Stand Up For California!
"Citizens making a difference"

www.standupca.org

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June 4, 2012

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RE: Opposition to SB 162 – Proposes to abdicate California's responsibilities to all California citizens to benefit tribal entities.

Dear Senators Anderson, Wyman and Assembly Member Garrick:

Please list ***Stand Up For California!***[1] in opposition to SB 162 authored by Senator Anderson, and co-authored by Senator Wyman[2] and Assembly Member Garrick. This legislation, read on May 21, 2012, has been inserted in a ***"gut and amend"*** bill. The bill appears to be special interest legislation for the Sycuan Band of Kumeyaay Nation (Band). The legislation has immediate and serious impacts on a number of non-tribal communities throughout California. Moreover, because it adopts a preemptive government response to key exceptions in the federal Indian Gaming Regulatory Act (IGRA), it sets an unwanted precedent of gambling expansion on off reservations lands acquired in trust for tribes after the enactment of IGRA.

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[1] *Stand Up For California!* our *organization* is a non-profit, public service corporation with the stated mission of educating lawmakers, law enforcement, local governments and citizens about the cultural, economic, and political impacts of state and tribal government gaming, and to develop a focused policy that safeguards communities, local governments and tribal governments and promotes cooperation and beneficial government to government relationships.

[2] Senator Mark Wyland, May 25, 2012, four days after the reading of SB 162 posts to his blog regarding another bill SB 829 "The bill left the Senate in one form was *gutted and amended* in the Assembly, and returned to the Senate a completely different bill. ***I believe this approach to lawmaking disregards the rules, often results in unintended consequence and can produce laws that don't reflect the people's interests."***

Analysis of SB 162

Federal Indian law throughout history has always focused on a policy's local effects on relationships between Indians and non-Indians. The additions to Government Code 11019.8 (4), (4)(c), and (4)(e) proposed in SB 162 significantly and negatively affect relations between California Indian tribes and their non-Indian neighbors. The legislation allows for the expansion of tribal gaming or ancillary supporting projects without state mitigation agreements. Without the assistance and protection of the State, taxpayers in communities will continue to unfairly subsidize the off-reservation impacts created by on reservation tribal developments.

SB 162 is not fiscally conservative. Although SB 162 purports to save state funds it will directly and practically affect the personal pocket books of individual citizens who suffer the greatest negative impacts from fee-to-trust land acquisitions and who are left with no recourse against tribal entities virtually immune to civil liability. The cost of the unmitigated cumulative environmental impacts, the loss of property tax and current or future taxable revenues, due to the removal of land out of state regulatory authority and from the tax rolls creates a significant fiscal impact to the scarce moneys in state and local government general funds.

Section (4)

This section conflicts with the principal responsibilities of state government, which are health, education, public safety, emergency services, housing, water, land use and wildlife protection. Responsibility over these public policy issues fall under the purview of respective state agencies. Fee-to-trust land acquisitions can negatively affect public policy and state laws in each of these instances. It is the duty of the Governor and the Attorney General to see that the laws of the state are uniformly and adequately enforced.[3] A plain reading of SB 162 reveals it to be an effort to tie the hands and limit the ability of the California Governor and Attorney General to execute their constitutional obligations.

Currently, the Governor and the Attorney General review all fee-to-trust land acquisitions to ensure that the acquisitions comply with federal law, the National Environment Protection Act (NEPA) and in general analyze the proposed fee-to-trust land acquisition's impact on the State and local government. As necessary, the Governor and the Attorney General comment on or oppose fee-to-trust land acquisitions that do not comply with federal law, including NEPA, or are deficient or problematic in any other manner that could negatively impact the State.

Section (4)(c)

This section raises significant question regarding *Separation of Powers* and the *1st Amendment Constitutional Rights of State Officials under both the State Constitution and under Federal law.* This is language that should be—must be—researched, as the consequences are far-reaching to all "State Officials."

- Who if not the Governor or Attorney General is responsible to take an action on behalf of the state if a fee-to-trust land acquisition application is processed incorrectly or inconsistent with federal regulation or where the federal regulation is unlawful or unconstitutional?

