

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Michael T. Healy (Cal. Bar # 133718)
Law Office of Michael T. Healy
11 Western Avenue
Petaluma, CA 94952
Telephone: (707)762-8768
Facsimile: (707)762-7589

**ENDORSED
FILED**
MAY 21 2012
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

*Attorney for Plaintiffs Stop the Casino 101
Coalition, Marilee Montgomery,
Pam Miller and Fred Soares*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SONOMA**

Stop the Casino 101 Coalition, Marilee)
Montgomery, Pam Miller and Fred Soares,)

Case No. *SCV* 251712

Plaintiffs,

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

vs.

Edmund G. Brown, Jr., Governor of the State)
of California, in his official capacity, and)
DOES 1 through 100,)

Unlimited Civil

Defendants.

INTRODUCTION

1. This action raises the narrow issue of whether land which is within the state's borders and has been governed by state law since the state was admitted into the Union remains under state jurisdiction even after title to the land is transferred by a private owner to the federal government in trust for an Indian tribe where the state has not ceded its sovereignty over the site. In this case, the land was taken into trust specifically so the tribe could construct and operate a casino – an activity illegal on lands governed by state law – and defendants simply assume that such transfer automatically deprives the state of jurisdiction to govern gambling on the land even though the state did not cede its authority.

1 Plaintiffs contend that the site remains subject to state law, including state prohibitions on
2 casino gambling because the state has not ceded its sovereignty over the site.

3
4 2. This action also effectively seeks to restore the original intent of Proposition 1A
5 from the 2000 election, by which California voters authorized casino gaming on Indian lands
6 under carefully proscribed conditions. Responding to arguments by Prop. 1A's opponents
7 that "Casinos won't be limited to remote locations. Indian tribes are already buying up prime
8 property for casinos in our towns and cities," Prop. 1A's proponents argued:

9
10 Proposition 1A and federal law strictly limit Indian gaming
11 to tribal land. The claim that casinos could be built
12 anywhere is totally false. ... The majority of Indian Tribes
13 are located on remote reservations and the fact is their
14 markets will only support a limited number of [slot]
15 machines.

16
17 See <http://primary2000.sos.ca.gov/VoterGuide/pdf/1a.pdf>. In short, Prop. 1A's proponents
18 promised voters that that measure would not spawn reservation shopping on non-traditional
19 Indian lands. AB 517 proves the falsity of that promise.

20
21 3. This action seeks to invalidate a bill, AB 517, passed by the California
22 Legislature in May 2012 and codified at Government Code § 12012.56 on the grounds that it
23 violates the California Constitution. AB 517 ratified a gaming compact with the Federated
24 Indians of Graton Rancheria ("FIGR") and authorizes the construction of a gaming casino on
25 a 254 acre site near Rohnert Park containing up to 3,000 slot machines. Casino gaming, slot
26 machines and banked card games like Black Jack are all illegal under the California
27 Constitution and Penal Code. The Governor and Legislature erroneously assume that the
28 mere fact that title to the site has been taken into trust by the Department of the Interior for
the FIGR deprives the State of California of sovereignty over the property and makes it
"Indian Land" within the meaning of state law and eligible for gaming under federal law. It

1 does not. State law, including prohibitions on gaming, still apply to the site. Accordingly,
2 plaintiffs seek appropriate declaratory and injunctive relief.

3
4 4. This legal theory is not new. The legal and factual bases for it were explained in
5 copious detail in a January 25, 2011 letter to Governor Brown, a true and copy of which is
6 attached hereto as Exhibit 1. Attached to Exhibit 1 is a one hundred year old letter from the
7 Department of the Interior acknowledging precisely the same analysis regarding Indian lands
8 in Mendocino County. No response to Exhibit 1 was ever received. Some of the plaintiffs in
9 this action previously presented much the same argument in federal court in an effort to
10 prevent the federal government from taking the site into trust; the court never reached the
11 merits of the argument because it determined that the casino use was “hypothetical” and that
12 plaintiffs therefore lacked federal standing. *Stop the Casino 101 Coalition v. Salazar*, 384
13 Fed.Appx. 546 (9th Cir. 2010). With the passage of AB 517, the casino use can no longer be
14 said to be hypothetical.
15

