

Off-Reservation Indian Gaming Agreements  
To Ratify or Not Ratify  
Testimony of Cheryl Schmit, Director  
*Stand Up For California!*  
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More than a decade ago, California voters amended the California Constitution through Proposition 1A to permit tribal gaming on “Indian lands.” The proponents promised California voters that Proposition 1A did not authorize off-reservation gaming. California voters, however, did not understand that the Bureau of Indian Affairs could determine that newly-acquired lands would qualify for gaming under various exceptions. As a result, tribal gaming proliferated well beyond anything the voters expected when they passed Proposition 1A.

Last year, the Governor took an additional step, which far exceeds any power California voters authorized or that the Governor has under the State constitution. Without the benefit of intelligible standards to govern his decision-making, without legislative approval, and without adequate environmental analysis, the Governor gave the Federal government the green light to remove two parcels of land from State and local jurisdiction for casinos. Make no mistake: *but for* the Governor’s “concurrences,” these two parcels of land would remain under State and local control, and no casinos would ever be built.

Authorizing the federal government to strip the State of its jurisdiction is a wholly different action than negotiating gaming compacts for existing Indian lands. In most cases, the State has no power to stop the Federal government from creating Indian lands to be used for gaming, and when the Federal government does this, the Governor is required by federal law to negotiate a gaming compact.

In these two cases, however, the State had absolute veto authority. The Governor could have prevented land from being removed from the State simply by saying no, I do not have the authority to do this, or by taking no action at all. And because the Governor is not authorized to unilaterally give away the State’s jurisdiction, the only legally permissible course of action for the Governor was to protect the State’s authority, not discard it.

The scope of the Governor’s authority under the California Constitution is a legal question that is pending before two California State Courts. It is in the best

interests of the California Legislature to defer taking any action until after the courts answer:

- (1) Did the Governor violate the California Constitution by agreeing to off-reservation gaming and the removal of land from State jurisdiction?
- (2) Did the Governor violate state law by failing to prepare an environmental impact report?

Also pending is a statewide referendum of the North Fork Compact. Voters in Nov. of 2014 will have an opportunity to express their opinion on off reservation gaming when they cast their ballots.

Not only does the Governor *not* have the authority to permit the removal of land from State jurisdiction, the State is under no obligation to permit off-reservation gaming. So before the legislature begins to discuss the standards that should govern such decisions or provides the authorization to the Governor, which the law requires, the Legislature should discuss *whether* California should permit off-reservation gaming *at all*.

California already has 63 tribal casinos. And there are another 69 tribal groups seeking federal acknowledgment. We can expect the Secretary to approve a great many of these groups, and California can expect to see many more casinos authorized in locations that no one expects. This working group must ask:

- Is it sound policy to permit off-reservation gaming under these circumstances, simply because a Tribe or its out-of-state gaming investor may prefer a particular location over the one to which the Tribe is legally entitled?
- How would the Governor/Legislature make off-reservation gaming decisions equitably, how will you choose winners and losers?
- And with the possibility of over 130 different tribes, where would it end?

Even if the Legislature ultimately determines that allowing off-reservation casinos makes sense, this immensely important decision cannot be made by the Governor alone. The Legislature must have input and there must be standards that govern the

process. Allowing one person to wield so much power is antithetical to the governmental structure Californians established in their Constitution. California gave the Governor only limited powers. Limited powers avoid corruption, improper influence and advance sound decision-making, which requires input from many sources, not just one.

If California is to permit off-reservation gaming at all, there must be a clear process that involves, at least:

- 1) Approval of the affected community, including a vote of the affected county consistent with our current law regarding gambling expansion;
- 2) A rigorous environmental review process in accordance with State laws;
- 3) A careful analysis of socio-economic impacts and the cumulative impacts of the proposal;
- 4) Comprehensive intergovernmental agreements that mitigate environmental impacts, and the cost of county or city services such as law enforcement, fire and emergency services; and
- 5) The right to seek judicial relief, before final ratification by the Legislature.

The bottom line is that the State must confront the question of whether gaming in California should expand beyond what the Federal government foists upon the State. Permitting off-reservation gaming will require the State to confront challenging questions about which Tribe gets what and why.

Tribal casinos are being considered in the urban areas of Los Angeles, San Gabriel Valley, Santa Ana, even San Juan Capistrano in Orange County. There are several additional tribes petitioning for federal recognition in the central valley including Fresno and Clovis. In the Bay Area groups seeking recognition reside in San Jose and Novato. Tribes with land and the right to game on that land want more, like the Los Coyotes Band is seeking a casino 150 miles from its current reservation with its Detroit MI investors and the Manzanita Band of San Diego is seeking a casino in Calexico, Imperial County.

The State should not assume that it should move forward with off-reservation gaming at all. It should be a considered decision, made only after considerable

information gathering and debate. But assuming that the State wants further casino expansion, there must be a rigorous process that ensures that removal of state lands for casino developments is in the best interest of the State and ensures the rights of its citizens are protected.

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