & Casino Resort Division” to “Seven Feathers Hotel & Casino Resort Corp.”

8. Attached as **Exhibit D** is a true and correct copy of a completed “Assumed Business Name—Amendment” form that the Corporation filed with the Oregon Secretary of State on January 16, 2015, signifying that “Seven Feathers Resort Casino” is a d/b/a of Seven Feathers Hotel & Casino Resort Corp.

9. Attached as **Exhibit E** is a true and correct copy of Title 5 of the Cow Creek Band of Umpqua Tribe of Indians Legal Code, titled “Governmental Immunity Code.” We at the Corporation understand Section 5-40 to apply specifically to the Corporation.

The foregoing statement is made under penalty of perjury and under the laws of the United States and is true and correct.

Signed this 7th day of April 2015 in Roseburg, Oregon.


Carol McKinney
Secretary, Umpqua Indian Development
Corporation

FEDERAL CHARTER OF INCORPORATION

issued by

**THE UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS**

to the

COW CREEK BAND OF UMPQUA TRIBE OF INDIANS

for the

UMPQUA INDIAN DEVELOPMENT CORPORATION

a federally chartered corporation

RECITALS

WHEREAS, the Congress of the United States has enacted the Indian Reorganization Act of 1934, as amended, 25 U.S.C. 461 et seq., which, in Section 17 thereof (25 U.S.C. 477), authorizes the Secretary of the Interior to issue a federal corporate charter to an Indian tribe; and

WHEREAS, the Cow Creek Band of Umpqua Tribe of Indians (the "Tribe") is organized under the provisions of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; as amended, the "IRA") as set forth in the Cow Creek Tribal Constitution, duly adopted pursuant to a federally-supervised constitutional ballot, on July 8, 1991 (the "Tribal Constitution"); and

WHEREAS, pursuant to Article III, Section 1 of the Tribal Constitution, the Cow Creek Tribal Board of Directors (the "Tribal Board") is the governing body of the Tribe; and

WHEREAS, on November 23, 1997, the Tribal Board petitioned the Secretary of the Interior to issue a federal charter of incorporation to the Tribe to establish a business corporation as authorized by Section 17 of the Indian Reorganization Act; and

WHEREAS, the Tribal Board has found that the formation of the Umpqua Indian Development Corporation (the "Corporation") pursuant to a §17 Charter will serve the best interests of the Tribe, its members and its enterprises and will protect the political integrity, economic security and health and welfare of the Tribe and its members by, among other

EXHIBIT A

things, 1) creating a legal structure which provides for the segregation of Tribal governmental assets and liabilities from Tribal business assets and liabilities, and 2) creating a legal structure which provides for the segregation of discrete Corporation assets and liabilities into separate Corporation subdivisions, without divesting either the Corporation or the Tribe of the privileges and immunities arising pursuant to their legal status under federal and Tribal law; and

WHEREAS, the Tribal Constitution does not include an impairment of contracts clause and the Tribe desires, by and through the §17 Charter of the Corporation, to provide assurance to business associates that the Corporation may enter into contracts without the Tribe subsequently enacting laws materially impairing such contracts other than as necessary to protect health or safety within the jurisdiction of the Tribe,

WHEREAS, the terms and provisions of this Charter were approved by the Tribal Board on November 23, 1997, pursuant to Resolution No. 97-21; and

WHEREAS, all of the legal prerequisites to the issuance of this charter have been fulfilled;

NOW, THEREFORE, I, Kevin Gover, Assistant Secretary of the Interior for Indian Affairs, by virtue of the power conferred upon the Secretary of the Interior by the said Act and delegated to me, do hereby issue this Charter of Incorporation to the Cow Creek Band of Umpqua Tribe of Indians for the Umpqua Indian Development Corporation, to be operative when ratified by the governing body of the Tribe.

ARTICLE I - NAME

The name of the Corporation is Umpqua Indian Development Corporation.

ARTICLE II - PRINCIPAL OFFICE AND REGISTERED OFFICE

A. Principal Office. The principal office of the Corporation shall be located within Tribal trust land in Douglas County, Oregon. The Corporation may have such other offices, either within or without Tribal trust lands, as the Board of Directors of the Corporation (the "Corporate Board") may designate or as the business of the Corporation may require from time to time.

B. Registered Office. The registered office of the Corporation may be, but need not be, identical with the principal place of business of the Corporation. The registered office may be changed from time to time by the Corporate Board. In all events the registered office of the Corporation shall be located within Tribal trust land.

C. Situs of Transactions. Any business transaction executed by the Corporation shall be deemed to occur on Tribal trust land unless no incident of such transaction occurs on Tribal trust lands.

ARTICLE III - AUTHORITY FOR CHARTER

The Corporation is organized, incorporated and chartered under the laws of the United States as a federally chartered corporation under 25 U.S.C. § 477, as amended, and shall have the powers, privileges and immunities granted by that statute embodied in this Charter.

ARTICLE IV - STATUS OF CORPORATION

A. The Corporation is a legal entity wholly owned by the Tribe, but distinct and separate from the Tribe. The activities, transactions, obligations, liabilities and property of the Corporation are not those of the Tribe; provided, that the Corporation may act on behalf of the Tribe in the circumstances and to the extent specified in Section VIII.F.

B. Nothing in this Charter of Incorporation shall be deemed to waive, or to permit the Corporation to waive, the sovereign immunity of the Tribe.

C. The Corporation shall have the same rights, privileges and immunities with respect to federal, state and local law as the Tribe but shall be subject to Tribal law; provided, however, that no valid legal contract between the Corporation and any non-Tribal person or entity, and no non-Tribal person or entity which enters into any such contract with the Corporation, shall be subject to any Tribal law enacted subsequent to the execution of such contract to the extent such subsequent Tribal law is held by a court of competent jurisdiction to effect a material impairment of such contract and to have a primary purpose other than protecting health or safety within the jurisdiction of the Tribe.

ARTICLE V - OWNERSHIP OF THE CORPORATION

A. The Corporation shall be wholly owned by the Tribe for the benefit of the Tribe and its members.

B. The Tribe shall be the sole owner of the Corporation. No individual or legal entity other than the Tribe shall acquire any shares in the Corporation and no interest in the Corporation may be voluntarily or involuntarily sold, transferred, pledged or hypothecated.