16 5. The necessity of formal state cession of sovereignty and jurisdiction over land to
17 the federal government is recognized by Government Code § 111, which lists all the statutes
18 which have ceded sovereignty over land to the federal government. The various statutes
19 enumerated therein pertain to military bases, national parks and the San Francisco Mint.
20 Only one statute, enumerated at Govt. Code § 111(g), cedes state sovereignty over an Indian
21 reservation, for the Soboda tribe of Riverside County. *See* 1911 Cal. Stat. Ch. 675, a true and
22 correct copy of which is attached hereto as Exhibit 2.
23

24 6. AB 517 was passed by the California Senate on May 7, 2012. It was passed by
25 the California Assembly on May 10, 2012. Governor Brown signed AB 517 on May 17,
26 2012 and it was filed with the Secretary of State the same day. AB 517 is an urgency bill, so
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

it took effect immediately. A true and correct copy of AB 517 is attached hereto as Exhibit

3. The Tribal-State Compact Between the State of California and the Federated Indians of Graton Rancheria (the "Compact") is 240 pages in length, and is therefore not attached as an exhibit hereto.

7. In or about October 2010, the Secretary of the United States Department of the Interior accepted into trust the 254 acre parcel of land adjacent to the City of Rohnert Park (the "Property") on behalf of the Federated Indians of Graton Rancheria. The Secretary acted pursuant to the Graton Rancheria Restoration Act of 2000 (the "Graton Act"), codified at 25 U.S.C. § 1300n-1, *et seq.*, which provides in pertinent part that "[u]pon application by the Tribe, the Secretary shall accept into trust for the benefit of the Tribe any real property located in Marin or Sonoma County ... after the property is conveyed ... to the Secretary and if ... there are no adverse legal claims to such property." 25 U.S.C. § 1300n-3(a).

8. The Graton Act provides that land selected by the FIGR for trust status shall become part of FIGR's reservation and shall be exempt from local, state and federal taxation, but does not purport to alter California's jurisdiction over the Property. 25 U.S.C § 1300n-3(b), (c) & (d).

9. Since the State of California was admitted into the Union in 1850, the Property was never an Indian reservation nor traditional Indian lands. The Property is governed by state law, and has been governed by state law since 1850. Until it was taken into trust by the Secretary, the Property was owned by a subsidiary of Station Casinos, Inc., a large casino operator based in Las Vegas, Nevada.

10. Plaintiffs currently benefit from California and local laws that set limits on land use and development, and which prohibit casino gambling, on the Property. If AB 517 and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Government Code § 12012.56 are upheld, plaintiffs' settled expectations as residents regarding the conformance of the Property to state and local land use, environmental protection and water quality laws, as well as prohibitions against casino gaming, would be disrupted.

11. The United States Constitution recognizes only three methods by which land that has been subject to the sovereignty of a state can be removed from that state's sovereignty. None of the three methods have been complied with regarding the Property. Accordingly, the Property is not Indian Land within the meaning of state law or eligible for gaming under federal law, and it remains subject to the laws of State of California, including prohibitions on casino gambling.

12. A controversy has arisen as to whether or not the Secretary of the Interior's action to take the Property into trust for the FIGR has the effect of depriving the State of California of sovereignty over the Property. If it does not, as plaintiffs contend, and California law still applies to the Property, then AB 517 and Government Code § 12012.56 violate provisions in the California Constitution and Penal Code by allowing casino gambling, slot machines and banked card games such as Black Jack on the Property.

