

Stand Up For California! **“Citizens making a difference”**

www.standupca.org

P. O. Box 355
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June 3, 2014

Assembly Member Adam Gray
State Capitol / Room 6012
P.O. Box 942849
Sacramento, CA 94249-0021

RE: Oppose AB 1098-Ratification of the Enterprise Tribal State Compact

Dear Assembly Member Gray,

Stand Up For California! is writing today to oppose efforts to ratify an off- reservation tribal state compact for the Enterprise Rancheria. Our organization is opposed to off reservation gaming compacts for the following reasons; (1) Off reservation gaming violates the California plan for gaming authorized in Proposition 1A, (2) Pending Litigation and Referendum (3) Yuba County Voters Opposed, (4) Enterprise has 40 acres eligible for gaming and, (5) Gaming Investors Driving Off-Reservation Gaming.

Discussion

1. Off Reservation Gaming Violates California’s Plan for Gaming Authorized in Prop 1A

More than a decade ago, California voters amended the California Constitution through Proposition 1A to permit a “limited exception” for tribal gaming on “Indian lands.” The proponents promised California voters that Proposition 1A did not authorize off-reservation gaming. Previous off-reservation casino proposals (Lytton and Los Coyotes/Big Lagoon) failed to get sufficient support in the Legislature, and it was not until last year that an off-reservation gaming compact was passed - the North Fork Rancheria compact. As you recall, legislators struggled with the vote for the North Fork compact and complained that the Governor was jamming them. It would appear this State Legislature is once again being jammed.

Casino proposals, like that of the Enterprise Rancheria and its gaming developer Gerald Forsythe from Chicago, erode the State’s legal basis for distinguishing between Indian and non-Indian gaming, because the State’s interest in protecting the public health, safety, welfare and good order will no longer be served by the careful limitation of casinos to remote Indian lands.

“Allowing any of these proposals to proceed would offend the State’s public policy, would betray the California electorate’s good faith and would subvert the notions of cooperative federalism that lie at the heart of the Indian Gaming Regulatory Act.” *May 2005, Peter Siggins, Legal Affairs Secretary to Governor Arnold Schwarzenegger, letter to Mr. Clay Gregory, Regional Director Bureau of Indian Affairs.*

(2) Pending Litigation and Referendum

It is not wise at this time for the State Legislature to approve another off-reservation gaming tribal state compact. 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 answers these questions. 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.

- (1) Did the Governor violate the California Constitution by agreeing to concur for an 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?

Furthermore, in federal litigation, we have challenged the Bureau of Indian Affairs for not being able to issue a complete administrative record more than a year after taking the Enterprise casino site land into trust.

Also pending is a statewide referendum on the North Fork Compact. *Stand Up For California!* is the proponent of this referendum. Voters in November of 2014 will have an opportunity to express their opinion on off-reservation gaming when they cast their ballots.

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 consider waiting until after a court ruling on the legality of the Governor’s ability to grant concurrence. Moreover, the Legislature should not consider acting on the Enterprise compact until after the referendum of the North Fork Compact in order to view the will of the California voters on the topic of expanding tribal gaming off-reservation.

(3) Yuba County Voters Opposed

In the November 2005 special election, Yuba County placed an advisory measure on the ballot asking the voters to decide if they wanted a casino (and the perceived benefits and burdens of a casino) in their community. The specific intent of the advisory vote was to give the public a voice on whether or not gambling was an accepted industry in their community.

Yuba County Ballot:

“Should a destination resort/hotel and American Indian gaming casino be located within the sports/entertainment zone on Forty Mile Road in the County of Yuba?”

The “NO” vote won 52.8% to 47.2%. And in the supervisor’s district where the casino would be

located, the “NO” vote was 59%.

Why support a tribal state compact that goes against the will of the Yuba County electorate?

(4) Enterprise has 40 Acres Eligible for Gaming

The Enterprise Tribe has 40 acres eligible for gaming in Butte County. The Tribe has purchased an additional 60+ acres just outside the City of Oroville. Both of these parcels are within the Enterprise Rancheria’s historic territory. The proposed site of the off-reservation casino is more than 50 miles from the original 40 acre Rancheria in an area to which the Enterprise Indians have no historic connection.

- The Enterprise Rancheria and the North Fork Rancheria are breaking the promise of no off-reservation gaming to the California electorate. This broken promise disenfranchises the will of California voters.
- This broken promise affects the financial viability of nearby tribes that have played by the rules of Proposition 1A. Tribal governments have based long-term financial planning on the gaming authorization in this constitutional amendment that restricted gaming to established Indian lands. Off-reservation gaming impacts tribal gaming markets and has the potential of bankrupting the efforts of tribes to achieve self-determination. In this instance the Tribes of Colusa, Mooretown and Berry Creek will be significantly affected.
- This broken promise affects the viability of the state’s commercial gaming entities and the revenues that are generated and paid to local governments and the State of California general fund.

(5) Gaming Investors Driving Off-Reservation Gaming

“**Reservation Shopping**” is visibly driven by out-of-state gaming investors. Currently, Station Casinos of Las Vegas, Penn National, Boyd Gaming, Genting of Malaysia, Illitches of Detroit, are investing in order to reap and take millions of dollars out of the State of California. These investors carefully control their clients, making “management contracts” and collateral “development agreements”. Some of these development agreements obscure the terms of the agreement, the source of the money and the payout to the investors. Often these agreements skirt the requirements of management contracts laid out in IGRA.

In a Freedom of Information Act law suit, *Stand Up For California!* was able to obtain, a copy of the Enterprise Management Agreement. The economic forecast for the Enterprise casino cash flow over the first 7 years of the Forsythe management contract per sales and management agreements shows between debt service and management fees, that Gerald Forsythe will earn \$345.4 million.

This is 70.25% of the revenue created by the Enterprise casino are revenues that will be taken from nearby tribes, non-tribal businesses in the surrounding community and tax dollars all exported to Illinois. **What is the benefit to the State of California?**

The Enterprise Rancheria is projected to earn \$120 million over that same seven year period. This is 24.4% of the casino earnings *if the revenue projections are accurate*. The contract only guarantees a total of \$8.4 million because Forsythe gets paid before the tribe gets anything.

This is only \$700,000 more per year than Enterprise is already getting from state revenue sharing. Meanwhile, nearby tribes, the state, local government and surrounding regional area will experience a revenue loss.

For all of the aforementioned reasons, *Stand Up For California!* opposes the ratification of the Enterprise tribal state compact.

Please list *Stand Up For California!* in opposition to AB 1098 and any other ratification legislation for the Enterprise compact.

Sincerely,



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