INDIAN GAMING

California: Leading the Off-Reservation Debate

Off-Reservation gaming expansion has become a national experiment in California. In order to maintain control over gaming policy, California is developing innovative and creative solutions in re-negotiated and new tribal state compacts.

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Influence of Gaming Money on Off-Reservation Casinos

- ***Motivation for Compact Re-negotiation***
- ***Political and Legal Impacts on Local Government***
- ***Jurisdictional Issues***
- ***Recall, Referendum, State Grand Jury and Federal Grand Jury***

Federal Law Governing the Siting of Off-Reservation Casinos

- ***Unique California Indian Law***
- ***The East Bay***
- ***Conflicting Determinations***
- ***Influence of Money on Policy***

Evolving State Policy

- ***Consistency with State Gambling Policy***
- ***Tribal State Compact Solutions***
- ***State Legislative Solutions***
- ***Federal Legislative Solutions***

Profiteers Creating Exceptions

- ***Management Contracts, Developers, Consultants and Manufacturers***
- ***Tribe Shopping***
- ***Landless Tribe Scheme***

California Casino Dreams

- ***Boom or a Bust***
- ***"What happens in California, doesn't stay in California"***

Influence of Gaming Money

Since its enactment in 1988, the Indian Gaming Regulatory Act (IGRA) has been used in a manner which reaches far beyond a simple policy to regulate and permit gaming on Indian lands. It has become a broad national policy on gaming, but a policy enacted without any national 'public' debate or comment. IGRA is now being utilized by tribes and their investors to promote gaming in communities and states that would never have permitted gaming previously. Although on its face limited to gaming, IGRA has affected tribal acknowledgment, tribal restorations, reaffirmations and gaming-related land acquisitions. Twenty-seven states have authorized full service casino-style gaming since the enactment of IGRA in an attempt to foster competition to control the expansion of tribal gaming.

California is the national experiment of tribal gaming expansion both on an off-reservation. Many California tribal groups qualify for gaming due to the 1994 enactment of legislation authored by U. S. Senator John McCain, which he represented at the time as non-controversial. The unintended consequence of Senator McCain's "List Act"[1] in California relates to Rancheria lands[2]. Many Rancheria Bands began to organize in order to promote casinos both on and off reservation in 1994. In essence, the 1994 McCain amendments to the Indian Reorganization Act of 1934 was to grant "class recognition" to tribal groups, which has set the stage for off-reservation gaming in California.

No other state in the Union demonstrates the consequences of gambling money's influence on federal Indian policy better than California, which is home to one-fifth of all tribes in the nation with the smallest population of enrolled tribal members, approximately 40,000. Of the 109 federally recognized tribes 54 are operating 57 lucrative or at the very least successful casinos– a $6 to $8 billion dollar a year industry in California and growing. Tribes and their casinos are untaxed by local, state and the federal government. The untaxed revenue stream of tribal gaming is estimated to grow to $10 to $12 billion in the next five years in California alone.[3]

In addition to the 109 tribes, California has 54 tribal groups currently seeking federal recognition (and concurrent gaming rights) through petitions for federal acknowledgment or Congressional action. Many of these are simply splinter groups of tribes that already exist. Most will not meet the stringent criteria of the federal recognition process.[4] Nevertheless if these tribal groups are bankrolled and able to produce top quality anthropological and genealogical work done by top-flight private outfits, the work by its very nature and quality will gain the attention of Interior bureaucrats. Acknowledged tribal governments qualify for an initial reservation and become a clear exception under IGRA.

Unique to California are Rancheria Bands who have avoided the regulatory process for recognition. These tribal groups, approximately 40 have gone to court and sued for federal recognition. (*Tillie Hardwick v. United States; Scotts Valley v. United States; Daniels v. Andres)* These now "restored" tribes have the potential to acquire new lands

as an exception under IGRA and promote casinos. Many of these tribes are claiming to be "landless" and in need of an "initial reservation," most often in areas far from their original location but more strategically located in profitable urban centers. Gaming investors are actively pursuing these tribal governments seeking to fund and profit from such off-reservation casino locations.

The tribal gaming industry is now attempting to move off-reservation,[5] away from established Indian lands, into lucrative urban and metropolitan communities. While the citizens of California voted for Proposition 5 in 1998 and Proposition 1A in 2000 to allow tribal gaming on <u>established</u> Indian lands, they did not intend to approve off-reservation gaming. Governor Davis filed an amicus brief in January of 2002 in a case which challenged the constitutionality of Proposition 1A (*Artichoke Joe's vs. Gale A. Norton)* in which it is clearly and cleanly stated that:

> **". . . the state has a long standing opposition to casino style gaming in urban areas". Further, the voters of this state were led to believe that the prospect of urban gaming cropping up throughout the State was not a legitimate concern. The ultimate purpose of Proposition 1A was to create a limited exception to the State's general prohibition upon casino style gaming that would allow Indian tribes to conduct gaming on "remote" Indian lands. Indian lands being those lands held in trust prior to the cut off date of the Indian Gaming Regulatory Act of 1988."**

This controversial move off-reservation by tribes presents serious problems for local governments and affected state agencies, because local government and state agencies have absolutely no control over zoning, police, fire, roads or other regulatory matters on tribal lands. Local government has no authority under the 1999 tribal state compacts to address off-reservation impacts. Even though the compact calls for 'good faith efforts' to mitigate off-reservation environmental impacts, when tribes decide not to come to the table, negotiations with the affected local governments are aborted before they ever begin.

<u>Motivation for tribal state compact re-negotiations:</u> The failure of the 1999 tribal-state compacts is what has created the public and local government backlash to tribal gaming expansion throughout California. The failure of the 1999 tribal-state compacts extends to both financial and social justice issues. The social, economic and political cost to citizens, local government and state agencies resulting from this failure is the primary motivation for Governor Schwarzenegger to re-negotiate all of these compacts.

In July 2002, the California State Association of Counties in conjunction with the California State Sheriffs Association and the California League of Cities released their Survey of Tribal Gaming Impacts on County Governments.[6] There are currently 54 operational casinos maintained by 53 tribal governments in 34 counties. More Indian casinos are planned. In the 34 counties impacted by tribal gaming only 18 agreements with tribes to address mitigations have been reached. Only a handful of these are

comprehensive and address the concerns of the greater community. One County, San Diego, has 8 casinos and a slot arcade, the most of any jurisdiction in the State.

Statewide as of 2002, Indian casinos have cost the counties more than $200 million in non-reimbursed road, water, sewage, and fire and law enforcement costs.[7] Tribal governments are not required to pay local or state taxes on their businesses or property. Nor are they required to collect sales taxes, a portion of which goes to local communities. Tribal hotels pay no transient occupancy tax and tribal enterprises to do not pay business license fees. Yet these governments use the services of their local jurisdictions [e.g., police and fire, roads] transferring the cost of these services to the revenue pools of local governments. The new Schwarzenegger intergovernmental agreements address this local government concern in a manner respectful of tribal government. County or City general funds are dependent on citizens and businesses that pay local and state tax. The local government cost burden due to Indian casinos amounts to $20 million annually in just 8 counties. [8]

Political and Legal Impacts on Local Government: In addition to the impact that this cost shift has on local government budgets and services to citizens, there are additional legal and political ramifications. In California there is ongoing disagreement concerning the desirability of siting tribal casinos in metropolitan areas as opposed to the rural areas of the state. While these discussions have some merit, tribal gaming changes communities, whether urban or rural, due to the very nature of tribal sovereignty, and the impacts of gambling on the public. Opponents of casino gambling in metropolitan communities argue that urban casinos will increase problem gambling, suicide, domestic violence and traffic congestion. Opposition from rural communities additionally point to the lack of infrastructure to support such large scale developments.