C. All rights of the Tribe as owner of the Corporation shall be exercised by the Tribal Board in accordance with this Charter and applicable Tribal law. No individual

member of the Tribal Board or individual member of the Tribe or any other person whomsoever shall be recognized as acting as or on behalf of the Tribe as owner.

D. The sole right and authority to represent the Tribe as owner of the Corporation shall be vested in the Tribal Board. Matters within the scope and legal authority of the Tribe as owner of the Corporation shall only be decided by the Tribal Board.

ARTICLE VI - PERIOD OF DURATION

The period of the Corporation's duration is perpetual, or until this Charter is revoked or surrendered by Act of Congress, pursuant to 25 U.S.C. § 477, as amended.

ARTICLE VII - CORPORATE PURPOSES

The purposes for which the Corporation is organized are:

- A. to engage in any type of lawful business, enterprise or venture;
- B. to provide for the efficient and effective utilization of the resources of the Tribe in a manner which protects the long-term interests of the Tribe;
- C. to promote the economic development of the Tribe;
- D. to accomplish the segregation of Tribal governmental assets and liabilities from Tribal business assets and liabilities; and
- E. to provide a vehicle for the Tribe to accomplish the financing of projects used in the provision by the Tribe of essential governmental services in the circumstances and to the extent specified in Section VIII.F.

ARTICLE VIII - CORPORATE POWERS

Subject to applicable federal law, the Corporation is authorized and empowered to engage in, carry on and conduct any lawful activity or business in which federally chartered corporations may engage pursuant to 25 U.S.C. § 477, as amended, including, but without limiting the broad authorization of the foregoing, the following:

- A. To sue in its corporate name and to permit suit against itself in its corporate name in courts of competent jurisdiction, notwithstanding the privileges and immunities the Corporation otherwise enjoys by virtue of its status; provided, that the Corporation may only waive the defense of sovereign immunity from suit in accordance with the applicable procedures and restrictions of Tribal law and provided further, that no

judgment, lien, garnishment or attachment may be made upon any property or income of the Corporation other than that property or income specifically mortgaged, pledged or assigned as collateral for its corporate debts or liabilities in a writing approved by the Corporate Board.

B. To purchase, take by gift, bequest, lease or otherwise and to own, hold, manage, operate, use and otherwise deal in and with real or personal property of every description or any interest therein, wherever situated, including the power to purchase land and issue in exchange therefore interests in corporate property; provided, that the title to any real property acquired by the Corporation shall be put into federal trust status for the Tribe whenever possible under federal law.

C. To sell, convey, mortgage, pledge, lease as lessor or lessee, exchange, transfer or otherwise dispose of all or any part of its corporate property or assets in accordance with Tribal law and this Charter; provided, that the Corporation has no authority to sell, mortgage or lease as lessor any property of the Tribe without the express consent of the Tribal Board given in the specific instance; provided further, that the previous exception shall not prevent the Corporation from mortgaging or subleasing any leasehold interest that the Corporation may have as lessee of any property of the Tribe; provided further, that in no event may the Corporation lease any trust property of the Tribe, or any Corporation interest therein, for a term of more than 25 years.

D. To create subdivisions of the Corporation for the purpose of legally segregating the assets and liabilities of discrete business endeavors of the Corporation regardless of common directorship; provided, that each such subdivision shall have the rights and privileges granted by and be subject to the limitations of this Charter.

E. To enter into and make contracts of every kind and nature with any person, firm, association, corporation, municipality, nation, Indian tribe, state or body politic, without the approval of the Tribe or the Secretary of the Interior, except when Tribal law or the use of trust or federally-restricted Indian property requires such approval.

F. Subject to the limitations imposed by Section A of this Article, to incur debts and raise, borrow and secure the payment of any money in any lawful manner, including the issue and sale or other disposal of stocks, bonds, indentures, obligations, negotiable and transferrable instruments and evidence of indebtedness of all kinds, whether secured by mortgage, pledge, deed of trust or otherwise, either on its own behalf or, subject to the requirements of the following sentence, on behalf of the Tribe, without the approval of the Tribe or the Secretary of the Interior, except when Tribal law or the use of trust or federally-restricted Indian property requires such approval. The Corporation's ability to exercise the foregoing powers on behalf of the Tribe are explicitly subject to the following restrictions:

1. any such borrowing shall be to finance or refinance property used or to be used by the Tribe in the provision of an essential governmental function within the meaning of Section 7871 of the Internal Revenue Code of 1986, as amended;
2. each such borrowing shall be approved by the Tribal Board prior to its incurrence;
3. each such borrowing shall be payable solely from (a) that property and income identified and pledged thereto by the Corporate Board pursuant to Section A of this Article, whether or not such property or income is derived from property financed in whole or in part with the proceeds of such borrowing, or (b) all or any part of the revenues of the Tribe specifically allocated to the corporation by the Tribal Board for the purpose of paying or securing such borrowing; and
4. no such borrowing shall create an obligation of the Tribe or constitute a waiver of the sovereign immunity of the Tribe, nor shall the Tribe be liable thereon other than to the extent specifically provided in accordance with this Section F, and such limitation shall be expressly stated in each such borrowing.

G. To apply for, obtain, register, purchase, lease or otherwise acquire, own, hold, use, operate and introduce, and to sell, assign or otherwise dispose of any trademark, trade name, patent, invention, improvements and processes used in connection with or secured under letters patent, and to use, exercise, develop, grant and give licenses in respect thereto.

H. To apply for, purchase or acquire by assignment, transfer or otherwise, and to exercise, carry out and enjoy any license, power, authority, franchise, concession, right or privilege which any government or authority or any corporation or other public body may be empowered to enact, make, or grant, and, subject to the limitations imposed by Section A of this Article, to pay for and to appropriate any of the Corporation's assets to defray the necessary costs, charges and expenses thereof.

I. To distribute all revenues of the Corporation to: (i) defray corporate obligations, including Tribal taxes; (ii) make dividend payments to the Tribe as owner of the Corporation; and (iii) establish and invest in a suitable capital reserve fund; provided, that the Corporate Board shall endeavor at all times to manage and operate the Corporation with the objective of minimizing expenses and maximizing benefit to the Tribe.

