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Testimony
Before the U. S. Senate Committee
on Indian Affairs

An Oversight Hearing on
Off Reservation Gaming
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My name is Cheryl Schmit. I am Director of Stand Up For California. My organization serves as an advocate and information resource for community groups and policy makers at the local, state and federal level, trying to understand and respond to the complexities surrounding the expansion of tribal gaming.

We thank you Chairman Mc Cain and Vice Chairman Dorgan and Committee members 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 in this complex and controversial issue.

Our organization supports the efforts of citizens who want to make sure that there are adequate protections for all communities potentially adversely impacted by unregulated gambling expansion. We do not seek to impede the economic progress and advancement of California's native peoples; rather we seek regulatory reforms that we believe are in the best interests of all the inhabitants of our State.

Reservation shopping in California is driven by the restored lands exception not an abuse of gubernatorial concurrence. There are currently 40 after acquired land proposals in California which Tribes and gaming investors continue to promote restored lands and other mandatory exceptions under section 20 of IGRA. This is being done to specifically preclude our Governor from having a say in the process, since he has made clear his opposition to such blatant reservation shopping attempts.

Gaming investors and Tribes are intentionally seeking a "Restored lands Exception" to avoid the rigorous two-part Secretarial process, as well as the substantial scrutiny involved by requiring input from neighboring tribes, local governments, state agencies and the concurrence of the Governor.

The “restored lands” exception found in IGRA makes the acquisition of newly acquired lands mandatory. This mandatory exception ties the hands of a states governor eliminating the opportunity for flexibility, cooperation or meaningful agreements. The exception reduces the decision making process of the Secretary of the Interior’s involvement to nothing more than a ministerial act of approval.

Yet the process of the “restored lands” determination is a gray area. There is a set of vague guidelines used as standards by the National Indian Gaming Commission and the BIA in determining restored lands. Since there is no federal regulation in place, this is a gray area and 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 the alternatives all play a role. Tightening the definition of restored lands helps but potentially only increases the influence of gaming money on the process.

Currently in California the NIGC is charged with determining if a tribe meets the criteria of a “restored tribe” or “restored lands” at the same time. These are two separate questions that unduly affect local government’s ability to comment wholly and fully on each question independently, and present a serious cost to community taxpayers. Moreover, NIGC’s determination is not a final agency action, where is the opportunity to challenge the determination of restored tribe or restored lands?

Mandatory exceptions totally avoid the Office of Indian Gaming Management-- circumventing established guidelines and safeguards developed by that office to address environmental

protections, involvement of affected governments and state agencies and other nearby Indian tribes.

Clearly there is a need for a more collaborative approach to mandatory land acquisitions like the restored lands exception. Especially whenever proposed acquisitions present serious environmental, taxation, jurisdictional and infrastructure problems or a state or local community has reasonable and legitimate objections.

Perhaps, a special provision can be crafted for mandatory applications mandating the Secretary of the Interior upon request by a state or one of its cities, counties or parishes to come together with affected parties early in the decision process. That there is a requirement to work out solutions to identified environmental, taxation, jurisdictional and infrastructure problems. As an incentive to working cooperatively a fast track process could be offered greatly reducing the work load of BIA officials the need for Tribes to request *ad hoc* legislation and most importantly eliminating local opposition and tribal gaming backlash.

We ask that this committee give grave consideration to any language that would limit, restrict or end the two-part determination or gubernatorial concurrence. The problem is not gubernatorial concurrence (section 2719 (b)(1)(A)) as there have only been three withholdings of gubernatorial concurrence in the last 17 years and more than 35 instances of tribes acquiring land through the mandatory exceptions in IGRA.

We would rather the committee consider eliminating the mandatory aspect of the exceptions and require that all after acquired lands go through a two-part determination with gubernatorial concurrence.

Gubernatorial concurrence judiciously used solves land use problems such as casino development in sensitive environmental locations, or placement of a casino adjacent to public and park lands or social concerns over the health and public welfare 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 and continue to witness in California.

Stand Up For California sincerely appreciates the opportunity to comment on off reservation gaming and urges only moderate modifications to IGRA, so not to upset the delicate balance between the rights and authorities of states, tribes and the federal government.

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