The disproportionate influence created by the influx of tribal government casino dollars into local and statewide political campaigns is of particular concern with respect to potential corruption of the political processes and public policy at both the local and state government levels.

- The 2001 Los Angeles County Mayoral election presented another side of tribal gaming influence on local politics. Former Speaker of the House Antonio Villaraigosa in his bid for Mayor experienced the wrath of tribes still angry over his introduction of legislation for the Pala Compact in 1998. A number of tribal governments, all outside of Los Angeles County, spent $350,000.00 dollars[9] sending out racially tinged "hit piece" mailers which affected the Villaraigosa campaign.[10]

- In early 2004, the Chumash Tribe of Santa Ynez called for the resignation of popular Santa Ynez Valley Supervisor Gail Marshall. This followed on the heels of a recall, which she survived, funded in part by the same Chumash Mission Indians. Supervisor Marshall worked aggressively lobbying the Governor and the Attorney General in an attempt to enforce the environmental framework of the 1999 compact between the Chumash and the State. She has also asserted

influence over the fee-to-trust process by requesting full environmental impact statements.[11]

- Experiencing the wrath of tribes is not isolated to elected officials. In January of 2003 Andy Rose then City Editor of the Santa Barbara News Press lost his job apparently due to allowing publication of a story about the Chumash Chairman, Vincent Armenta, directing a blackjack dealer to provide free chips for Armenta's 18 year old son and other patrons.[12]

- The Governor's initial appointment of Chairman John Hensley to the California Gambling Control Commission, responsible for enforcing the State's gaming policy, resigned after two years of frustration over the lack of support from the Governor for the Commission's efforts to regulate tribal gaming. Both the Commission's budget and Chairman Hensley personally were under constant attack from the State's most recalcitrant gaming tribes.

The 2003 Recall of Governor Gray Davis was a prime example of tribal governments exercising checkbook politics in jaw-dropping amounts. 10 tribal governments with a combined total of fewer than 2000 members contributed over $11 million dollars in just a few days to Lt. Governor Bustamante's campaign for his run for Governor. This blatant attempt to use money to influence California's election process changed the public's view of tribal government to merely another special interest industry using government policy for personal gains.

> **"The tribes are the most powerful political contributors in the state, and they've already crossed the $11 million mark, and that is likely to rise in the last week. The amounts are extraordinary," said Jim Knox, executive director of Common Cause in California. The Indian money accounts for one of every six dollars of the $66 million contributed to candidates or spent by independent committees so far on the recall effort." [13]**

- In the November 2004 election, three council members who were in favor of the off-reservation casino were voted off of the City Council of Plymouth, Mayor Nowicki of Hesperia was overwhelmingly defeated by an anti-casino candidate, and likewise pro-off-reservation casino Supervisor Simmons in Yuba County lost his bid for re-election. The City of Rohnert Park voted off 2 pro-casino council members.

Tribal governments have become the largest political contributors in California spending more than $125 million dollars since 1998 -- and millions more that cannot be easily traced by individual tribal members who are flush with cash from payouts of casino profits. The nature of tribal sovereignty affects not only gambling policy but numerous public policies affecting the quality of life of non-tribal members, businesses, and local government. Clearly, tribal gaming money has the potential to corrupt and interfere with the political processes of state and local governments.[14]

The California Fair Political Practices Commission is currently pursuing enforcement actions against the Agua Caliente Band of Cahuilla Indians and the Santa Rosa Tachi Yokut Tribe for non-reporting of campaign contributions. The tribes have contested enforcement of the State's campaign reporting laws in separate actions and the issues are now being briefed before the California Supreme Court. The tribes claim exemption based upon traditional tribal common law sovereign immunity from suit. California's Third District Court of Appeal ruled in both matters that the Federal Constitution's Guarantee of a republican form of government trumps the tribes' sovereign immunity.

Jurisdictional Issues: The Indian Gaming Regulatory Act authorized states to negotiate compacts for gaming with Indian Tribes. California has both Constitutional and state authority empowering the Governor to negotiate and the state Legislature to ratify gaming agreements as provided by federal law. There is, however, no express constitutional or statutory authorization for cities or counties to enter into agreements with tribal governments for a share of casino revenue without provision in a tribal state compact. Some local governments in California have incurred significant risk in entering into agreements with tribal governments apparently betting that the agreements will be ratified by a tribal state compact.

City and county governments developing agreements with tribes lacking tribal state compacts or land in trust do not know whether, or the conditions under which class III gaming will be approved, for the land in question. The proposed agreements, which are known as a Memorandum of Understanding or a Municipal Service Agreement, constitute a "project" under the California Environmental Quality Act, (CEQA). These proposed agreements contain provisions that purport to legally bind the city or county signatory to definite courses of action that typically involve physical changes to the environment. In entering into these agreements, there has been general noncompliance with state environmental review requirements under the California Environmental Quality Act (CEQA) that have already resulted in judicial invalidation of two such agreements by the lower courts. (*Citizens to Enforce CEQA vs. City of Hesperia,* See also *No Casino in Plymouth vs. City of Plymouth*, *Amador County vs. City of Plymouth*, and *Citizens for Local Gov't Accountability vs. Palm Springs RDA: Settlement Payment)*

The Cities of Hesperia and Palm Springs have negotiated Municipal Service Agreements through City Redevelopment Agencies. This again is a clear violation of California State law precluding use of redevelopment to assist gambling enterprises. This issue has previously been litigated by the State successfully against Cities negotiating with tribes. The City of Hesperia has pending litigation on this issue. (*Hesperia Citizens for Responsible Development vs. Community Redevelopment Agency for the City of Hesperia;* See also *Daniel E. Lungren as Attorney General vs. Community Redevelopment Agency for the City of Palm Springs)*.[15]

Recall, Referendum, Grand Jury and Federal Grand Jury: Elected officials aspiring to develop off-reservation casinos place themselves at political risk and expose city governments to unnecessary litigation. An increased number of recalls, County Grand Jury, and referendum actions are being initiated by outraged community groups, various

elected officials and members of law enforcement over the expansion of tribal gaming. There is discontent over the actions of elected officials negotiating agreements with tribal governments introducing tribal gaming into urban and metropolitan areas of the state.

So far, one Federal Grand Jury investigation has been initiated by a faction of a tribal government being disenrolled due to the development of a potential casino in Yuba County.[16] Other letters to County Grand Jury's have been submitted asking for investigations into the actions of individual City or County officials which include questions surrounding the Brown Act and failure to comply with CEQA, due to their support for an off-reservation casino. [17]

County Agencies are independently sending letters to Governor Arnold Schwarzenegger asking him to delay tribal state compact negotiations for proposed casinos. The Sonoma County Transportation Authority is asking to delay any compact negotiation until they can adequately assess the Federated Indians of the Graton Rancheria's EIS due out in February 2005.[18] All local entities and the public need to fully understand the affect on traffic, water and other shared resources of County and City government. Predictably more counties and cities will follow suit to document the impacts in order to mitigate through the tribal state compact process. Local government, Law enforcement, Environmentalist Organizations and State Agencies are aggressively engaged in the Environmental Assessment process and asking that a full Environmental Impact Statement be a requirement.

