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Testimony
Before the Committee on Resources
United States House of Representatives

Hearing on Draft Legislation
Off-Reservation Casinos
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My name is Cheryl Schmit. I would like to thank Congressman Pombo and other distinguished members of the Committee of resources for providing me this opportunity to speak before you today on behalf of affected community groups across this great State of California. My organization, Stand Up for California, serves as an advocate and information resource for community groups and policy makers trying to understand and respond to the complexities surrounding the expansion of tribal gaming. My being here today demonstrates this committee's recognition that all affected parties must be invited to the policy debate that is essential to ensuring fairness, objectivity and accessibility.

We support the efforts of citizens who want to make sure that there are adequate protections for all communities adversely impacted by unregulated gambling expansion. We do not seek to impede the economic progress and advancement of California's native peoples; rather we seek regulatory reforms that we believe are in the best interests of all the inhabitants of this State.

We sincerely appreciate the effort of Congressman Pombo to bring forward legislation in an attempt to restrict the proliferation of tribal gaming and at the same time encourage greater local government involvement in the mitigation of impacts.

Voters were emphatically told in Propositions 5 and 1A that the ballot measures would be a limited exception to the prohibition on casino style gaming and would not result in the proliferation of urban casinos. Yet here we are today, with more proposals than any other state all in varying stages of development. It is clear that off reservation land acquisitions for gaming will undermine the constitutionality of California's Indian gaming industry. Moreover, off reservation casinos pose a serious threat to the tribal gaming industry, as the public support which tribal governments enjoyed in 2000, is evaporating. The California electorate now feels betrayed by the broken promises of no urban casinos.

California is significantly affected by tribes continuing to reservation shop for new casino sites off established reservations and without historic ties. Tribes and gaming investors continue to promote numerous exceptions under IGRA for off reservation casinos that allow for the development of gaming on lands acquired after the 1988 cut off. The list I am providing you includes land acquisitions that are mandatory and circumvent the Governor, discretionary requiring gubernatorial concurrence and several exceptions to acquire land for gaming in accordance with IGRA--such as contiguous lands, land settlements through litigation or ad hoc legislation. This list continues to document the influence of gaming industry dollars on federal Indian policy for land acquisitions and tribal recognitions.

Many California tribal groups qualify for gaming due to the enactment of Senator John McCain's 1994 legislation. The unintended consequence of the List Act (Technical Corrections Act of 1994, Section 5, Pub.L.103-263, 108 Stat. 707 (May 31, 1994)) in California relates to Rancheria lands that were owned in fee—not in trust by the United States. The misapplication by the BIA of the Senator's amendment has allowed numerous land-based groups to be elevated to the federal recognition list despite legitimate questions that should have occurred. Many of the Rancheria tribal groups began to organize for the first time in 1994 and to develop off-reservation casinos.

Off reservation gaming has created a domino effect of impacts. It has created numerous instances of internal enrollment disputes over Indian lands, gaming money and power. It has set off political and legal impacts on local governments and the surrounding communities of citizens.

But gaming investors are ever-clever, coming up with new ways of acquiring new land in order to create new unchallenged exceptions for gaming. Two great examples exist in Northern California today:

- The Alturas tribe is currently constructing a gaming facility on fractional interest allotment land over which it has just recently begun to exercise governance--land which is a significant distance from the tribe's established land base and recently proclaimed to be under the tribe's governance.

- The second example involves the Santana family, an individual Indian family owning trust allotment land as of 2000, which is transferring governance of this very marketable location in a City of Cloverdale (population: 8,000) to the Hopland tribal government located approximately 50 miles away.

Your legislation addresses some of these schemes head-on by requiring a historic tribal governmental nexus with the land and local control. But, there are many exceptions this legislation needs to give further consideration too.

Local approval

Your proposed amendments to IGRA would protect and ensure the well-being of the public, the good working order of affected local jurisdictions and the long-term success of tribal governments. Your legislation addressing local input is greatly needed.

While the amendment specifically would remove the sole discretion of the Governor to approve off reservation casinos it appears to expand the approval to all affected parties. This amendment will require precise language to clarify the approval process.

Revisions and Zones

Stand Up for California views with considerable concern the idea of economic zones as set forth in the bill. CSAC has made many suggested revisions and modifications that support the concerns of citizens in communities affected by tribal gaming. Stand Up For California supports these revisions in general but would also caution there is a lack of acceptance and or support for the idea of economic zones, even as modified in the CSAC language.

- An economic zone is an incentive to identifying an area that is not currently Indian country which invites the abuse of land speculators and gaming developers who will drive decisions about the locations of these zones rather than the cool minds of policy makers.
- Economic zones are a recipe to by pass environmental regulations and review that will encourage the development of mega-casinos in urban or sensitive rural areas.
- IGRA is already riddled with loopholes - like the restored lands exception to the two-part determination in Section 20 of IGRA - which has promoted a land grab for gaming.

Conclusion

Overall, while we sincerely appreciate the opportunity that this draft legislation presents for a public debate on the impacts of tribal gaming, we believe a more moderate approach will be less objectionable and consistent with the delicate balance between the rights and authorities of states, tribes and the federal government. For example, we believe that rulemaking at the administrative level—a formal revamping of the fee-to-trust process for all new land acquisitions is a good beginning.

It is without a reasonable dispute that “Reservation Shopping” is driven by out of state gaming investors, carefully controlling their clients (a.k.a. tribes) and making “development agreements” rather than “management contracts”. These gambling interests are deliberately circumventing the National Office of Indian Gaming Management and the National Indian Gaming Commission by seeking to have land taken into trust as restored lands. This type of abuse demands federal regulatory action to protect the integrity of tribal gaming operations and protect state and local governments.

- An incremental change requiring approval of all agreements is necessary as IGRA only requires management contracts to be reviewed and approved.

Stand Up for California would like to see the full support of the Conference of Western States Attorneys General and the support of all Governors for this legislation. We thank you for your willingness and courage to raise these timely and contentious issues in an open and respectful debate.

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