PARTIES

13. Plaintiff Stop the Casino 101 Coalition ("Coalition") is an unincorporated association of citizens who live near the Property, own land or businesses near the Property, or have other interests directly affected by the FIGR's proposed casino, and whose interests are currently protected by the laws of the State of California. The Coalition was founded in August 2003 by long-time Rohnert Park resident Pastor Chip Worthington.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

14. Plaintiff Marilee Montgomery is a member of the Coalition and resides at 4427 Taylor Avenue in an unincorporated area within a half mile of the proposed FIGR casino. She moved to the area 18 years ago because she wanted a peaceful and natural place to live. She relies on well water for her residence. She will suffer environmental and economic injury if the casino is built because it will accelerate the depletion of the aquifer. She will also suffer injury to her quality of life due to increased risk of flooding, traffic congestion, noise, water and air pollution and water shortages resulting from the casino.

15. Plaintiff Pam Miller is a member of the Coalition and resides at 4306 Primrose Avenue in an unincorporated area approximately a half mile from the proposed FIGR casino. She raises sheep, chickens and goats on her 2.5 acre property, and pumps groundwater to meet her domestic and farming water uses. She will suffer environmental and economic injury if the casino is built because it will accelerate the depletion of the aquifer. She will also suffer injury to her quality of life due to increased risk of flooding, traffic congestion, noise, water and air pollution and water shortages resulting from the casino.

16. Plaintiff Fred Soares is a member of the Coalition and resides at 4319 Primrose Avenue in an unincorporated area approximately a half mile from the proposed FIGR casino. He has lived on this property for over 30 years. He pumps groundwater to irrigate his 2.5 acres, on which he grows crops and raises farm animals. He will suffer environmental and economic injury if the casino is built because it will accelerate the depletion of the aquifer. He will also suffer injury to his quality of life due to increased risk of flooding, traffic congestion, noise, water and air pollution and water shortages resulting from the casino.

17. AB 517 and the gaming compact that it ratifies authorize a casino of 540,000 square feet with 3,000 slot machines on the Property. Station Casinos, Inc., the FIGR's

1 business partner, has stated that it anticipates beginning construction in the summer of 2012
2 and opening the casino in 2013. Thus, the danger to plaintiffs is immediate.

3
4 18. All plaintiffs have reasonable and settled expectations, as residents of Sonoma
5 County, that the Property, which has been subject to state and local laws since 1850, will
6 continue to be subject to state and local laws and will therefore be subject to local land use
7 and zoning regulations, including local general plans, as well as state laws regulating
8 environmental quality and prohibiting casino gambling. The current county zoning on the
9 Parcel is primarily Rural Residential and Agricultural. All plaintiffs have public interest
10 standing within the meaning of *Save the Plastic Bag Coalition v. City of Manhattan Beach*,
11 52 Cal.4th 155 (2011), because this action involves a question of public right and its object is
12 to procure compliance with the California Constitution's prohibition of casino gaming on
13 lands subject to state sovereignty.
14

15 19. Defendant Edmund G. Brown, Jr., is the Governor of the State of California
16 and is sued in his official capacity. In that capacity, he signed the Tribal-State Compact
17 Between the State of California and the Federated Indians of Graton Rancheria, *see* the
18 Compact at p. 107, which purports to authorize the FIGR to conduct Class III gaming on the
19 Property and which AB 517 and Government Code § 12012.56 purport to ratify.
20

21 20. The true names and capacities, whether corporate, associate, individual,
22 partnership or otherwise of defendants Does 1 through 100, inclusive, are unknown to
23 plaintiffs, who therefore sue said defendants by said fictitious names. Plaintiffs will ask
24 leave to amend this Complaint to assert their true names and capacities when the same are
25 ascertained
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

21. At all times referenced herein each of the defendants, including the Doe defendants, was and is the agent, employee and partner of the remaining defendants, and was, in performing the acts complained of herein, acting within the scope of such agency, employment or partnership authority.

VENUE

22. Venue is proper in the Sonoma County Superior Court pursuant to Code of Civil Procedure § 393(b) in that this action arises in Sonoma County because the Property is located entirely within Sonoma County.