Yuba County Board of Supervisors in 2002 approved an MOU with the Enterprise Maidu of Butte County for an off-reservation casino. County Officials and the public were told the tribe was an exception under IGRA. The tribe however requires the concurrence of the Governor. The Environmental Assessment produced by this tribe is woefully inadequate causing the County Board of Supervisors to change their approach. In a letter dated August 19, 2004 to Clay Gregory, Regional Director of the BIA, **"Further, the Board requested an Environmental Impact Statement be prepared to address the costs and responsibilities for the numerous mitigation issues raised in our comments."**

In Santa Ynez, Santa Barbara County Concerned Citizens have organized. A national law firm, a lobbyist and public relations firm has been retained.[19] This concerted effort is being made to address an 800 ac. purchase of land from Fess Parker to build 500 homes, two golf courses and a hotel casino complex. Also at issue is a 6.9 ac. land acquisition which the tribe states is for a museum although gaming is discussed in the fee-to-trust application. The BIA is stating the land meets the exception of contiguous lands. Contiguous or adjacent lands are not defined in federal regulation.[20]

This identifies another problem in California related to gaming expansion **"bait and switch"** land acquisitions. A tribe submits an application and states the land will be used for non-gaming activity. After the land is in trust, tribal governments change their minds and use the land for gaming or gaming related activities, usually parking structures. This counters good public policy decision making. The issue of **"bait and switch"** land

acquisitions is currently being addressed by U. S. Senator Inhofe. **"My Office is aggressively gathering information on this issue, and I am prepared to ask the BIA to investigate these matters."** [21] Tribal governments must plan for the future and recognize that this type of activity creates backlash and robs tribal government of its political capitol and public good will.

Federal Law Siting Casinos

The Indian Gaming Regulatory Act provides many exceptions for tribal governments to promote casinos on newly acquired land in metropolitan and urban areas. Current controversial examples of clear exceptions are the Lytton Band of Pomo promoting a casino in San Pablo and the Federated Indians of the Graton Rancheria promoting a casino on the outskirts of Rohnert Park. Previous Congressional exceptions include the United Auburn Indian Community in Placer County and Paskenta Band of Nomiaki Indians in Tehama County.

The following exceptions avoid the Governor's concurrence and review by the Secretary of the Interior.

> **25 US Section 20 2710 (b)(1)(B)(i) – (iii) Subsection (a) will not apply when lands are taken into trust as part of –**
> **(i) a settlement of a land claim**
> **(ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process, or**
> **(iii) the restoration of lands for an Indian tribe that is restored to Federal recognition.**

Unique California Indian Law: While the above Congressional exceptions have occurred in recent years in California, the greater expansion of off-reservation gaming is occurring due to past judicial and current administrative exceptions supporting tribal governments declaring the status of 'landless' tribes. California has a unique Indian law history in the development of Reservations and Rancherias and the recognition of tribal governments. Each tribal government's federal recognition and land status must be reviewed independently. California Indians do not have ratified treaties for reservations in California with the federal government. Tribal land and tribal governments were established by Executive Orders, Acts of Congress, or Secretarial Orders.

The Congressional Acts of 1906 (34 Stat. 383) and 1908 (35 Stat. 70-76) were Appropriation Acts that provided money to purchase land for residential and agricultural use for homeless Indians, often of no specific tribal affiliation.[22] Commonly these were small family groups or totally unrelated racially mixed Indian families joined together on land. It is important to note here, that the process for taking land into trust did not develop until the Indian Reorganization Act of 1934.[23] There is a specific process governed by regulation to change the status of fee-land into trust land. Indians that shared a common residence of a federal area were permitted by the BIA to organize under the terms and conditions of the Act.

However, the Indian Reorganization Act of June 18, 1934, specifically allowed only 'federally recognized' Indian tribes or descendents of federally recognized Indian tribes residing on 'Reservations' to reorganize. The Declaration of William Miles Wirtz, former Solicitor of the Pacific Regional Office of the BIA from 1971 to 1999, raises many questions about the restoration of Rancheria Bands and the BIA policy of treatment of tribal groups living on Rancherias as tribal governments.

> **"During my employment at the Solicitor's Office it was part of the course and scope of my duties to understand and articulate the policies and procedures of the BIA, including the process by which the federal government officially recognized Indian tribes. During my tenure with the BIA is was the policy of the BIA that while a reservation was necessarily held in trust for the benefit of a particular tribe, it was not necessarily true that a Rancheria legally constituted either an "Indian reservation" or "Indian country."**

The East Bay: The San Francisco East Bay area is significantly affected by 'landless' tribes attempting to acquire land after the 1988 cut off date of IGRA to promote casinos. Tribal gaming may be conducted on land acquired after October 17, 1988, on lands that are located in a state or states within which an Indian tribe is presently located. 25 USC 2719 (a) (2)(B) and if the tribe had no reservation on October 17, l988. These tribes will need (1) the concurrence of the Governor and Secretary of the Interior or (2) a restored lands determination. A restored lands determination will require certain questions to be satisfied. "Where is the tribes last recognized reservation?" Does this land meet the more critical standard of restored lands?

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 alternatives all play a role.

Challenges to tribal claims of historic or aboriginal lands must be made immediately to the Secretary of the Interior in order stop spurious determinations. Tribes should be required to more than satisfy as a matter of historical fact that Indians have resided continuously in the specific site of the casino project. There should be evidence of Indian title to the land. The evidence must be strong and compelling and the claim on the land ***must be continuous and current***. It must be much more than an option with prominent real estate developers or gaming investors for a casino, for example. It would appear that the BIA Solicitor's in a memo dated 12-5-2001 regarding the "Confederated Tribes of Coos/etc." agrees that "restored land" does not mean just any aboriginal land ever occupied:

> **However, because IGRA provides certain temporal (i.e., the October 17, 1988 limitation for reservation boundaries) and geographic limitations (i.e., land within or contiguous to the tribe[1]s reservation) we cannot view**

> **§ 2719(b)(1)(B)(iii) to allow gaming on after-acquired lands with no limitations. Consequently, we do not use a dictionary definition of restored to include all land restored. It also seems clear that restored land does not mean <u>any</u> aboriginal land that the restored tribe <u>ever</u> occupied. Tribes that were not terminated and thereby not capable of being restored, lost vast amount of land and were forced to move all over the country such that their reservations on October 17, 1988, are vastly different than their aboriginal land.[24]**

This prior memo appears to have influenced the new final decision of September 10, 2004, of the National Indian Gaming Commission on the Wyandotte Nations Amended Gaming Ordinance. In this memo the agency has revised their stance on gaming off-reservation but still clearly disfavors approval of lands far from established land bases:

> **"It is clear that Congress intended to allow some gaming to occur on lands acquired after enactment of IGRA under this provision, but only contemplated gaming on newly acquired lands far from the current or prior reservation in very specific isolated circumstances."[25]**

The tribal governments promoting casinos in the Bay Area are Rancheria Bands. Scotts Valley and Guidiville have Rancheria lands in trust in the name of individual Indians. These lands appear to have met the legal threshold of IGRA. Yet these tribes with their out-of-state investors are seeking land far from their last recognized Rancheria or aboriginal lands. Typically speaking, in California, Rancheria lands were or still are held in fee-simple in the name of the United States for the use and occupancy of homeless Indians and not in trust. Some of these Rancheria Bands have viable litigation still pending over the legitimacy of their tribal recognition, restoration or legitimate questions are currently being asked over their re-affirmation or the ability to conduct gaming on lands which are not held in trust.