J. To employ or appoint employees and agents of the Corporation and define their duties and fix their compensation.

K. To lend money for its corporate purposes, invest and reinvest its funds and take and hold real and personal property as security for the payment of funds so lent and invested.

L. To adopt and amend bylaws for the regulation of the internal affairs of the Corporation ("Corporate Bylaws") consistent with this Charter without the approval of the Secretary of the Interior.

M. To pay pensions and establish pension plans, pension trusts, profit-sharing plans, and other incentive plans for any or all of its directors, officers and employees.

N. To obtain a certificate of authority to transact business in any of the United States as a foreign corporation and to comply with applicable state law governing foreign corporations.

O. To have and exercise all lawful powers incidental, necessary or convenient to effect any or all of the purposes for which the Corporation is organized.

ARTICLE IX - LIMITATIONS ON CORPORATE POWERS

A. The Corporation shall have no power:

1. to enter into any agreement of any kind on behalf of the Tribe, either expressly or by implication, other than in the circumstances and to the extent specified in Section VIII.F.;
2. to pledge the credit of the Tribe;
3. to dispose of, pledge, or otherwise encumber real or personal property of the Tribe other than the Corporation's interests therein;
4. to waive any right, privilege or immunity of, or release any obligation owed to, the Tribe; or
5. to enter into any sublease or other encumbrance or instrument respecting lands leased to the Corporation by the Tribe without the express written approval of the Tribal Board.

B. Nothing in this Charter, and no action taken by the Corporation pursuant to this Charter, shall be construed as permitting, recognizing, or granting any state or any

political subdivision thereof any regulatory jurisdiction or taxing jurisdiction over the property or activities of the Corporation or its employees located within the boundaries of the Tribe's trust lands.

ARTICLE X - OWNER OF THE CORPORATION

A. Sole Owner; Owner Action. The sole owner of the Corporation is the Tribe; the owner shall be represented by and act through the Tribal Board pursuant to Tribal law.

B. Voting. At all meetings of the owner relative to the Corporation, the members of Tribal Board shall, where applicable, act in their capacity as the representatives of the sole owner of the Corporation and not in their capacity as members of the Corporate Board. The decision of the majority of the members of the Tribal Board, voting at any duly called and noticed meeting at which a quorum is present, shall be the decision of the Tribal Board in exercise of its authority as representative of the sole owner of the Corporation.

ARTICLE XI - BOARD OF DIRECTORS

A. Management Authority. The business affairs of the Corporation shall be managed exclusively by the Corporate Board. The Tribal Board shall have no authority to direct the business affairs of the Corporation, except through its status as the representative of the owner of the Corporation and as provided in this Charter.

- B. Number. The Corporate Board shall consist of eleven voting members:
- (i) the Chairperson (by office), Vice-Chairperson (by office), Secretary (by office) and Treasurer (by office) of the Tribal Board; and
 - (ii) seven members, selected by Tribal Board Resolution adopted by at least eight members of the Tribal Board, and constituted as follows:
 - a. four duly enrolled members of the Tribe, eighteen years of age or older, whether members of the Tribal Board or otherwise; and
 - b. three persons experienced in business and/or Tribal affairs, eighteen years of age or older, who may be, but need not be, members of the Tribe.

The Tribal Administrator of the Tribe (by office), employed by the Tribe pursuant to Section 1(v) of Article VII of the Tribal Constitution, shall at all times have a seat on the Corporate Board as a non-voting member unless such Tribal Administrator is already seated as a voting member pursuant to Section B(i) or (ii) of this Article.

C. Initial Corporate Board. The initial members of the Corporate Board (each a "Corporate Director"), and the initial terms of office thereof, shall be selected by the Tribal Board within sixty days of federal approval of this Charter. Corporate Directors seated pursuant to Section (B)(ii) of this Article shall have staggered initial terms, as determined by the Tribal Board, in order to ensure that the terms of only two or three members of this group of Corporate Directors expire in each successive year.

D. How Elected. Except for those Corporate Directors who serve pursuant to Section B(i) of this Article, Corporate Directors shall be selected by the Tribal Board in accordance with this Charter and applicable Tribal law.

E. Terms of Office. The terms of office for those Corporate Directors who serve pursuant to Section B(i) of this Article shall be coterminous with such person's term as an officer of the Tribal Board. The seating of any successor to any such person as an officer of the Tribal Board shall constitute the seating of such successor as a Corporate Director. The terms of office for all other voting Corporate Directors shall be for three years, once their initial terms of office have expired. The Tribal Administrator's non-voting seat on the Corporate Board shall be coterminous with such person's tenure as Tribal Administrator.

F. Duties of Corporate Directors. The Corporate Board shall manage the general affairs and business of the Corporation. The Corporate Directors shall in all cases act as a Board, regularly convened, by a majority vote, and they may adopt such rules and regulations for the conduct of their meetings and the management of the Corporation as they may deem proper as long as such rules or regulations are not inconsistent with this Charter, the Corporate Bylaws and applicable Tribal or federal law. A Corporate Director's duties shall be performed in good faith, in a manner the Corporate Director believes to be in or not opposed to the best interests of the Corporation, and with such care as an ordinarily prudent person would use under similar circumstances in a like position. In performing such duties, a Corporate Director shall be entitled to rely on factual information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

1. one or more officers or employees of the Corporation whom such Corporate Director reasonably believes to be reliable and competent in the matters presented;
2. legal counsel, public accountants or other persons as to matters which such Corporate Director reasonably believes to be within such person's professional or expert competence; or
3. a committee of the board upon which such Corporate Director does not serve, duly designated in accordance with a provision of the Corporate Bylaws, as to matters within its designated authority, which committee such

Corporate Director reasonably believes to merit confidence; provided, that a Corporate Director shall not be considered to be acting in good faith if such Corporate Director has knowledge concerning the matter in question that would cause such reliance to be unwarranted.

G. Liability of Corporate Directors. A Corporate Director shall not be personally liable to the Corporation or to the owner of the Corporation for monetary damages for breach of fiduciary duty as a Corporate Director unless:

1. the Corporate Director has breached or failed to perform the duties of the Corporate Director's office as provided in Section XI.F, and
2. the breach or failure to perform constitutes willful misconduct or recklessness.