FIRST CAUSE OF ACTION

(Declaratory and Injunctive Relief (CCP §§ 526, 1060))

23. The allegations of paragraphs 1 through 22 above are realleged and incorporated herein by this reference.

24. AB 517 and Government Code § 12012.56, as they will be applied in the near future, impinge on plaintiffs' rights by authorizing the construction of a casino on the Property in violation of the California Constitution, as explained herein. Construction of a massive casino within a half mile of the homes of plaintiffs Montgomery, Miller and Soares will irreparably harm their quality of life, including traffic, noise, air and water pollution, depleting the aquifer and increased risk of flooding. Construction of a massive casino will harm all plaintiffs by introducing casino gaming for the first time into the urban core of Sonoma County, with all the attendant social ills that accompany such establishments, including increased crime, alcoholism and drunk driving, stressing the finances of working families, and harming established small local businesses.

1 25. California Constitution Art. 4, § 19(e) provides “The Legislature has no power
2 to authorize, and shall prohibit casinos of the type currently operating in Nevada and New
3 Jersey.” The next subdivision provides an exception for Indian gaming, as follows:

4 Notwithstanding subdivisions (a) and (e), and any other
5 provision of state law, the Governor is authorized to
6 negotiate and conclude compacts, subject to ratification by
7 the Legislature, for the operation of slot machines and for the
8 conduct of lottery games and banking and percentage card
9 games by federally recognized Indian tribes on Indian lands
10 in California in accordance with federal law. Accordingly,
11 slot machines, lottery games, and banking and percentage
12 card games are hereby permitted to be conducted and
13 operated on tribal lands subject to those compacts.

14 California Constitution Art. 4, § 19(f). The federal Indian Gaming Regulatory Act (“IGRA”)
15 provides that Class III gaming (e.g., slot machines and banked card games) may be allowed
16 only on (1) “Indian lands” where (2) the “tribe ha[s] jurisdiction over such lands.” 25 U.S.C.
17 § 2710(d)(1)(A)(i). Importantly, California law incorporates federal law to determine the
18 eligibility of Indian Lands for gaming. Only Indian Lands that meet the second requirement
19 of being under tribal jurisdiction are eligible for gaming under both federal and California
20 law.

21 26. Lands that are “under tribal jurisdiction” are lands that are not under state
22 jurisdiction or sovereignty. Not all Indian Lands so qualify, which is why federal law sets
23 forth a two step test.

24 27. The 254 acres that constitute the Property have not traditionally been Indian
25 lands. A subsidiary of Station Casinos, Inc. purchased the property in 2005 from Dennis
26 Hunter and Clem Carinalli, who are not Indians. Before the Hunter / Carinalli ownership, the
27 Property had been in the long-time ownership of the Poncia family, local dairy farmers, who
28 are not Indians. In June 1844 the Property was part of the 17,239 acre Rancho Cotate land

1 grant by the Mexican government to Juan Costaneda, a captain in the Mexican Army who
2 was not a local Indian. The Property has not been owned by Indians since before the
3 admission of California as a state in 1850, and has been subject to California sovereignty
4 continuously since 1850.
5

6 28. There are only three methods by which the federal government, and through it a
7 tribe, can gain sovereignty over lands within a state's borders. The first method is where the
8 federal government or a tribe has the land reserved for it when the state was admitted into the
9 Union; such land is commonly known as traditional Indian lands. Second, the federal
10 government may obtain exclusive jurisdiction over lands purchased pursuant to the Enclaves
11 Clause of the United States Constitution, with the state's consent. Third, where a state cedes
12 jurisdiction over certain land, and the federal government accepts such, it gains those powers
13 ceded by the state. These are the only three methods. *Coso Energy Developers v. County of*
14 *Inyo*, 122 Cal.App.4th 1512, 1520 (2004).
15