Questions have been raised about the federal recognition of the Shingle Springs Miwoks and the Lytton Band of Pomo tribal governments. Legal issues remain regarding the tribal status since, according to the BIA, these groups were created by Indian Commissioners grouping together homeless Indians of no specific tribal affiliation in the early 1900's for "administrative purposes". The Lower Lake of the Koi Nation re-affirmation occurred December 29, 1999. Asst. Deputy Secretary Kevin Gover granted federal recognition to this group, but questions remain regarding the standard on which this decision was made which demonstrate the continuous foundation from historic times for a government-to-government relationship.

In any case, challenges will likely continue to occur until there is a court decision on the status of these and other groups since the 6 year statute of limitations may not necessarily apply to substantive challenges to an agency's application of an agency's decision to a particular challenger pursuant to *Wind River Mining Co. v United States, 946 F 2d 710 (9th Cir. 1991) ("Wind River")* As off-reservation casino proposal accelerate this type of

litigation is a viable option for opponents of these projects. Most Rancheria tribal governments cannot demonstrate a continuous political existence since historical times.

Conflicting Determinations: The Scotts Valley, Guidiville and Koi Nation Bay Area casino proposals have not yet been determined to be legitimate claims to "restored" lands. Even the vague criterion of restored lands does not seem to apply. Rather, at present they are discretionary and require the concurrence of the Governor and the Secretary of the Interior. However, since the enactment of IGRA there have been a number of conflicting opinions and determinations regarding land status made by the Pacific Region and Central Office of the Bureau of Indian Affairs in California. For example:

- In the case of the Dry Creek Rancheria, land title is in the name of the United States in fee-simple. This land is held no differently than that of the local post office or which a federal court sits upon. Yet, the BIA has determined the land to be in **"implied trust".** There is no legal definition of implied trust in the Code of Federal Regulations. The tribes gaming investor is Nevada Gold from Texas.

- In a second situation, the Ione Band has 40 ac. of land in fee-simple, the BIA officials who have allowed their family members to enroll in the tribe have determined the tribal government to be landless and in need of an "initial reservation" for the development of a casino. The gaming investor is Ikon of Mississippi, Wilco Seven LLC. and Lightening Rod. This presents the appearance of federal officials granting favors for the benefit of a casino to family members. Lobbyist Roger Stone is active in this development.

Influence of Money on Policy: Prior to the 1998 election, the first attempt to legalize slot machines in California, a number of land status determinations were made by Solicitors of the BIA on land held by Rancheria tribal governments. These determinations indicated that specific Rancheria tribes did not have the authority to place casinos on newly acquired lands without the Governor's and Secretary of the Interior's concurrence**.** Today, these same tribal governments now financed by out-of-state investors have been given new land status determinations that make them a clear and indisputable exception to the Indian Gaming Regulatory Act.

- The Bear Band of the Rohnerville, a tribe restored through litigation whose land is in the City of Fortuna purchased land in Loleta, California with a Housing and Urban Development Grant fund (HUD). Several years later with their new investor an opinion is written determining that this land more than meets the stringent criteria of "restored lands".

- The Chuckchansi of the Picayune in Madera County is a tribe restored by litigation and has been given a land determination of "Indian Country" upon which it built a multi-million dollar casino with Cascade Management. This land is not in trust and does not meet the legal threshold of IGRA. California does not have land that meets the legal definition of "Indian Country".

- The Mechoopda Maidu, a tribe restored by litigation, was declared by a Solicitor of the BIA in 1998 not to qualify to acquire land. Yet in 2004 with Station Casinos they have a new determination of restored lands to promote a casino in Butte County.

The single common denominator which has reversed prior decisions is the deep pockets of the gaming investors shopping for tribes and casino opportunities in California.

Evolving State Policy

Discretionary land acquisitions for gaming provide greater opportunity for communities of citizens, local and state government to assert their legitimate concerns over the development of a casino. Support of the community is necessary if the tribe wishes to be successful in the establishment of tribal gaming operations. Governor Schwarzenegger has made clear in many letters to communities that he will not enter into compact negotiations with tribes absent land in trust without 'widespread' community support. Below is an excerpt from a letter to Supervisor Dan Logue of Yuba County:

> **"I am responding to your July 9, 2004, letter to Governor Schwarzenegger in which you request that the Governor not negotiate a compact with the Maidu Enterprise Rancheria until the tribe has land in trust. As a general rule, the Governor does not intend to negotiate with tribes that do not have land eligible for a gaming establishment. One exception to the rule, however, is where both a tribe and surrounding local community support a casino in their area. Given this possible exception, we cannot provide you with a definitive statement that the Governor will not negotiate with any tribe that does not have land in trust. With respect to the Enterprise Rancheria, however, it does not appear that there is adequate support in the local community. Our calls to local government entities in the area have confirmed that many are opposed to the tribe's proposed casino. Accordingly, we are not inclined to enter into negotiation with the tribe at this time."** ***Letter dated October 13 2004 by Peter Siggins, Secretary of Legal Affairs to Governor Arnold Schwarzenegger.***

In a more recent letter, to the County Administrator and County Counsel of Contra Costa County, Peter Siggins spells out a strongly stated public policy on Section 20 concurrence:

> **The Governor has no intention of entertaining requests for additional compact negotiations in the state's urban areas. Moreover, the Governor will not entertain requests for Section 20 concurrences unless there is a clear, independent public policy that supports his doing so. For example, a tribe with gaming-eligible land in an environmentally sensitive area, may with the agreement and support of local government, move a proposed casino to another location that does not present the same environmental concerns.**

> **Absent clear public policy considerations that provide solution to real problems that state and/or local communities face with the prospect of casino development, the Governor will not consider request for Section 20 concurrences.** ***Letter dated December 20, 2004 by Peter Siggins, Secretary of Legal Affairs to Governor Arnold Schwarzenegger***

Section 20 concurrences for land acquired after October 17, 1988 require a two-part determination approval for the establishment of land for gaming facilities after the enactment of IGRA. The information for the determination is prepared in the Department of the Interior, Bureau of Indian Affairs-Indian Gaming Management. The research and compliance items are given to the Secretary of the Interior to review in order to develop a concurrent opinion with the Governor of the state.

Nevertheless it must be noted, there is no federal regulation in place that details the concurrence process. It is unclear what triggers the review if the land is already in trust. Without a federal regulation there is no assurance a process will be followed, that there is a window of review, a deadline and a final action. The concurrence of the Governor of a State and the Secretary of the Interior are determinations which must reflect the process for land acquisition specific for gaming and verify the Secretary has completed requirements to consult with the state, state agencies, other local political subdivisions and affected tribal governments of the proposed off-reservation casino.[26]

Tribes promoting gaming off-reservation under Section 20 do not have the legal authority to **'obligate'** the Governor to concur with the Secretary of the Interior. The Governor's concurrence is an exercise of "executive powers" on an infrequent and episodic basis. The law merely says that the Governor may concur -- if the Governor does not concur, the tribe does not get a tribal state compact. The Siletz Tribe sued the Governor of Oregon for refusing to concur. The 9th Circuit Court of Appeals ruled in favor of the Governor.