H. Corporate Board Meetings. The regular annual meeting of the Corporate Board shall be held immediately following the annual meeting of the Tribe. Regular or special meetings of the Corporate Board may be called upon the request of the Chairperson or of any two Corporate Directors.

I. Notice of Meetings. Notice of meetings, other than the regular annual meeting, shall be given by service upon each Corporate Director in person orally at a preceding meeting, or by mailing to the last known post office address of the Corporate Director, at least three days before the date therein designated for such meeting, including the day of mailing, of a written or printed notice thereof specifying the time and place of such meeting, and the business to be brought before the meeting. No business other than that specified in such notice shall be transacted at any special meeting. At any meeting at which at least eight members of the Corporate Board shall be present, although held without notice, any business may be transacted which might have been transacted if the meeting had been duly called.

J. Quorum. At a meeting of the Corporate Board, a quorum shall consist of seven voting Corporate Directors, at least three of whom must be Corporate Directors pursuant to Section B(i) of this Article and three of whom must meet the qualifications of Section B(ii)(a) of this Article. The Chairperson shall count towards the establishment of a quorum. In the event of a quorum not being present, a lesser number may adjourn the meeting from time to time without further notice.

K. Voting. At a meeting of the Corporate Board, each Corporate Director shall have one vote; provided, that the Chairperson shall vote only in the event of a tie. A majority of a quorum of the Corporate Board shall carry any issue.

L. Meeting Options. Except as otherwise restricted by the Corporate Bylaws, members of the Corporate Board or any committee designated thereby may participate in a meeting of the Board or committee by means of a conference telephone call or similar communications equipment by which all persons participating in the meeting can hear each other at the same time; participation by such means shall constitute presence in person at a meeting. Except as otherwise restricted in the Corporate Bylaws, any action required or permitted to be taken at a meeting of the Corporate Board may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Corporate Directors, and the consent shall have the same effect as a unanimous vote.

M. Presumption of Assent. A Corporate Director who is present at a meeting of the Corporate Board at which action on any corporate matter is taken shall be presumed to have assented to the action taken, unless such dissent shall be entered in the minutes of the meeting or unless the Corporate Director shall file a written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Corporate Director who voted in favor of such action.

N. Corporate Director Compensation. Corporate Directors shall receive such expense reimbursement, salary or compensation as may be determined by the Corporate Board as provided in the Corporate Bylaws.

O. Resignation and Removal of Corporate Directors. The resignation, removal, retirement or electoral defeat of any Corporate Director who is seated pursuant to Section B(i) of this Article from that person's position as officer of the Tribal Board shall constitute such person's resignation or removal as a Corporate Director seated pursuant to Section B(i) of this Article.

Corporate Directors seated pursuant to Section B(ii) of this Article shall be subject to removal from office by the Tribal Board for:

1. failing to attend more than three consecutive regularly scheduled properly noticed meetings; unless, a non-interested majority of the Corporate Directors specifically consent to the absence or missed vote; or,
2. gross misconduct; or
3. becoming physically or mentally incapable of performing his or her duties.

Any member of the Corporate Board seated pursuant to Section B(ii) of this Article and subject to removal shall, before a vote is taken, be provided at least ten days in advance with a detailed written notice of the charges against him or her and with a fair opportunity

to reply to such charges and present evidence on his or her behalf at an open hearing of the Tribal Board called for that purpose. At least eight members of the Tribal Board must vote in favor of removal in order for such removal to be valid. The Chairperson shall be permitted to vote on the question of removal, regardless of the fact that there is no tie.

P. Vacancies. Whenever any vacancy shall occur in the Corporate Board by death, resignation, removal or otherwise, the same shall, as applicable, be filled either by the filling of the corresponding vacancy in the Tribal Board or by appointment by the Tribal Board.

ARTICLE XII - OFFICERS

A. Number and Positions. The officers of the Corporation shall be the Chairperson, the Vice-Chairperson, the Secretary, and the Treasurer. The Chairperson of the Tribal Board shall serve as Chairperson of the Corporate Board. Any two or more offices may be held by the same person, except the offices of Chairperson and Secretary. The Corporate Board may, by resolution, add additional officer positions at any time and appoint persons to fill such positions.

B. Election. Except for the office of the Chairperson, all officers of the Corporation shall be elected annually by the Corporate Board at its meeting held immediately after the annual meeting of the Tribe, and shall hold office for the term of one year or until their successors are duly elected.

C. Initial Officers. The initial officers of the Corporation, other than the Chairperson, shall be selected by the Corporate Board within 20 days of the appointment of the initial Corporate Board under Section XI.C.

D. Duties of Officers. The duties and powers of the officers of the Corporation shall be as provided in the Corporate Bylaws.

E. Compensation. The officers shall receive such expense reimbursement, salary or compensation as may be determined by the Corporate Board.

F. Resignation and Removal of Officers. Any officer may resign his or her position as an officer of the Corporation (without, if applicable, resigning as a Corporate Director) at any time by giving written notice to the Chairperson of the Corporate Board. Such resignation shall be effective on the date specified in the notice. Any one or more of the officers may be removed either with or without cause, at any time, by a majority vote of the Corporate Board, at any special meeting called for that purpose or at the annual meeting.

G. Vacancies. All vacancies in any office shall be filled by the Corporate Board for the unexpired portion of the term without undue delay, at its regular meeting or at a meeting specially called for that purpose.

ARTICLE XIII - INDEMNIFICATION

The Corporation may, in the discretion of the Corporate Board, fully or in part indemnify any current or former Corporate Director, officer or employee against reasonable expenses actually and necessarily incurred by such person in connection with the defense of any action, suit, or proceeding in which such person is made a party by reason of being, or having been, such Corporate Director, officer or employee of the Corporation, and the reasonable costs of settlement of any such action or proceeding, if a majority of Board members not seeking indemnification or otherwise involved in the controversy shall determine in good faith that:

1. such person did not act, fail to act, or refuse to act willfully or with gross negligence or with fraudulent or criminal intent; and
2. any legal fees paid or any settlements made are reasonable; and
3. the person seeking indemnification did not act beyond the scope of his or her employment or office; and
4. it is in the best interests of the Corporation that indemnification be made.

