



CNIGA

California Nations Indian Gaming Association

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‘Historic Gathering’ Summit Draws Tribal, Federal, State Regulators

Cash-starved state governments have “hijacked” tribal sovereignty in their efforts to extract revenue from gaming on Indian lands, the architect of the Indian Gaming Regulatory Act told participants in a historic regulatory summit Nov. 13-14 in Sacramento.

“IGRA says very clearly that the states are violating federal law if they try to exact a tax when negotiating a compact,” said Frank Ducheneaux, former legal counsel to the congressional committee that crafted the landmark 1988 act. “That is coercion of the tribes and against the will of Congress.”

The 1988 act came in response to a 1987 U.S. Supreme Court ruling that affirmed the sovereign right of tribes to offer gambling, Ducheneaux said. It was never Congress’ intention that Indian casinos become sources of revenue for state and local governments. Yet California and other states are attempting to use tribal revenues to alleviate budget deficits.

“The benefits of gaming are great,” Ducheneaux said, and too often tribes are willing to concede sovereignty to obtain a compact. However, it was the intent of IGRA

to strengthen and not weaken the principles of self-governance and sovereignty.

“Indian tribes are not about running casinos,” Ducheneaux said. Indian ancestors fought and died to protect sovereignty, he said, not to enable their descendants to operate casinos. If a tribal leader makes concessions in sovereignty to obtain a compact, he said, “You’ve reversed the whole proposition.”

Ducheneaux delivered his remarks to more than 200 participants in the California Tribal Government Gaming Regulatory Summit at the Doubletree Hotel in Sacramento. It was the first such gathering of tribal, state and federal regulators involved in overseeing the conduct of gaming on Indian lands.

The former legal counsel to the U.S. House Interior & Insular Affairs Committee was one of several respected tribal, state and federal officials (See “Honored Guests”) to attend the summit, sponsored by California tribal governments. The event was coordinated by the California Nations Indian Gaming Association.

“We are extremely gratified at having been able to bring together officials with all the
Summit: Continued on Page 5

Tribal Job Growth at 15.9%

Tribal government employment for the year ending October 2003 rose 15.9 percent, according to the California Employment Development Department. Employment growth for the month of October was about .5 percent, according to EDD figures.

Tribes employ 41,600 workers, more than twice the 17,300 employees on tribal payrolls in March 2000, when 65 percent of California voters approved a constitutional amendment permitting tribes to operate slot machines and

house-banked table games on Indian lands.

Statewide, California’s economy in October added 34,800 jobs, the biggest one-month gain in nearly three years and a sign the nation’s slow employment recovery was finally making its way to California.

Despite the supermarket strike, 100,000 Californians went back to work, according to EDD figures.

“People typically reenter the labor force when they feel their prospects are good or improving,” Richard Holden, chief of the

EDD’s labor market information division, told the *Los Angeles Times*. “That’s a hopeful sign.”

Other economists similarly expressed muted optimism about the state’s latest job gains, the largest since December 2000.

“It’s just one more piece of evidence that the economy is not falling back into recession,” Michael Bazdarich, director of the Forecasting Center at UC Riverside, told the *Times*. “We’re still in the very early stages of a job expansion.”

Chris Gallardo Joins CNIGA as Legislative Director

Chris L. Gallardo, former senior consultant with the Assembly Business and Professions Committee, has accepted the position of legislative director for the California Nations Indian Gaming Association (CNIGA).

Gallardo, 36, began his duties with CNIGA on Nov. 17.

"We are very pleased that Chris has agreed to join the CNIGA family," said CNIGA Executive Director Jacob Coin. "We have great confidence in his ability and knowledge and we are certain he will do an excellent job representing CNIGA and our member tribes."

CNIGA is a non-profit organization comprised of 57 federally recognized tribal governments. The association is dedicated to protecting the sovereign right of Indian tribes to have gaming on federally recognized Indian lands. It acts as a planning and coordinating agency for legislative, policy, legal and communications efforts on behalf of its members and serves as an industry forum for information and resources.

