

# WOULD-BE TRIBES ENTICE INVESTORS

By IVER PETERSON

It has become a ritual in every part of the nation: a group of people of American Indian heritage, eyeing potential gambling profits, band together and seek federal recognition as a tribe.

But in their quest, these groups have created another tribe in search of wealth: the troop of genealogists, historians, treaty experts, lobbyists and lawyers they hire to guide them through the process. And the crucial players in this brigade are the casino investors who can pay for it all.

There are now 291 groups seeking federal recognition as tribes, and many have already signed with investors seeking a piece of the nation's \$15-billion-a-year Indian gambling industry. Among the dozen or so groups awaiting final determinations from the federal Bureau of Indian Affairs, two-thirds have casino investors bankrolling them, said Eric Eberhard, a lawyer specializing in Indian law.

If their risk is huge -- most would-be tribes have been turned down for recognition -- so is their potential payoff. And yet there are increasing complaints, from casino investors as well as government officials and opponents of gambling, that the big money and high expenses are turning the tribal-recognition process into a costly boondoggle.

"You have all these experts and they're like an army -- genealogists, historians; it's like a never-ending battle," said Tom Wilmot, a Rochester shopping mall developer who estimates he has invested "well in excess of \$10 million" since 1995 to support the application and reapplication of a group called the Golden Hill Paugussett, a group in Trumbull, Conn., near Bridgeport. "It's easy to spend millions, and then when you get turned down you're basically back to submitting more briefs again."

Mr. Eberhard, a former staff member of the Senate Committee on Indian Affairs who practices in a Seattle law firm with many tribal clients, said

costs had been driven up by the sheer number of groups seeking to become tribes and the scarcity of experts to back their claims.

"It has never been inexpensive, but prior to the advent of gaming it was reasonable to say it cost between \$100,000 and \$200,000," he said. "Now it runs in the millions of dollars because there is a finite pool of experts available to assist them, and so they go to tribes who have developers who can pay them."

But in Connecticut and elsewhere, state officials and citizens' groups that are trying to slow the spread of Indian casinos say the investors have no one to blame but themselves. The deluge of gambling money has corrupted the process, they say, so that rulings on tribal status are based less and less on merit.

"Money is driving the federal tribal recognition process," said Richard Blumenthal, Connecticut's attorney general, who is leading an effort to overturn the recent recognition of three tribes in his state. "Each of these tribes has wealthy, powerful investors who have made a very big debt on gaining recognition, because the financial payback is potentially unending and immeasurable. We're not talking about hundreds of millions here. We're talking about billions."

Mr. Blumenthal also criticizes what he and other foes of gambling see as the casino-friendly management of the Bureau of Indian Affairs, the Interior Department office that rules on all applications for tribal recognition. He argues that senior bureau officials, many of whom are Indians, have conflicts of interest because of past associations with casino developers, or because they know they can become gambling consultants when they leave office.

The bureau was the focus of a 2001 General Accounting Office investigation after it was disclosed that a bureau official in the Clinton administration, Michael Anderson, had signed the final approval documents for a Massachusetts tribe three days after he left office. That approval was rescinded by the Bush administration, but the investigation found that the

bureau's standards for recognition were so imprecise that they left the door open to undue influence by casino investors.

"The end result could be that the resolution of tribal recognition cases will have less to do with the attributes and qualities of a group as an independent political entity deserving of a government-to-government relationship with the United States," the General Accounting Office report concluded, "and more to do with the resources that petitioners and third parties can marshal to develop a successful political and legal strategy."

Undue influence is also the subject of a federal investigation begun in Sacramento last month into evidence that local Indian Affairs officials were instrumental in persuading a local tribe, the Ione Band of Miwok Indians, to drop its resistance to casino gambling and to begin developing a casino in central California.

All these issues involving money and influence are elements in Connecticut's effort to appeal the agency's recognition of the Schaghticoke Tribal Nation in January.

Dan DuBray, an Interior Department spokesman, rejected Attorney General Blumenthal's criticism. "Federal acknowledgment of an Indian tribe is a very serious and very deliberative process," he said, "and in that process all affected parties have a voice, and they have due process."

Federal recognition grants Indian tribes not only the right to build casinos, but also sovereign, tax-free status and federal help with housing, education and health care.

In Brooklyn, Chief Sitting Sun of the Ohatchee Cherokee tribe of New York and Alabama said getting federal help for his 130 members in New York City was his only motive for applying. "I was born in Anniston, Ala., and my mother sent me up here when I was 4," he said. "Now I'm 71, and I'm looking to establish a reservation here to get some of the benefits of it."

Mr. Blumenthal hastened to say that Connecticut's two existing Indian casinos, Foxwoods and Mohegan Sun, were "good corporate neighbors,"

pumping \$400 million a year into state and local treasuries and providing tens of thousands of jobs. The question Connecticut has to answer, he said, is, "How much gambling is enough?"