ARTICLE XIV - DIVIDENDS

A. The Corporate Board may declare dividends from the surplus profits of the Corporation whenever, in its opinion, the condition of the Corporation's affairs will render it expedient for such dividends to be declared; provided, that no distribution may be made if either:

1. the Corporation would not be able to pay its debts as they become due in the usual course of its business; or
2. the Corporation's total assets would be less than the sum of its total liabilities.

B. All dividends declared by the Corporate Board shall be paid to the Tribe as the owner of the Corporation.

ARTICLE XV - REPORTS TO OWNER

A. The Corporation shall maintain its financial records in conformity with generally accepted accounting principles.

B. No less frequently than annually, the Corporate Board shall report in writing to the Tribal Board on the financial and operating condition of the Corporation, including the assets and liabilities of the Corporation and the official actions of the Corporation's officers.

C. The Corporate Board shall prepare a Business Plan and submit it to the Tribal Board for review and approval not less than 30 days prior to the beginning of each fiscal year.

D. The financial and operating records of the Corporation shall at all reasonable times be open to inspection by the Tribal Board and its authorized agents.

E. The Corporation shall, within 120 days following the close of the Corporation's fiscal year, submit to the Tribal Board an audited financial statement showing the status of the Corporation as of the last day of the Corporation's fiscal year.

ARTICLE XVI - DISSOLUTION AND REVOCATION

A. After issuance of this Charter by the Secretary of the Interior and ratification by the Tribal Board, the Corporation may be dissolved and this Charter revoked only as provided in this Article.

B. The Corporation may be dissolved and this Charter revoked by the act of the Corporation as follows:

1. The Corporate Board shall adopt a resolution recommending that the Corporation be dissolved and this Charter be revoked and directing that the question of dissolution be submitted to a vote at a meeting of the Tribal Board, which may be either an annual or special meeting.
2. Written notice shall be given to the Tribal Board in the manner provided in applicable Tribal law for giving notice of meetings of the Tribal Board, and shall state that the purpose, or one of the purposes, of the meeting is to consider the advisability of dissolving the Corporation and revoking this Charter.
3. At the meeting, a vote shall be taken on a resolution to dissolve the Corporation.

4. Upon adoption of the resolution, a statement of intent to dissolve shall be executed by the Corporation by its Chairperson or Vice-Chairperson and by its Secretary and verified by one of the officers signing the statement, and shall be delivered to the Secretary of the Interior.
5. Upon filing of the statement of intent to dissolve with the Secretary of the Interior, the Corporation shall cease to carry on its business, except insofar as necessary for the winding up thereof, but its corporate existence shall continue until this Charter is revoked by act of Congress.
6. After filing the statement of intent to dissolve, the Corporation shall immediately cause notice thereof to be mailed to each known creditor of the Corporation and shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to the Tribe, pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets, either in cash or in kind, to the Tribe.
7. By resolution of the Corporate Board or by resolution adopted by the Tribal Board at any time prior to revocation of this Charter by act of Congress, the Corporation may revoke any voluntary dissolution proceedings. Written notice of the revocation shall be filed with the Secretary of the Interior. Upon filing of the notice of revocation of voluntary dissolution proceedings, the revocation shall be effective and the Corporation may again carry on its business.
8. If voluntary dissolution proceedings have not been revoked, when all debts, liabilities and obligations of the Corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the Corporation have been distributed to the Tribe, the Tribe shall take all actions necessary to obtain an act of Congress revoking this Charter and dissolving the Corporation.

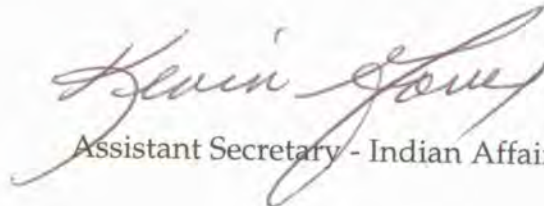
ARTICLE XVIII - AMENDMENTS

A. The authority to petition for amendments to this Charter is vested in the Tribal Board, but such amendments shall have no legal effect until approved by the Secretary of the Interior and ratified by the Tribal Board in accordance with 25 U.S.C. § 477, as amended, and in accordance with applicable Tribal law.

B. The Corporate Board may request the Tribal Board to petition the Secretary of the Interior for amendments to this Charter, but the final decision on submitting any such petition shall be made by the Tribal Board.

ARTICLE XIX - CERTIFICATE OF APPROVAL

I, Kevin Gover, Assistant Secretary - Indian Affairs, by virtue of the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984, 25 U.S.C. § 477), as amended, and delegated to me by 209 D.M. 8.1, do hereby approve this Federal Charter of Incorporation for use by the Cow Creek Band of Umpqua Tribe of Indians of Oregon, and its enterprise, the Umpqua Indian Development Corporation. It shall become effective upon ratification by the Tribal Board; provided, that nothing in this approval shall be construed as authorizing any action under this document that would be contrary to Federal law.


Assistant Secretary - Indian Affairs

Washington, D.C.

Date: MAY 12 1998



Application for Amendment/Withdrawal - Foreign Business/Professional

Secretary of State - Corporation Division - 255 Capitol St. NE, Suite 151 - Salem, OR 97310-1327 - <http://www.FilingInOregon.com> - Phone: (503) 986-2200

Check the appropriate box below:

- ☒ AMENDMENT TO APPLICATION FOR AUTHORITY
(Complete only 1, 2, 8)
- ☐ WITHDRAWAL OF AUTHORITY TO TRANSACT
(Complete only 3, 4, 5, 6, 7, 8)

FILED

AUG 31 2010

REGISTRY NUMBER: 601494-90

OREGON
SECRETARY OF STATE

In accordance with Oregon Revised Statute 192.410-192.490, the information on this application is public record.
We must release this information to all parties upon request and it will be posted on our website.

For office use only

Please Type or Print Legibly in **Black Ink**. Attach Additional Sheet if Necessary.

AMENDMENT TO APPLICATION ONLY

1) ENTITY NAME: Umpqua Indian Development Corporation Seven Feathers Hotel & Casino Resort Div

2) AMENDMENT: (The amendment is as follows.)

Name is changed to: Seven Feathers Hotel & Casino Resort Corp.

