



STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

January 8, 2001

Via Facsimile (619) 696-7253 & U.S. Mail

Honorable Dianne Jacob, Chairwoman
San Diego County Board of Supervisors
1600 Pacific Highway, Room 335
San Diego, CA 92101-2470

Re: Tribal-State Gaming Compacts

Dear Chairwoman Jacob:

In reviewing your December 20, 2000, letter to Governor Davis, I was struck by the comment that you "find it extremely difficult to understand why the Attorney General does not believe he has the authority" to require that California's tribal governments adhere to environmental provisions contained in the state's Indian gaming compacts. Let me take this occasion to state the reasons that this is in fact so.

First, there is no basis in federal statute for my office or any arm of state government to enforce California's environmental laws on tribal trust lands. In the absence of federal authorization, or tribal agreement making provision for such enforcement, neither my office nor any other arm of state government can be presumed to have environmental enforcement authority on tribal trust lands.

Second, given the absence of federal law on point, the only source of authority for enforcement of any environmental protections on tribal lands derives from the compacts negotiated between the Governor and California's tribes. Those compacts, however, do not provide for state environmental laws to apply directly on tribal trust lands; rather they provide for the tribes themselves to adopt ordinances incorporating the policies and purposes of federal and state environmental laws. The compacts provide for enforcement of compact terms in the form of invocation of specified dispute resolution procedures, including litigation, by the Tribe or the state. No other form of enforcement is provided for by the compacts.

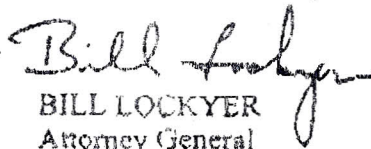
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Third, the compacts do not authorize my office to act in any independent capacity respecting the compacts' environmental provisions. Because authority to enforce the compact's provisions belongs to the state and not a particular state officer, my office's enforcement role is limited to acting as the attorney for the Governor in the event that he, as the state's chief executive, determines that a dispute exists under the compact; and that dispute would best be decided by initiating dispute resolution procedures included in the compact.

As to the procedural concerns previously identified by my office in correspondence with several tribes, our comments have been intended to provide constructive comment to the tribes as contemplated by the compacts, and to assert my office's views of what the public interest requires in the circumstances. Our comments do not constitute a determination that a violation of the law or a violation of a gaming compact has occurred, and certainly are not intended to supply a pretext to local governments for delaying, avoiding, or refusing to engage in necessary consideration of official actions which state law places within their responsibility.

Thank you for the opportunity to improve the general understanding of some of the constraints that exist in the state's conduct of tribal-state relations, and of my role within those constraints.

Sincerely,


BILL LOCKYER
Attorney General

cc: Members, San Diego County Delegation
David Rosenberg, Director of Intergovernmental Relations, Governor's Office
Demetrios A. Boutris, Secretary of Legal Affairs & Counsel to the Governor
Harlan Goodson, Director, Division of Gambling Control, Attorney General's Office
Olin Jones, Director, Office of Native American Affairs, Attorney General's Office
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