The off-reservation Indian gaming policy is purely at the discretion of the Governor. This authority is an 'executive exercise'. If misconstrued as a veto, some judges might view this as a significant authority by an official who is not appointed by the President and may be a violation of the Appointments Clause of the U.S. Constitution, or the principles of separation of powers. This very issue was recently litigated in the 7th Circuit in the case of Lac Courte Oreilles Band of Lake Superior Chippewa Indians in an action against the U. S. The court once again upheld the exercise of executive authority to refuse negotiations for off-reservation casinos. A recent California example of this exercise of executive authority was demonstrated by Governor Davis in negotiating a compact with the Fort Mojave tribe in 2003 although it was not ratified by the State Legislature.

The Fort Mojave tribal government willingly negotiated with the County of San Bernardino and the City of Needles for an off-reservation location. Clearly, this was an appropriate use of the exception in IGRA. The land, which the tribal government held satisfied the legal threshold of the Indian Gaming Regulatory Act and was, located within the City limits of Needles. The tribal government recognized the off-reservation impacts

to the City. The tribal government negotiated for an off-site location which proved to be a desirable and appropriate choice. The language in the 2003 Fort Mojave Compact Section 10.8.1 spells out the two-part determination requirements for land taken into trust after 1988. The state with this language in a tribal state compact has ensured a process for the two-part determination.

Governor Schwarzenegger has re-negotiated the Fort Mojave tribal state compact. He has kept the language in the Fort Mojave compact defining the two-part determination requirements. This is California's first off-reservation casino proposal presented to the Governor. The request from local government for the exercise of the Governor's executive power to permit off reservation gaming must not be abused. A Governor must **establish objective criteria** for the exercise of his/her executive power for concurrence of an off reservation casino in agreement with the Secretary of the Interior. Criteria must include evidence of public comment received and public debate engaged in of the affected communities and local governments at large.

The objective criteria must include meaningful evidence that the Cities/Counties have provided the opportunity for public comment and allowed for the public to engage in debate. This must be done before the Governor can concur in the federal determination of no detrimental impacts to the surrounding community or in the contractual agreement of a tribal state compact. The established criteria of the Governor's determination will be supported by evidence of responsible government actions representing the majority of their constituents and regional neighbors.

Consistency with State Gambling Policy: Governor Schwarzenegger has inserted additional language in the Fort Mojave intergovernmental agreement to assure widespread community support. This language is consistent with long-standing state policy which allows for community approval of the introduction or expansion of California Card Clubs the closest type of gaming facility California has to a tribal casino. California Business and Profession Code Section 19961 (a), 19961. (b)(4) and 19961. (c).

> **Section I. Fort Mojave Compact**
> **In light of the Tribe's willingness to locate its Gaming Facility on the 300 Acre Parcel outside the City of Needles, the Governor intends to grant his concurrence as long as (i) the Secretary of Interior determines that the Gaming Facility would be in the bests interests of the Tribe and its members and not detrimental to the surrounding community, (ii) the Board of Supervisors of the County of San Bernardino and the City Council of the City of Needles approves of the location in the form of a resolution or other appropriate instrument, and (iii) a favorable advisory vote is given by the electorate in the City of Needles, which would be the affected local community in this case.**

Neither citizens nor established gaming tribes anticipated "reservation shopping" for gaming when they supported Proposition 1A in 2000. This unintended consequence has divided tribal governments statewide on the issue of "reservation shopping". Some tribes

have and are organizing opposition to this off-reservation phenomenon. A recent article authored by Deron Marquez, Chairman of the San Manuel Band of Serrano Mission Indians expresses the sincere concern of Indian peoples opposed to "reservation shopping". In the Chairman's words of opposition, **"…is the protection of our homeland and our identity as a people."** He goes on to say: **"Sovereignty is a tool, not a toy. Sovereign tribal nations must practice their sovereignty responsibly. They must acknowledge and respect the ancestral lands of other Native nations."**[27]

Nevertheless, this division in tribal governments has not stopped tribal leaders across California from continuing to be approached by gaming investors from out-of-state that push negotiated local agreements with cash strapped cities/counties desperate for recession proof revenue. Negotiated local agreements with tribal governments are used as a political tool to promote the idea of widespread support and acceptance of a new tribal casino offering jobs and local revenue. City/County officials are exploiting and abusing state and federal gambling policy to the very detriment of the citizens who have supported their political careers.[28]

There is an apparent unfairness to small Rancherias that were not terminated in requiring them to go through a two-part determination for off-reservation casinos that might be "far" removed from established Indian lands, especially when landless tribal governments or congressionally mandated tribal governments can get downtown metropolitan areas by circumventing regulatory processes. Prior Department of the Interior opinions reflects this view. In a letter dated August of 1998, John D. Leshy, Solicitor, wrote:

> **We agree that the intent of the Section 20 (b)(1)(B)(iii) is to permit tribes restored to recognition the same opportunity to game on its "Indian lands" that tribes with such lands at the time of IGRA's enactment enjoy. We cannot agree, however, that Congress wanted to put restored tribes in a better position than all other tribes, simply because they have been restored to federal recognition. Nothing in the legislative history of this section suggests that this was the purpose of the "restored tribe" exception**.

The recent proposal by the Lower Lake Koi Nation in the City of Oakland makes clear the conflicts tribes face in promoting casinos in metropolitan locations. A recent joint meeting of the Alameda and San Leandro City Councils was called to hear from the public on the 250,000 square foot casino, hotel and spa to be located in the City of Oakland. These neighboring cities will experience all of the impacts and share in none of the proposed benefits. Numerous community groups and political organizations have clearly stated their opposition on the merits of this and other Bay Area projects. Off-reservation gaming proposals create backlash to Native people. **"Let's be honest," said Robert Cheasly, president of the East Shore Parks group. "This isn't Red Cloud or Crazy Horse. It's a rent-a-tribe. Harrah's is the driving horse. They get a tribe in, say, "sit down and be quiet and we'll make you millionaires."**[29]

The discontent of neighboring local government over the Lower Lake Koi Nation proposal is not an isolated event. The California Valley Miwok proposal in San Benito

County is opposed by the Board of Supervisors (BOS) of neighboring Monterey County. In a letter dated November 24, 2004 addressed to the Chairman of the BOS of Santa Clara County, the Monterey County BOS writes:

> "**In the words of our Sheriff Mike Kanalakis, [We are] not in favor of anything that supports, enhances or increases gambling. Permitting the placement of a casino in either the Soap Lake or Aromas areas would potentially increase criminal activity in surrounding neighborhoods and result in a diminished security for those who live in the adjacent area." [30]**

The letter goes on to identify traffic congestion**,** littering and dumping affecting thousands of residents. Without a doubt tribal gaming affects the local and greater regional neighbors.

