Stand Up For California!

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February 2, 2006

Honorable John McCain
Chairman, Senate Indian Affairs Committee
Russell Senate Building Room 241
Washington, D.C. 20515

RE: (S. 2078) Indian Gaming Regulatory Act ("IGRA") Amendments of 2005

Dear Chairman McCain:

Stand Up For California has been involved with issues associated with Indian gaming for many years in California and frequently serves as a resource to policymakers and elected officials at the local, state and national level. We thank you for the many Senate Hearings in which you have invited affected parties to participate in a policy debate essential to ensuring fairness, objectivity and accessibility.

Reforms presented in S. 2078 amending and modifying IGRA are necessary to ensure the integrity of the tribal gaming industry and its future success. While IGRA presents a delicate balance between the rights and authorities of states, tribes and the federal government your amendments in general strengthen and provide a uniform federal approach to the regulatory framework.

We wish to submit comments for the record on S. 2078 and further request that your committee consider extending an invitation to our organization to participate in the hearing process. While we generally support your amendments we ask that you consider small modifications to language that vitally affects California.

Empower NIGC with Authority over Gaming Contracts:

S. 2078 would expand the authority of the National Indian Gaming Commission (NIGC) over gaming related contracts. We support this proposal.

Profiteering by out-of-state investors has significantly soured the public's view and support of tribal gaming operations. Gaming on after-acquired lands, or "reservation shopping" as it has been termed, is visibly driven by out-of-state gaming investors, making "development agreements" rather than "management contracts". These types of agreements obscure the terms

of the agreement, the source of the money and the payout to the investors. These agreements skirt the criteria of management contracts laid out in IGRA intended to promote transparency in the tribal gaming industry.

A good example is the Timbisha Shoshone Development Agreement with Rinaldo Corporation for an off-reservation casino in the City of Hesperia. Developer Gary Fears would own 82% of the casino and equipment and pay the tribe 18% revenue for 10 years. This is clearly contrary to the intent of IGRA. Another angle is the use of tax-exempt bond financing used by a Baltimore developer David S. Cordish, a financing vehicle which is the focus of an Internal Revenue Service investigation. The federal government prohibits Indian tribes from using tax exempt municipal bonds to build commercial enterprises such as casino/hotel complexes or golf courses. This move by investors and Tribes could make billions of dollars in interest subject to federal tax. Unlike typical management contracts approved by the NIGC, these deals lack formal approval and are intended to circumvent federal oversight.

We applaud you for this amendment as this type of abuse demands federal regulatory action to protect the integrity of tribal gaming operations. Federal action is necessary as IGRA only requires management contracts to be reviewed and approved. All others, consultants, investors, developers and manufacturers get a free pass through this loophole in federal law.

NIGC Empowered to Regulate Class III Gaming:

The amendment empowers NIGC to monitor and demand access, to inspect and examine any and all records of class II and III gaming. It provides regulations for minimum internal control standards (MICS) for Class III gaming. This amendment is necessary to negate the recent decision of the 9th Circuit Court of Appeals in the *Colorado River Indian Tribes (CRIT) vs. NIGC* that held IGRA gave NIGC only regulatory power over Class II gaming.

In essences the MICS must set a uniform federal framework upon which Tribes establish their internal control standards. As long as the MICS are designed to address ***control issues*** related to the particular games in play and not to classify games into class II or III, our organization will support this amendment.

Gaming on Later-Acquired Land

The amendments tightening the exceptions of Section 20 are helpful but still allow for discretion of the Secretary of the Interior in making determinations regarding restored tribal lands. The problem has been a set of vague guidelines used as standards by the NIGC and the BIA in determining what are “restored lands”. Since there is no federal regulation in place, this is a gray area that has left room for both political and gaming money influence. Determinations are often based on a “sliding scale” in which the relationship to the land wanted, the intensity of the development and the availability of alternatives all play a role.

Therefore, we respectfully request that additional requirements in federal regulations through the rule-making process be made on tribes and their gaming investors which require more than satisfying as a matter of historical fact that Indians have resided continuously on the specific site of the casino project. There should be evidence of Indian title to the land. The evidence must be strong and compelling and the claim on the land must be continuous and current.

The Two-Part Determination:

The bill limits the application of the two-part determination to those land-into-trust applications the Secretary reviewed, or was in the process of reviewing, at the Central Office of the Bureau of Indian Affairs, Washington, D.C., before November 18, 2005. **We ask that you consider striking this amendment as it will significantly affect California's efforts to establish a tribal gaming policy that is fair to all affected parties**.

This amendment presents a significant disadvantage to California because it eliminates gubernatorial concurrence after November 18, 2005. Gubernatorial concurrence when judiciously used solves land-use problems such as casino development in sensitive environmental locations, adjacent to park lands or social concerns that result from casino placement near homes, churches and schools. Moreover, the elimination of the two-part determination creates reverse incentives encouraging gaming investors to re-write tribal histories to meet the exceptions in Section 20 of IGRA as we have witnessed in California.

History demonstrates that fears regarding gubernatorial concurrence are misplaced and unwarranted. There have been only three instances of withholding of gubernatorial concurrence since the enactment of IGRA in 1988; however there have been at the very least 35 gaming and gaming related land acquisitions due to the exceptions of IGRA since that time.

Gubernatorial concurrence balances a State's role in the implementation of national policy regarding tribal gaming. Concurrence over after-acquired lands provides a governor with the significant capability to manage the growth and location of tribal gaming, thus protecting communities, local governments, state agencies, natural resources, even ***tribal market saturation*** and yet fairly provides the opportunity of economic self-reliance to tribes.

Grandfather Clause:

The bill makes clear that land deemed gaming-eligible by the Secretary or the Chairman of the NIGC prior to the enactment of the bill into law, shall continue to be eligible for those purposes. **We ask you to modify this amendment to include a remedy for unintended impacts created by the placement of casinos on lands not meeting the legal threshold of IGRA.**

Grandfathering in tribal developments established prior to this bill is fair, but should not be considered without the ability of local governments or States to seek a remedy to the impacts which these developments potentially have created on states and local communities. Many of the casinos in California were developed years ago in environmentally-sensitive areas in the midst of residential and rural residential neighborhoods. For the most part these developments are on gaming-eligible lands; however there are a few that are more than questionable.

These questionable lands and facilities have affected the shared natural resources of regional areas and the good working order of local governments. Requiring tribes to (1) re-negotiate their tribal-state compacts and/or (2) agree to establish intergovernmental mitigation agreements with host communities affected by large scale casino complex developments.

Again, thank you for you willingness to address the needed regulatory reform of the tribal gaming industry. Please give your consideration to Stand Up For California's two requests regarding gubernatorial concurrence and mitigation agreements when grandfathering in casinos.

Sincerely,

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CC: Honorable Andrea Hoch, Secretary of Legal Affairs
Honorable Asst. AG Robert Mukia, Indian Law and Gaming Unit CA DOJ