[3] California Constitution Article 5

- Who if not the Governor or Attorney General is responsible to take an action on behalf of the state if the Bureau of Indian Affairs (BIA) in their review of the National Environmental Protection Act (NEPA) disregards environmental requirements?

- Does this Legislature expect the state to simply rubberstamp any application that a tribe claims as housing, environmental protection or cultural preservation?

- What will be included in the broad terms "environmental protection" or "cultural preservation"? What standards will be applied, what requirements will be enforced? And by whom? Tribes have purchased land on the open market. If Tribes own the land free and clear and control development, why is placing it in trust necessary?

- To what extent can the Legislature limit the free speech and right of access to the courts of the Executive Branch of Government - and for how long, forever?

- To what extent can the Legislature limit the scope of Constitutional authority of the Executive Branch of government to protect the interest of the State?

- Can a state statute limit Gubernatorial or Attorney General constitutional authority? Or does SB 162 language require a State Constitutional Amendment?

Federal Indian policy attempts to maintain the delicate balance between state, tribal and federal authorities. Certainly state statutes or policies should also focus on positive relations between tribes and the surrounding communities. SB 162 upsets this delicate balance in the fee-to-trust land acquisition process between the state, tribes and the federal government. Instead, **SB 162 abdicates California's responsibilities to all California citizens to benefit tribal entities**. Moreover, the abdication is completely unnecessary – any state opposition in a fee-to trust-land acquisition application is not a permanent end to the process. The applications can be resubmitted after any problems have been resolved.

The fee-to-trust land acquisition process is *"linked"* to multiple federal and state statutes and regulations. Often a federal fee-to-trust land acquisition application takes several years to process because of the expertise that is necessary for the review of: (1) environmental impacts such as traffic circulation, air quality, water resources, waste water disposal, toxic and hazardous wastes, all state public policies, (2) ethno-historical, genealogical, anthropological and federal statute review to ensure tribal status[4] and (3) analysis of fee-to-trust land acquisition regulations linked to the IGRA, the California Tribal State Compacts the National Environmental Protections Act, the Endangered Species Act, Indian Lands Consolidation Act, Quiet Title Act, Administrative Procedures Act, the Williamson Act, court rulings, and other laws both federal and state depending on the unique set of circumstance in each fee-to-trust land acquisition application. This applies whether the application is for housing or for gaming and directly and practically affects the welfare of the public and operation of government.

[4] Since 2009, the *Carcieri v Salazar* ruling by the United States Supreme Court prevents the Secretary of the Interior from taking land into trust for tribes recognized after 1934.

Section (e)

This section must be deleted or its wording revised. While use of this list is appropriate for the BIA to use in their delivery of services, it is improper for the State of California solely to rely upon it. The List may be used as guidance, this section limits the State of California, *"...for the purposes of this code, or any other California law..."* to using the Indian Entities Recognized and Eligible to Receive Services List from the United States Bureau of Indian Affairs. The list contains names of tribal groups that have been improperly placed on this list and potentially allows the development of illegal casinos. The list is not accurate.

IGRA Exception *Linked* to Fee-to-Trust Land Acquisitions - Sycuan Band of the Kumeyaay Nation

The Sycuan Band of the Kumeyaay Nation's fee-to-trust land acquisition is a gaming acquisition. Please review: 25 USC 2719(a)(1) Gaming on lands acquired after October 17, 1988 is prohibited unless –

> **"(1) such lands are located within or contiguous to the boundaries of the reservation of the Indian tribes on October 17, 1988, or..." (Emphasis added)**

The Sycuan Band of the Kumeyaay Nation's revised application is to take twenty-one parcels located in San Diego County out of the regulatory control of the state in trust for the Tribe. Only 2 of the 21 parcels have boundaries that are contiguous, yet the application is using the ON reservation regulation 151.10 which identifies this application as land that meets the above exception for gaming.[5] The BIA is not adhering to its own rules. This is federal overreaching, affecting the police powers of the State of California under the 10th Amendment requiring that the state adequately enforce the law.[6]