Tribal State Compact Solutions: Governor Schwarzenegger in the Lytton Compact has attempted to address the siting of casinos that require a two-part determination. He has created a 35 mile **exclusivity zone** radiating out from the Lytton/San Pablo tribal casino. This zone may seem illusory as it will have no affect on landless, restored, acknowledged tribes, or congressional mandated acquisitions within the zone. Nonetheless, this is a necessary step in the right direction to establish a statewide policy of no urban tribal casinos and eliminate discretionary proposals.

The Viejas tribal government solution to off-reservation gaming is included in the Ewiiaapaayp tribal state compact. These tribal leaders have taken a novel approach by promoting two side-by-side casinos on the Viejas Reservation but owned and operated by each tribal government. The Ewiiaapaayp had previously proposed a casino on trust land that domiciled an Indian Health Clinic. The land was taken into trust as a joint effort of five tribal governments and supported by local government several years prior with the specific intent of the medical center. The proposed off-reservation casino was opposed by local tribes, the County and the State. However, this unique and novel solution of **"reservation sharing"** further eliminates the social discord and environmental impacts to the surrounding community.

Another approach to reservation shopping furthering the concept of **"partnering"** is **"clustering".** Clustering is the concept of siting casinos proposed by tribal governments with local governments in locations that have widespread support for the introduction of a new gaming facility. Tribal governments that may be 100's of miles apart but willing to operate their casino in a distant location will assist in resolving long-standing disputes between tribal governments and the State of California. Clustering also provides an opportunity for tribes in remote locations to acquire more marketable locations. This concept provides a pragmatic approach to resolving some of our states long standing disputes with tribal governments but lacks in popularity with both tribes and community groups.

The new Schwarzenegger compacts have **disincentives** built in to discourage cash strapped cities and counties from entering into local agreements with tribal governments

shopping for a gaming market. The new tribal state compacts require revenue sharing with the State of California and authorize judicially enforceable local agreements to address off-reservation environmental impacts. This leaves a diminutive amount of money on the table for enticement or seduction to be worth the effort of local or tribal governments to engage in shopping ventures.

A component of both the 1999 tribal state compact and the new Schwarzenegger compacts is the **"Revenue Sharing Trust Fund".** This fund was designed to share the gaming proceeds of successful tribes with the poor tribes in California that did not have marketable locations and prevent off-reservation gaming. Instead, this well intended component has backfired. Planned as a replacement for providing health care, education and tribal government services it has become a source of funding to hire gaming attorneys and public relations firms to assist tribes seeking off-reservation casino locations.

State Legislative Solutions: The numerous off-reservation casino proposals in the Bay Area have awakened California State Representatives. There is now State Constitutional Legislation authored by Assembly Member Loni Hancock, asking for a 60 day cooling off period each time a tribal state compact is submitted to the State Legislature for ratification.[31] The intent is to give Legislators and the public time to review each agreement and participate in legislative hearings. This will ensure debate on the Senate and Assembly floor. Comment and speculation in news print is helpful, but only a real debate documented in pubic record will be meaningful to any state or federal court if there is litigation. Opponents have stated this legislation need be only statutory law.

Serious discussions of a moratorium on negotiation and ratification of any new tribal state compacts is occurring. Coupling the moratorium with the need for a study of the effects of the impacts of tribal gaming on the State of California is the motivation shaping legislative language. In discussion is a five-year moratorium on any new tribal gaming compacts while a Gambling Impact Study Commission researches legitimate issues. Legitimate issues that can be raised by a State without being in "bad faith" are identified in IGRA.

> **In determining a state's good faith, a court "may take into account the public interest, public safety, criminality, financial integrity, and adverse economic impacts on existing gaming activities."** (25 CFR 2710 (d) (7) (B) (iii)

A report would be produced at the end of the moratorium to develop guidelines and recommend potential legislation or Constitutional amendments for future Governors and State Legislators.

Language asking for a strong public policy **'prohibiting'** the Governor from negotiating tribal state compacts for off-reservation casinos was floated last year with several State Legislators. The language requested that no tribal casinos are built within 2 miles of any home, church or school and provided that no tribal casinos could be built on land acquired after 1988 in accordance with the Indian Gaming Regulatory Act. While this

language at first blush seems reasonable, it can also be viewed as a threat to the concurrence and exercise of a Governor's executive authority to provide solutions to real problems the state and or local communities face with the prospect of casino development in an environmentally sensitive area.

Federal Legislative Solutions: Congressman Richard Pombo, Chairman of the House Resources Committee held hearings in the 2004 Congressional session on reservation shopping. He has discussed the need to carry legislation to stop reservation shopping, by unscrupulous casino developers entering into partnerships with economically depressed Native people abusing the intent of IGRA to bring self-reliance to Indian Nations.

Profiteers Creating Exceptions

Recognition and Acknowledgement decisions by the federal government, overlaid by the exceptions in the Indian Gaming Regulatory Act, have created a political vacuum, where there is ambiguity, confusion and profiteers waiting to create or manipulate newly developed Indian tribes to promote gaming in areas that would never have supported gaming expansion. So pronounced is this effort by gaming investors and profiteers that the Government Accounting Office (GAO) developed a report addressing this very issue. According to the report released to *The Hartford Courant*, November 1, 2001:

> **"Weaknesses in the process create uncertainty about the basis for recognition decisions. The end result could be that the resolution of tribal recognition cases will have less to do with the attributes and qualities of a tribe…and more to do with the resources that petitioners and third parties can marshal."**

California has 54 petitioning tribal groups seeking federal recognition. Several of these groups have attempted Congressional action in the last three years in order to circumvent the federal regulatory process. Casino dollars are the driving force. "Reservation shopping" a phrase that has been coined, continues to accelerate.

Tribe Shopping: In this plan, investor's look for tribal groups to help through the petitioning process or expedite by assisting with a Congressional Act for Restoration or Acknowledgement. These newly restored tribes would become clear exceptions to IGRA and avoid the Governors concurrence. There have been more than a half dozen attempts at federal legislation since 2000.

The landless tribe scheme: Most tribes currently promoting off-reservation proposals do not have tribal state compacts or a gaming ordinance with the National Indian Gaming Commission. Some of these tribes are claiming to be landless when in fact the tribes have established Rancheria lands. Rancheria tribal governments may simply not exercise governance over land held in private ownership of tribal members, a requirement of IGRA.[32] Moreover, the term "governmental power" is not defined. (*Miami Tribe v. United States, 927 F. Supp. 1419 (D. Kan. 1996) Miami I)*[33]

'Reservation Shopping' is visibly driven by out-of-state gaming investors, carefully controlling their clients and making "development agreements" rather than "management contracts". These types of agreements obscure the terms of the agreement, the source of the money and the payout to the investors. These agreements skirt the requirements of management contracts laid out in IGRA.

One source of funding is tax exempt bond financing. An investigation has been initiated by the Internal Revenue Service, looking into the tax exempt financing by Baltimore developer David S. Cordish. Several California tribes are involved in tax exempt bond financing, Guidiville and Cabazon are two, and others are known to be under construction, potentially 24 in California alone. The federal government prohibits Indian tribes from using tax exempt municipal bonds to build commercial enterprises such as casino/hotel complexes or golf courses. This move by tribes could make billions of dollars in interest subject to federal tax. Unlike typical management contracts approved by the National Indian Gaming Commission, these deals lack formal approval and are an intentional circumvention of federal oversight.[34]

The similarity in many of these proposals is the investors and what appear to be shell companies. Shell companies developed in order to obscure the backgrounds of the investors and the tracking of the money. In some instances the background of the investors establishes the need for state regulation that does not burden the tribes but investigates the background of those involved in contracts for development, manufacturing, consulting and investing.