WITHDRAWAL OF AUTHORITY TO TRANSACT BUSINESS ONLY

- 3) NAME: _____
- 4) STATE OR COUNTRY OF INCORPORATION: _____
- 5) THIS CORPORATION IS NOT TRANSACTING BUSINESS IN OREGON, AND SURRENDERS ITS AUTHORITY TO TRANSACT BUSINESS IN OREGON.
- 6) THIS CORPORATION REVOKES THE AUTHORITY OF ITS REGISTERED AGENT TO ACCEPT SERVICE ON ITS BEHALF AND APPOINTS THE SECRETARY OF STATE AS ITS AGENT FOR SERVICE OF PROCESS IN ANY PROCEEDING BASED ON A CAUSE OF ACTION ARISING DURING THE TIME IT WAS AUTHORIZED TO TRANSACT BUSINESS IN OREGON.
- 7) MAILING ADDRESS: (The address to which the person initiating any proceeding may mail to this Corporation a copy of any process served on the Secretary of State. The Corporation will notify the Corporation Division, Business Registry of any change in this mailing address for a period of five years from the date of this withdrawal.)

8) EXECUTION: (Must be signed by at least one officer or director.)

By my signature, I declare as an authorized authority, that this filing has been examined by me and is, to the best of my knowledge and belief, true, correct, and complete. Making false statements in this document is against the law and may be penalized by fines, imprisonment or both.

Signature:

Michael Rondeau

Printed Name:

Michael Rondeau

Title:

Secretary

CONTACT NAME: (To resolve questions with this filing.)

Jhana McCullum

PHONE NUMBER: (Include area code.)

541-677-5524

SEVEN FEATHERS HOTEL & CASINO R



60149490-12095442

AMDAUT



Phone: (503) 986-2200
Fax: (503) 378-4381

Secretary of State
Corporation Division
255 Capitol St. NE, Suite 151
Salem, OR 97310-1327
FilingInOregon.com

Application for Authority to Transact Business—Business/Professional

Check the appropriate box below:

☒ FOREIGN BUSINESS CORPORATION
(Complete only 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12)

☐ FOREIGN PROFESSIONAL CORPORATION
(Complete all items)

FILED

MAY 18 2009

OREGON
SECRETARY OF STATE

REGISTRY NUMBER:

601494-90

For office use only

In accordance with Oregon Revised Statute 192.410-192.490, the information on this application is public record.
We must release this information to all parties upon request and it will be posted on our website.

For office use only

Please Type or Print Legibly in Black Ink. Attach Additional Sheet if Necessary.

1) NAME OF CORPORATION

UMPOUA INDIAN DEVELOPMENT CORP.
SEVEN FEATHERS HOTEL & CASINO RESORT DIV

NOTE: Must be identical to the name on the Certificate of Existence. See #2.

2) CERTIFICATE OF EXISTENCE (This application must be accompanied by a certificate of existence, current within 60 days of delivery to this Division, authenticated by the official having custody of the corporate records in the jurisdiction of incorporation.)

☒ CERTIFICATE ATTACHED

3) DATE OF INCORPORATION

DURATION, IF NOT PERPETUAL

06/19/1996

4) STATE OR COUNTRY OF ORGANIZATION

USA

5) ADDRESS OF PRINCIPAL OFFICE OF THE BUSINESS
(Address, city, state, zip)

146 CHIEF MIWALETA LN
CANYONVILLE OR 97417

6) NAME OF OREGON REGISTERED AGENT

BRUCE SCHONEBOOM

7) REGISTERED AGENT'S PUBLICLY AVAILABLE ADDRESS (Must be an Oregon Street Address which is identical to the registered agent's business office.)

146 CHIEF MIWALETA LN
CANYONVILLE OR 97417

8) ADDRESS FOR MAILING NOTICES

c/o UIDC ADMIN SERVICES
2340 NE STEPHENS ST
ROSEBURG OR 97470

9) NAME AND ADDRESS OF PRESIDENT AND SECRETARY

President: SUE M. SHAFFER, CHAIRMAN

Address: 2371 NE STEPHENS ST STE 100
ROSEBURG OR 97470

Secretary: MICHAEL RONDEAU

Address: 2371 NE STEPHENS ST STE 100
ROSEBURG OR 97470

PROFESSIONAL CORPORATION ONLY

10) PROFESSIONAL/BUSINESS SERVICES (List professional service(s) and other business services, if applicable, to be rendered.)

11) EXECUTION
Signature

Sue M. Shaffer

Printed Name

SUE M. SHAFFER

Title

CHAIRMAN

12) CONTACT NAME (To resolve questions with this filing.)

JHANA McCULLUM

DAYTIME PHONE NUMBER (Include area code.)

541-677-5524

EEEE



60149490-11016221

4-30-09-58-15-1 (53)

601 494-90

FILED

MAY 18 2009

**OREGON
SECRETARY OF STATE**

**CERTIFICATE OF GOOD STANDING AND COMPLIANCE
(IRA SECTION 17 FEDERAL CORPORATION)**

IT IS HEREBY CERTIFIED THAT THE:

UMPQUA INDIAN DEVELOPMENT CORPORATION

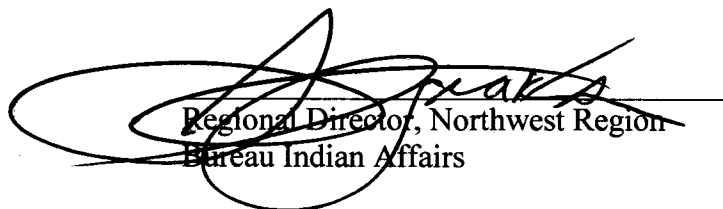
A corporation chartered pursuant to Section 17 of the Act of June 18, 1934 (48 Stat. 984, 988; 25 U.S.C. § 477), as amended, of the laws of the United States of America is duly authorized to transact business and to exercise the powers, privileges and immunities granted by said Act and embodied in its Federal Charter of Incorporation, issued by the Assistant Secretary – Indian Affairs on May 12, 1998, and ratified by the Cow Creek Tribal Board of Directors on May 27, 1998, and became effective on May 27, 1998.

IT IS FURTHER CLARIFIED that the Seven Feathers Hotel & Casino Resort Division of the Corporation is in good corporate standing and duly authorized to transact business, as its corporate charter has not been rescinded by act of Congress or surrendered by the Cow Creek Band of Umpqua Indians. This certification is not to be construed as an endorsement, recommendation or notice of approval of the corporation's financial condition or business activities and practices.