Other states are walking the same fine line, hungry for gambling revenue but insistent on managing the number and location of new casinos. In New York, Gov. George E. Pataki is trying to arrange deals for Indian casinos in three Catskills locations and elsewhere upstate. Yet on eastern Long Island, where local opposition to a casino is strong, he has moved to block construction by the Shinnecock Indians, who have a casino investor but do not have federal recognition. New Jersey has vowed repeatedly to block efforts by local groups to form tribes; Indian casinos, which do not pay state taxes, could compete with Atlantic City casinos, which do.

The mounting opposition is worrisome to investors in Indian casinos.

For all the millions of dollars he has already invested in the Paugussett, Mr. Wilmot stands to win back many times as much if the group wins tribal status. But so far his experience in the tribal recognition gamble has consisted of dealing with experts and lawyers coming to him with upturned palms. The Paugussett's request for tribal status was rejected in 1996, and Mr. Wilmot says he is spending millions more to underwrite the group's appeal for reconsideration.

But he knows that plenty of other developments can derail his plans for a Paugussett casino in downtown Bridgeport, where the City Council has already offered land. Tribes often splinter into factions after they hit the recognition jackpot, and an investor can end up backing the losing side. Or, once recognition is won, tribes can invoke their sovereignty and drop their original backer for one with deeper pockets, or one who will settle for a smaller share of the profits. Several major investors, including Donald Trump, have lost out in this way.

Mr. Trump signed a casino development deal with the Eastern Pequot of Connecticut before the 1,200-member tribe was officially recognized, and the tribe dropped him after recognition was won. He is suing the tribe. "It's a very complicated experience," Mr. Trump said.

States can also add years of delays to an eventual casino payout by appealing the Bureau of Indian Affairs' decisions, as Connecticut has done.

"It can be very tricky," Mr. Wilmot said. "I guess what I learned is that it's a lot more complicated than we thought when we started."

Under the federal Indian Gaming Regulatory Act, outside investors' share of a casino may not exceed 30 percent of all profits, and their contracts must expire -- but may be renewed -- after seven years. Lyle Berman, whose companies developed four Indian casinos around the country under contracts that have now expired, says this arrangement favors the Indians.

"I call that a small percentage for all the risks we take and the work we do," Mr. Berman said. "Find me another business where a company puts up all the money, takes all the risks and has all the expertise and has an agreement to take about 30 percent of the profits for seven years and then go away."

(One of the founding partners in Mr. Berman's company, now called Lakes Entertainment, was David Anderson, who is now the director of the Bureau of Indian Affairs. Mr. Anderson has said he will withdraw from the bureau's reconsideration of the Nipmuc, the group whose application for recognition Mr. Berman has spent about \$4 million backing.)

All but a handful of the nearly 300 groups now seeking tribal recognition have come forward since Indian gambling was legalized by Congress in 1988. Although 53 are in California, most of the rest are east of the Mississippi, where long histories of white settlement and intermarriage have blurred tribal lineages. There are 7 in New York, 3 in New Jersey and 12 in Connecticut, while Virginia has 13, North Carolina has 12 and South Carolina, 10.

Since the Bureau of Indian Affairs was given the authority to recognize tribes in 1978, it has approved 15 applications and denied 18, while hundreds of others are still working their way through the process. But if even a handful of the groups nearing final decision succeed, opponents of expanded Indian gambling maintain, there will be a flood of new casinos

throughout the East, with the attendant frictions between local communities and their newly sovereign neighbors that are roiling the politics in New York and Connecticut.

"If just a fraction of these groups receive sovereign status, they instantly become a vessel for a casino mogul to enter a state that otherwise does not permit casino gambling," said Jeff Benedict, president of the Connecticut Alliance Against Casino Expansion. "So if you are a South African businessman or an Asian financier or a Las Vegas corporation, this is your vehicle to crack into a market that you can't otherwise get into."

Mr. Benedict was referring to Sol Kerzner, a South African resort developer who financed the Connecticut Mohegan tribe's Mohegan Sun casino, and to the Malaysian family of financiers who backed the Mashantucket Pequots, operators of the Foxwoods Resort and Casino, and other Indian gambling ventures.

For groups without casino investors, the rising cost of seeking federal recognition can be daunting. In Norwich, Conn., Frank Cook of the Native American Mohegan said his 600 members had applied for recognition. "We are very small," said Mr. Cook, a member of the tribal council. "We really depend on tribal dues to pay for all the actions that we have taken, because we have absolutely no backing at all."

"Right now we have no plans for gaming," he said, using the term for gambling that the industry favors. "It's going to be up to the membership to decide, and who knows?"