A good example is the Timbisha Shoshone Development agreement with Rinaldo Corporation for an off-reservation casino in Hesperia. The Developer Gary Fears would own 82% of the casino and equipment and pay the tribe 18% revenue for 10 years. IGRA requires a 5 to 7 year management agreement with 30% to 40% revenue sharing in certain situations; 20% - 25% is average. Notably, the National Indian Gaming Commission stepped in and commented on the development agreement making it for all practicable purposes null and void.[35]

Another profiteering scheme while not directly related to reservation shopping but clearly affecting tribal state compact negotiations deserves mentioning. Approximately ten tribal governments are involved in the purchase and shipping of Video Lottery Terminals (VLT) into California with Multimedia Games, Inc. These Video Lottery Terminals are illegal gaming equipment in the State of California.[36] This action by tribes and the manufacturer raises several concerns. First, is the manufacturer knowingly participating with tribes in a scheme to violate tribal state compacts and state gaming laws, as well as the Johnson Act? And second, does the contract under which the manufacturer takes a cut of the gross profits violate federal gaming regulations under IGRA? A provision in the State Constitution limits the right to casino gaming to only federally recognize Indian tribes. Is the manufacturer acting in the capacity of a partner or joint venture with the tribe in taking a share of the gross profits?[37]

This is the type of abuse that demands federal regulatory action to protect the integrity of tribal gaming operations. Federal action is necessary as IGRA only requires management contracts to be reviewed and approved. All others, consultants, investors, developers and manufacturers get a free pass through this gaping loophole in federal law.

California Casino Dreams
Boom or a Bust?

California is a desirable gaming industry market location. There is population, tourism and an exclusive monopoly for lucrative slot machine gaming. There are 109 tribal governments and only 54 are currently involved in gaming operations. So the question to shop or not to shop is driven by financial ambition to cash in on California's new casino gold rush. But before the casino fever takes hold, stop and ask the question, is this a boom or bust venture? Pay attention to the old axiom, if it sounds too good to be true, it probably is. Familiarity with unique California Indian law and an acute awareness of the political realities within the state are essential components in making viable decisions about the success of any off-reservation proposal. Let's be clear, there are many serious hurdles.

Casino style gambling has been illegal for over 130 years in California. Not until the March 7th 2000 vote to approve Proposition 1A allowing for slot machines on Indian Lands did slot machines become legal in California. In that election the question of expanded gambling was never addressed in a public debate. Rather, the measure was promoted as a **'necessary action'** to help California's poor **Indians keep the gaming that they had**. Imagine the surprise and dismay to the public when less than 24 hours after the 64% statewide approval of slot machines on California Indian lands to allow tribal governments to "keep what they had", multiple announcements of new multi-million dollar expansions and full service casino resort renderings were published in statewide news stories.

In the November 2004 election, gambling was debated in the public for the first time since the explosive expansion of tribal gaming in California. Expanded gambling and particularly urban and metropolitan gambling were determined to be ***bad***, by Police, Sheriffs, District Attorneys, Parent Teachers Association, the Republican Party, the Democratic Party, community groups, church groups, labor unions and State Association of California Chamber of Commerce all led by California's popular Governor, Arnold Schwarzenegger. The historic nature of gambling and its propensity for crime were highlighted. Gambling meant cheating, loan sharking, money laundering, skimming, rigged books, embezzlements and crimes of sophisticated financial fraud.

Having two gambling measures, Proposition 68 and 70 on the ballot did not confuse the public. The NO vote was thoughtful and intentional. Proposition 68 promoted by out-of-state Horseracing and California Card clubs promoted the idea that a yes vote would make Indians pay 25% tax to the state or 5 racetracks and 11 card clubs would get 30 thousand slot machines in major cities and would pay revenue to the State. This deceptively written proposition was overwhelming defeated by 83% of the public

statewide. Proposition 70 promoted by Aqua Caliente Band of Mission Indians was a mandatory amendment for 99 years claiming Indians would pay the same corporate tax as all other businesses. Citizens recognized immediately that the status-quo of the failed 1999 tribal state compacts stayed in place for environmental concerns, patrons and employee protections and assured future erosion of local government. It was clear that the measure provided no valid way of auditing to ensure that the State of California was getting paid a corporate tax rate.

The prior statewide elections in 1998 and 2000 for expanded gaming focused on the self-determination and self-reliance of tribal government. Tribal public relation firms prepared appeals based on sympathy and guilt to right the wrongs of the past. The philosophy of the separatist victimology was powerful and easy to package in a 30 second sound bit. But that same public relations appeal will not work in 2005. In fact, it works increasingly to the detriment of tribal governments who take this approach.

Tribal gaming in California is at a significant crossroads. Two paths appear before gaming tribes: one path is marked by tribes attempting to use their newly acquired wealth and power to run roughshod over all those whom they perceive as enemies and antagonists. And then there is a second path, a difficult path no doubt, but one which attempts through dialogue and respect to carve out an entirely new relation amongst all the inhabitants of California. Tribes who choose this path recognize that the well-being of their own future as well as that of all Californians depends upon working with, rather than against, nearby communities and the local governments that represent them.

Citizens continue to be outraged at the number of off-reservation proposals. The voting public who had supported the economic development of tribal governments now feel betrayed by tribal governments and gaming investors. A backlash against the proliferation of tribal gaming and gambling in general began. This backlash against gambling expansion was apparent in the crushing vote of opposition to both Propositions 68 and 70.[38]

It is undisputable that tribal gaming has provided economic opportunity and significant benefits to tribal governments. However it is equally clear that the explosive growth of the gaming industry has been accompanied by conflicts affecting the public policy of our State. These issues are interwoven with major public policies affecting the health and safety of citizens and the good working order of local governments, state agencies and the rights of States.

We have witnessed across the state the disastrous effects of continuing to exclude local governments and local communities from input:[39]

- In Plymouth, over 60% of the voters recalled the mayor and two council members.

- In Palm Springs more than 3700 residents signed a referendum petition to block casino-related zoning changes in the downtown area sought by the Agua Caliente tribe.

- More than 1000 Santa Ynez Valley residents turned out in April in opposition to a proposal by the Chumash Indians to build over 500 homes, a hotel/casino and two golf courses on 745 acres of agricultural land outside of environmental, land-use and tax regulations.

These examples, and hundreds more like them, of mounting voter dissent will explode if the State and the more thoughtful tribes fail to come to terms and follow a responsible path.