This certificate of good standing and compliance shall remain effective until rescinded by the Department of the Interior.

This certificate is issued by virtue of the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984), as amended, and delegated to the Regional Director, Bureau of Indian Affairs.

Executed on: FEB 20 2009


Regional Director, Northwest Region
Bureau Indian Affairs

Secretary of State - Corporation Division - 255 Capitol St. NE, Suite 151 - Salem, OR 97310-1327 - <http://www.FilingInOregon.com> - Phone: (503) 986-2200**FILED**

JAN 16 2015

OREGON
SECRETARY OF STATE

REGISTRY NUMBER: 205791-99

In accordance with Oregon Revised Statute 192.410-192.490, the information on this application is public record.
We must release this information to all parties upon request and it will be posted on our website.

For office use only

Please Type or Print Legibly in Black Ink. Attach Additional Sheet if Necessary.

1. CURRENT BUSINESS NAME: Seven Feathers Hotel & Casino Resort

2. NEW BUSINESS NAME: (If changed) _____

3. DESCRIPTION OF BUSINESS: Gaming and hospitality

4. PRINCIPAL PLACE OF BUSINESS: (Street Address, City, State, Zip)

5. NAME OF AUTHORIZED REPRESENTATIVE: (One name only) CONTINUING ☐ or NEW ☒Wesley Kwok

6. MAILING ADDRESS OF AUTHORIZED REPRESENTATIVE:

c/o Umpqua Admin Service, 2371 NE Stephens, Ste 100, Roseburg, OR 97471

7. REGISTRANTS/OWNERS: (List name and publicly available street address of each person or entity who will conduct or transact business under the assumed business name.) (All new registrants must be listed. If any registrants are WITHDRAWING; withdrawing, new and/or continuing registrants must be listed.)

a. NEW REGISTRANTS/OWNERS: Street Address City State Zip

b. CONTINUING REGISTRANTS/OWNERS: Street Address City State Zip

c. WITHDRAWING REGISTRANTS/OWNERS:

8. COUNTIES: ☐ Baker ☐ Crook ☐ Harney ☐ Lake ☐ Morrow ☐ Union

☐ Benton ☐ Curry ☐ Hood River ☐ Lane ☐ Multnomah ☐ Wallowa

☐ ALL COUNTIES ☐ Clackamas ☐ Deschutes ☐ Jackson ☐ Lincoln ☐ Polk ☐ Wasco

☐ (Statewide) ☐ Clatsop ☒ Douglas ☐ Jefferson ☐ Linn ☐ Sherman ☐ Washington

☐ Columbia ☐ Gilliam ☐ Josephine ☐ Malheur ☐ Tillamook ☐ Wheeler

☐ Coos ☐ Grant ☐ Klamath ☐ Marion ☐ Umatilla ☐ Yamhill

9. SIGNATURE(S): Any change requires a signature. New registrants must sign.

By my signature, I declare as an authorized authority, that this filing has been examined by me and is, to the best of my knowledge and belief, true, correct, and complete. Making false statements in this document is against the law and may be penalized by fines, imprisonment or both.

Signature: _____

Printed Name: _____

BRUCE R. SUBRAMANIAM

SEVEN FEATHERS HOTEL & CASINO R



20579199-15778842

AMDREG

Assumed Business Name - Amendment (04/14)

FEES

If Changing Business Name \$50

No Fee For Other Changes

Processing Fees are nonrefundable. Please make check payable to "Corporation Division".

Free copies are available at FilingInOregon.com using the Business Name Search program.

COW CREEK BAND OF UMPQUA TRIBE OF INDIANS TRIBAL LEGAL CODE

TITLE 5 GOVERNMENTAL IMMUNITY CODE

5-10 Authorization and Repeal of Inconsistent Legislation

The Cow Creek Band of Umpqua Tribe of Indians (the "Tribe") is organized under the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) and the provisions of the Cow Creek Band of Umpqua Tribe of Indians Recognition Act of December 29, 1982 (P.L.97-391), as amended by the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgement Funds Act of October 26, 1987 (P.L.100-139), and the Cow Creek Tribal Constitution, duly adopted pursuant to a federally-supervised constitutional ballot, on July 8, 1991 (the "Tribal Constitution").

Pursuant to Article III, Section 1 of the Tribal Constitution, the Cow Creek Tribal Board of Directors (the "Board") is the governing body of the Tribe. Pursuant to Article VII, Section I(d) of the Tribal Constitution, the Board has the authority to *"administer the affairs and assets of the Tribe. . ."* Pursuant to Article VII, Section I(i) of the Tribal Constitution, the Board has the power to *"enact ordinances and laws governing the conduct of all persons on tribally-owned land; to maintain order and protect the safety, health, and welfare of all persons within the jurisdiction of the Tribe; and to enact any ordinances or laws necessary to govern the administration of justice, and the enforcement of all laws, ordinances or regulations. . ."* Pursuant to Article VII, Section I(q) of the Tribe's Constitution, the Board has the power *"[t]o assert as a defense to lawsuits against the Tribe, and to waive only by express written agreement, the sovereign immunity of the Tribe. . ."* Pursuant to Article VII, Section I(t) of the Tribe's Constitution, the Board has *"such other powers and authority necessary to meet its obligations, responsibilities, objectives, and purposes as the governing body of the Tribe."*

Pursuant to the foregoing and the Tribe's retention of the full spectrum of sovereign powers recognized in federal common law and statute, the Board has the authority to establish, and the Board desires to establish, this Title 5 of the Cow Creek Tribal Legal Code, Governmental Immunity Code (this "Governmental Immunity Code") as a legislative form and procedural delineation of the *"express written agreement"* by which the Board may waive the sovereign immunity of the Tribe pursuant to Article VII, Section I(q) of the Tribe's Constitution.

Any prior Tribal regulations, Resolutions, orders, motions, legislation, codes or other Tribal law which are inconsistent with the purpose and procedures established by this Governmental Immunity Code are hereby repealed to the extent of any such inconsistency. Any properly authorized and valid waiver of sovereign immunity given by the Tribe prior to the effective date of this Governmental Immunity Code shall continue in effect in accordance with the terms of such waiver but shall be governed by the terms of this Governmental Immunity Code.