SB 162 - Creates a Gaming Loop-Hole in the 1999 Tribal State Compacts

The 1999 Compacts[7] permit a tribe to have "two gaming facilities". The 1999 Compact stipulates that land must meet the standards of "Indian Lands" under IGRA. Indeed the 1999 Compacts state the following:

> Section 4.2 Authorized Gaming Facilities. The Tribe may establish and operate not more than two Gaming Facilities, and only on those Indian lands on which gaming may lawfully be conducted under the Indian Gaming Regulatory Act. The Tribe may combine and operate in each Gaming Facility any forms and kinds of gaming permitted under law, except to the extent limited under IGRA, this Compact, or the Tribes Gaming Ordinance. (Emphasis added)

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[5] In the Governor's letter of November 18, 2011, page 3 paragraph 3, points out that analysis of the application under C.F.R. 151.10 is for an ON reservation application. The land in question has been under the authority of the State of California since 1850 and is not reservation lands. This land is OFF reservation and must be analyzed under C.F.R. 151.11. SB 162 will set an unwanted policy on the acquisition of contiguous lands that potentially will result in gaming expansion off reservation statewide without mitigation of impacts.

[6] United States Constitution Tenth Amendment – Police Powers of the State

[7] There are 33 Tribes with 1999 Tribal State Compacts. Six of these 1999 tribal state compact tribes reside in San Diego County. SB 162 will allow unquestioned fee-to-trust land acquisitions for housing, environmental protection or cultural preservation for all of San Diego Counties 18 tribal governments. Compacts are set to expire in 2020.

Section 4.2 of the 1999 Compact identifies "Indian Lands" eligible for gaming consistent with IGRA without regard to whether or not the land is acquired for gaming or housing or any other purpose. The 1999 Compact negotiated by the Governor, ratified by the State Legislature and approved by the Secretary of the Interior imposed this requirement.

- SB 162 adopts a preemptive state government response to newly acquired lands that will meet the definition of "Indian Lands" eligible for gaming.

- SB 162 circumvents the State's role in the fee-to-trust land acquisition process to protect the interests of the state should newly acquire land be eligible for gaming under IGRA.

- SB 162 creates a loop-hole for gaming expansion off-reservation without State input.

Legislators must consider if California voters would have approved Proposition 1A, the statewide ballot authorizing tribal gaming in 2000 on established Indian lands *IF* this requirement had not been imposed in the Tribal State Compact? The electorate was promised, NO off-reservation gaming.

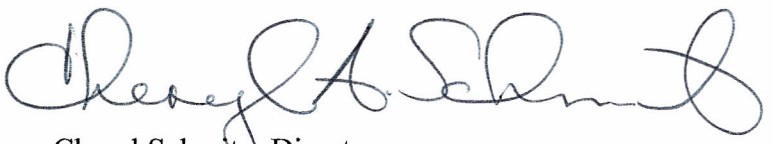
A compact is an agreement to permit gambling, it is also an important and vital agreement that maintains the delicate balance of powers between tribes, a state and federal government. A compact is an agreement that should be carefully constructed while recognizing the powers invested in the Executive and Legislative branches of government. It is an agreement that should be recognized and be enforced to ensure the continued rights of not only the parties but of ALL citizens. SB 162 upsets the rights of the parties and all citizens of California.

Conclusion

California, with 110 Tribal governments and 78 more tribal groups seeking federal recognition, has approximately 137 fee-to-trust land acquisition applications pending with the BIA, encompassing more than 15,000 acres of state lands. The cumulative environmental impacts and the cost of the financial removal of these lands from the tax rolls in California is astronomical. Most of these applications are for contiguous lands and are applications by many of the state's successful gaming tribes. This makes fee-to-trust land acquisitions a serious emerging financial, and public policy issue. Further, fee-to-trust land acquisitions are linked to IGRA and to our Tribal State Compacts significantly affecting our states gambling policy.

Please list ***Stand Up For California!*** opposed to this legislation for all of the above reasons.

Sincerely,



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