Governor Schwarzenegger's new tribal state compacts will assist tribal gaming growth in exchange for a fair share of tribal gaming revenue to the state. These new intergovernmental agreements are respectful of the nature of tribal sovereignty. The re-negotiated tribal state compacts address not only the economic implications and impacts, but also the social issues of public safety and the critical jurisdictional issues which allow for secure relationships betweens sovereign governments. This includes state regulatory oversight of gaming regulations, environmental impacts, patron and employee protections and judicially enforceable local agreements over land use. The continued re-negotiations of the tribal state compacts are essential to ensuring fairness, objectivity and accessibility in the tribal gaming industry.[40]

"What happens in California, doesn't stay in California": One thing is certain, what happens in California will affect national policy and national public awareness. California recognizes and is working toward the need for a comprehensive "federal" Indian gaming policy. A recent policy statement by the California State Association of Counties makes clear the need for a focused federal policy which ensures a balance between the rights and responsibilities of non-Indian citizens, local governments and tribal governments. Local governments and State agencies simply cannot be a charity of the tribal gaming industry. Tribal, local and state governments must be engaged in a mutually-beneficial relationship in which all parties have a seat at the table.

Fortunately, a model Compact has emerged. Governor Schwarzenegger and some of the State's largest gaming tribes have signed new gaming intergovernmental agreements. As such, we are entering an entirely new era of tribal gaming in California. A new paradigm of relations between tribes, the State, local governments and local communities is emerging. The success of California's intergovernmental agreements with tribal governments will be the focus of national attention and a model to replicate.

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[1] **1994 Technical Correction – By Senator John McCain states created tribes must be treated like historic tribes. – The List Act** The amendment is intended to prohibit the Secretary or any other Federal official from distinguishing between Indian tribes or classifying them not only on the basis of the IRA but also on the basis of any other Federal law. Other agencies of the Federal Government may have developed

distinctions or classifications between federally recognized Indian tribes based on information provided to those agencies by the Department of the Interior. The amendment to section 16 of the IRA is intended to address all instances where such categories or classifications of Indian tribes have been applied and any statutory basis which may have been used to establish, ratify or implement the categories or classifications. There was never a debate over Californian Indian lands and yet this affected over 60 Rancheria tribal groups allowing tribal groups to re-organize and promote off reservation casinos.

[2] **Rancherias are lands not governments**, held in the name of the United States for Homeless Indians of no specific tribal affiliation. These lands were established by Congressional Appropriations Acts well after 1908. The lands were not and could not be reservations due to a prior Congressional Act in California called the Four Reservations Act of 1864.

[3] In Business Las Vegas, by Liz Benston, Bill Eadington Director of UNR's Institute for the Study of Gambling and Commercial Gaming

[4] 25 US Code Part 83

[5] Los Angeles Times, 8-25-03 By Louis Sahagun, *Indian Gambling Looks Beyond the Reservations*

[6] www.csac.counties.org/legislation/indian_gaming/index.html

[7] www.csac.counties.org/legislation/indian_gaming/index.html

[8] The Press Democrat, 6-28-03 Clark Mason, *Counties say tribes should pay their share*

[9] The Wall Street Journal, John Fund,9-24-04, *Indian Givers --II*

[10] LA Daily Journal, 1-12-2003 The Nation, by Marc Cooper 2-12-2003, *Left Coast Notes*

[11] The Lompoc Record, By Erin Carlyle, 3-4-04 *Chumash demand Marshall resign*

[12] The Los Angeles Times, Glenn Bunting, 12-25-04, *Editor draws tribes wrath*

[13] The Washington Post, by William Booth, *California Tribes Clout Carries Political Risk*

[14] The Wall Street Journal, John Fund, 9-24-03, *Indian Givers--II*

[15] California Health and Safety Code§ 33426.5

[16] Appeal Democrat, Harold Kruger, 11-13-03, *Setbacks hit casino*

[17] Amador County Grand Jury Report, June 10, 2004, findings and recommendations in Penal Code Sections 933.05(a) – 933.05(f)

[18] SCTA, Sonoma County Transportation Authority, Letter to Peter Siggins dated 12-10-04

[19] Santa Barbara News Press, Nora K. Wallace, 9-28-04, *Valley group gathers forces to fight Chumash: land deal coalition expands membership raises funds and hires DC lawyers, lobbyist.*

[20] The Los Angels Times, Glenn Bunting, 12-25-04, *Casino success breeds tension*

[21] The Oklahoman, by Tony Thornton, 10-23-2004, *Some tribes skirt land rules*

[22] RG 75 Reno Indian Annual Narrative and Statistical Reports 1912-1924 box 6: Folder [Annual Narrative Reports 1923 Reno Ind. A.]" pgs. 1-31.

[23] **1934 The Wheeler Act—**(This act may not legally include Rancheria Tribes, the DOI may in error allowed California Rancheria Tribes to organize and take land under section 5 of this Act.) An Act to conserve and develop Indian lands and resources; to extend to Indians the right to form business and other organizations; to establish a credit system for Indians; to grant certain rights of home rule to Indians; to provide for vocational education for Indians; and for other purposes.

Sec. 19. The term "Indian" as used in this Act shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all person who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any "reservation", and shall further include all other persons of one-half or more Indian blood. For the purposes of this Act, Eskimos and other aboriginal peoples of Alaska shall be considered Indians. The term "tribe" wherever used in this Act shall be construed to refer to any Indian tribe, organized band, pueblo, or the Indians residing on one reservation. The words "adult Indians" wherever used in this Act shall be construed to refer to Indians who have attained the age of twenty-one years.

[24] Memorandum to Asst. Solicitor, Division of Indian Affairs, 12-5-2001, Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians v. Babbitt, 116 F.Supp.2d 155 (D.D.C. 2000) in regard to proposed gaming on the Hatch Tract in Lane County, Oregon.

[25] National Indian Gaming Commission, Wyandotte Nation Amended Gaming Ordinance, 9-10-2004, Final Decision and Order

[26] Governor must concur specifically required in IGRA Section 20(b)(1)(A) or US Code at 25 Section 2719 (b)(1)(A).

[27] Indian Country Today, Chairman Deron Marquez, *12-17-04,Land trust issues can prove divisive for Native people*
[28] Letter June 10, 2003, Office of the Speaker, Congressman Hastert to Secretary of the Interior Gale Norton-opposition to "reservation shopping"
[29] Contra Costa Times, by Rebecca Rosen Lum 12-16-04, *Parks supporters file suite over casino*.
[30] Letter from Monterey BOS to Santa Clara County BOS dated 11-24-04 on casino development
[31] The Press Enterprise, Editorial, 12-26-04, *Best bet: Casino law*
[32] Stand Up For California's list of off reservation proposals, tribes, established land bases, proposed locations and investors
[33] This was litigation over a small parcel of land in Kansas; the court upheld the proposed casino site was not "Indian Lands" as required by IGRA because the tribe lacked governmental power over the land. The land had a history which lacked tribal authority.
[34] The Baltimore Sun, by Robert Little, 12-23-2004, *IRS seeks to curb financing tactics used by Cordish for Indian casinos*
[35] Timbisha Shoshone Project Meeting May 3, 2003, Developers Agreement
[36] California State Legislative Opinion, April 12, 1984 on California State Lottery Act, Bion M. Gregory, Legislative Counsel and Paul Antilla Deputy Legislative Counsel.
[37] Governor's letter to Clifton Lind, CEO President-Director of Multimedia Games, Inc. 11-16-2004
[38] San Francisco Chronicle, Jim Doyle, 10-24-2004, *Backlash on betting, Californians have second thoughts about gambling*
[39] www.standupca.org 2004 newsletters
[40] The Los Angeles Times, by Dan Morain, 11-4-2004, *Defeats Don't Mean the Dealing's Done*