5-20 Policy.

In order to i) protect and preserve the sovereignty, people and assets of the Tribe; ii) protect the political integrity of the Tribal government; and, iii) guarantee the continued provision of governmental functions and services, the Board enacts legislatively this Governmental Immunity Code setting forth and defining the scope of sovereign and official immunity for the Tribal government, the Board, and their officers, agents and employees and delineating the exclusive circumstances under which the sovereign immunity of the Tribe may be waived.

5-30 Sovereign Immunity.

The Tribe, as a sovereign government, and the members of the Board in either their official or personal capacity, as well as Tribal officers, agents and employees acting within the scope of their authority in the exercise of their duties to the Tribe, share sovereign immunity to the fullest extent available under applicable law and may not, other than as provided in this Governmental Immunity Code and notwithstanding any other provision of Tribal law, be made a defendant party in any lawsuit or proceeding without the express written consent of the Board by written resolution approved by at least eight (8) members of the entire Board by roll call vote. Service of process or acceptance of service of any summons and complaint on the Tribe pursuant to Tribal code or rules does not constitute a waiver of any defense, including without limitation, governmental or sovereign immunity.

5-40 Limited Waivers of Immunity

- A. The Tribe and its officers, agents, employees and members of the Board may be made a defendant party to a lawsuit or proceeding in a court or forum of competent jurisdiction only in the following circumstances:
- a) when the Board enacts a Resolution, Code or other legislation providing an express waiver of sovereign immunity for the limited purposes described in such Resolution, Code or other legislation;
 - b) when the Board authorizes, by written resolution approved by at least eight (8) members of the entire Board by roll call vote, intervention as a party in a lawsuit between other parties; provided, however, that such authorization shall not waive immunity with regard to any form of counterclaim;
 - c) when the Board enters into a written agreement with the United States pursuant to a federal law requiring the Tribe to purchase liability insurance, and thereby consents to a waiver of immunity to the policy limits;
 - d) when the Board enters into a written commercial agreement:
 - i) expressly waiving immunity,
 - ii) setting out procedures to be followed and type and scope of remedies available in the event of breach or default by a party to the agreement, and

- iii) the execution of such agreement is approved by the Board by written resolution approved by a majority of the entire Board by roll call vote.
- B. Any business corporation owned, in whole or in part, by the Tribe has sovereign immunity which may not be waived without the express consent of the board of such corporation, and only if the charter or articles of such corporation expressly provide for board power to waive sovereign immunity. A "Sue and Be Sued" clause in the corporate charter or the articles of incorporation of any corporation owned, in whole or in part by the Tribe, is not a waiver of sovereign immunity under any circumstances.
- C. The Tribe does not waive Sovereign Immunity in any manner when it purchases liability insurance with an endorsement that the insurer may not invoke Tribal sovereign immunity up to the limits of the policy in State, Federal or Tribal court, including when the Tribe or an entity of the Tribe is the named defendant. The Tribal insurer, however, shall nevertheless remain liable for, and shall pay, all damages awarded pursuant to any legal action against the Tribe, up to the policy limits of any policy wherein the Tribal insurer agrees by endorsement that it will not invoke Tribal sovereign immunity up to the limits of the policy in State, Federal or Tribal court, including when the Tribe or an entity of the Tribe is the named defendant. All parties to a proceeding in the Cow Creek Tribal court must still abide by the Procedure for Giving Notice of Claims and Filing Actions as detailed in Section 4-40 in the Cow Creek Tribal Code.

5-50 Damages

- A. Generally, any waiver of sovereign immunity granted pursuant to the terms of this Governmental Immunity Code shall be limited to the recovery of damages as follows:
 - a) in all instances, damages must be reasonable;
 - b) damages which are not specifically quantifiable cannot be recovered; and
 - c) recovery under any implied covenant is prohibited.
- B. Monetary judgments against officers, agents or employees of the Tribe acting within the scope of their authority in the exercise of their duties to the Tribe shall be treated as judgments against the Tribe and shall be satisfied by the Tribe, subject to the availability of funds in the Tribal treasury.
- C. In any case or proceeding sounding in tort, any waiver of sovereign immunity granted pursuant to the terms of this Governmental Immunity Code shall be limited to the recovery of damages as follows:
 - a) no punitive or exemplary damages may be recovered;

- b) for claims arising from a single transaction or occurrence, a plaintiff may not recover a total compensatory sum greater than two hundred and fifty thousand dollars (\$250,000) or the maximum sum payable by an insurer under any policy required by federal law, whichever is less; and,
- c) multiple plaintiffs whose claims arise from one transaction or occurrence may not recover a compensatory sum greater than seven hundred and fifty thousand dollars (\$750,000) or the maximum sum payable by an insurer under any policy required by federal law, whichever is less.

5-80 Severability.

If any section, or any part thereof, of this Governmental Immunity Code or the application thereof to any party, person or entity in any circumstances shall be held invalid for any reason whatsoever by a court of competent jurisdiction or by federal legislative enactment, the remainder of the section or part of this Governmental Immunity Code shall not be affected thereby and shall remain in full force and effect as though no section or part thereof has been declared to be invalid.

5-90 Amendment or Repeal of Governmental Immunity Code.

After this Governmental Immunity Code becomes effective pursuant to Section 5-100, below, neither this Governmental Immunity Code, nor any section, part or word hereof, or any Resolution adopted by the Board pursuant to the terms hereof, may be amended or repealed other than by Board resolution approved by unanimous roll-call vote of the entire Board at a special meeting of the Board which meeting may only be convened upon receipt by the Tribal Secretary of a petition signed by at least nine members of the Board.

100-100 Effective Date.

This Governmental Immunity Code becomes effective upon adoption by resolution approved by at least eight (8) members of the entire Board by roll call vote. This Governmental Immunity Code shall not govern or supersede the terms of any waiver of sovereign immunity granted prior to the effective date hereof; provided, however, that the protective provisions of this Governmental Immunity Code shall retroactively extended (to the extent not already extended as a matter of common law) to Tribal officers, agents and employees with regard all acts taken and waivers of immunity granted within five (5) years of the effective date hereof.