16 29. None of the three methods of providing tribal sovereignty have been achieved
17 with respect to the Property. The Property is not traditional Indian lands, nor has it been
18 since before 1850. The federal government has not invoked the Enclaves Clause in
19 connection with the Property. Nothing in Government Code § 12012.56 or in the Compact it
20 ratifies purport to cede the State of California's sovereignty over the Property to either the
21 federal government or the FIGR. Thus, the Property remains subject to state sovereignty.
22

23 30. The Property is not under FIGR tribal jurisdiction within the meaning of 25
24 U.S.C. § 2710(d)(1)(A)(i) and is therefore not eligible for casino gaming under IGRA.
25 Because the Property is not Indian Lands under state law, and does not qualify for casino
26 gaming under IGRA, it does not qualify for the exception to California's prohibition on
27
28

1 gaming provided by California Constitution Art. 4, § 19(f). Because the Property does not
2 qualify for the exception, the Compact, AB 517 and Government Code § 12012.56, which
3 ratify the Compact, all violate California Constitution Art. 4, § 19(e).
4

5 31. A present and actual controversy exists between plaintiffs and defendants
6 regarding plaintiffs' rights under the California Constitution. Plaintiffs contend that AB 517
7 and Government Code § 12012.56 violate California Constitution, Art. 4, § 19(e) & (f)
8 because the Property is not Indian Lands within the meaning of federal and state law, and
9 therefore the State of California is prohibited from entering into the Compact and thereby
10 authorizing casino gaming on the Property. Defendants dispute plaintiffs' contentions and
11 contend that the statute is valid and enforceable, both on its face and as applied to plaintiffs.
12

13 32. Plaintiffs desire a judicial determination and declaration of plaintiffs' and
14 defendants' rights and duties under AB 517 and Government Code § 12012.56, of the
15 question of whether AB 517 and Government Code § 12012.56 violate California
16 Constitution, Art. 4, § 19(e) & (f), and of the validity and enforceability of AB 517 and
17 Government Code § 12012.56. Such a declaration is necessary and appropriate at this time
18 so that plaintiffs may ascertain their rights and duties without being subjected to a possibly
19 irreversible decision to build the casino, or the later interposition of a laches defense.
20

21 33. Injunctive relief is appropriate pursuant to CCP § 526(a)(2) to avoid great or
22 irreparable injury to plaintiffs, because monetary compensation would not provide adequate
23 relief within the meaning of CCP § 526(a)(4), and to avoid a multiplicity of judicial
24 proceedings within the meaning of CCP § 526(a)(6).
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WHEREFORE, plaintiffs Stop the Casino 101 Coalition, Marilee Montgomery, Pam Miller and Fred Soares pray for judgment against defendants as follows:

1. For a declaration of the Court that AB 517, Government Code 12012.56 and the Compact are unconstitutional on their face and as applied to plaintiffs, that they violate the Indian Gaming Regulatory Act, that they are invalid and unenforceable, and further that the ratification of the Compact is null and void and of no effect;

2. Judgment against Governor Brown and Does 1 through 100 (1) declaring that AB 517, Government Code § 12012.56 and the Compact violate California Constitution Art. 4, § 19(e) & (f) and the Indian Gaming Regulatory Act; (2) permanently enjoining participation by Governor Brown and Does 1 through 100 and their agents, servants, and employees, from participation in the administration of the Compact or taking any actions to carry out the purposes of AB 517 and Government Code § 12012.56; and (3) requiring Governor Brown and Does 1 through 100 to notify all relevant federal officials that the State of California's ratification of the Compact is null and void and of no effect;

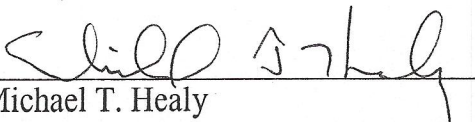
3. For costs of suit;

4. For reasonable attorney's fees pursuant to CCP § 1021.5; and

5. For such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: May 21, 2012.


Michael T. Healy
*Attorney for Plaintiffs Stop the Casino 101
Coalition, Marilee Montgomery,
Pam Miller and Fred Soares*