Gallardo, who served three years with the Assembly Business and Professions Committee under the direction of Assembly member

L o u
C o r r e a
(D-Santa Ana), will oversee all legislation affecting tribal government gaming in California.

"I'm excited about the opportunity to do what I can to protect tribal sovereignty and the right to game," Gallardo said.

Prior to working with the state Assembly Gallardo served as program manager for La Cooperativa Campesina De California, a statewide non-profit advocacy group for migrant workers and children.

At La Cooperativa Campesina De California, Gallardo managed two federally funded youth programs (the Migrant Child Labor and Farm Worker Youth programs) awarded to La Cooperativa Campesina De California by the U.S. Department of Labor. The two programs were designed to provide incentives for farm worker youth to stay in school and prepare for secondary and postsecondary education.

Gallardo has a master's degree in public administration and a bachelor of science degree in criminology, both from National University, La Jolla.

Aside from his commitment to his work, Gallardo likes to spend all of his spare time with his wife, Denise, and their three children: Patrick, 10; Christian, 7; and Aaron, 3.

"A person's commitment to his or her job or profession is very important," Gallardo said. "However, it can impact the family if one is not careful. A strong commitment to spending as much spare time as possible with your family is very important because it is what will keep your family focused and together."

Gallardo family hobbies include boating, baseball, basketball and swimming.

"Playing baseball, and basketball with my boys is very rewarding because when we're playing together, it truly is our special time together," Gallardo said.



Gallardo and his family also are members Calvary Evangelism Center (CLC) in Sacramento.

Coin Grilled by UNLV Law Students

Twenty-five gaming law students grilled Jacob Coin, executive director of the California Nations Indian Gaming Association, during a 90-minute lecture Nov. 5 at the William S. Boyd School of Law at the University of Nevada, Las Vegas.

Several of the upper-level students quizzed Coin on issues of sovereignty and jurisdictional issues, the scope of tribal compact negotiations, revenue sharing and interpretations of the Indian Gaming Regulatory Act.

In the midst of the exchange Coin outlined for the students the history of tribal government gaming, touching on legal issues and explaining to the students how government gaming has generated hope and economic gains in Indian Country.

"I was both impressed and encouraged at the depth of understanding these students had when it came to tribal governments and tribal gaming," Coin said following the lecture. "It's comforting to know these young people will soon be going out and spreading that knowledge and understanding."

Instructor Robert Faiss, chairman of the administrative and gaming law department for Lionel Sawyer & Collins, Nevada's largest law firm, said tribal gaming is a major part of course studies.

"We believe no law student in this country should conclude a class in gaming law without a basic understanding of the laws that govern Native American casinos and the history and culture of those who have created those casinos," Faiss said.

"Jake Coin did a remarkable job in conveying that understanding."

Coin also participated in a television talk show hosted by Faiss. Most of the program was devoted to sovereignty and the legal status of tribal governments.

Much of the discussion centered on the unique legal status of American Indians in the United States.

Jacob Coin Speaks Tribes 'Hijacked' by States

"Indian cars" still sit rusting amongst the weeds on tribal reservations and rancherias throughout California, home to the nation's largest tribal government gaming market. The blessings of tribal gaming have yet to trickle down to many of the more than 4,000 Hupa and Yurok Indians in the far north, where rays of the rising sun piercing forests of majestic redwoods often reflect off aging trailer homes on cinder blocks.

The myth of the rich Indian perpetuated by critics of tribal gaming is very much evident in California as it is throughout the country. There persists a long backlog of needs in Indian Country where, despite a binding trust obligation by the federal government, the nation's First Americans are deprived of basic services and programs readily available to all others.

Thousands of Indians in California lack running water and electricity. Jobs. Educational opportunities. Adequate health care. Hope.

The memories are still fresh: Arnold Schwarzenegger's face flashing on the television screen during the October gubernatorial recall election. "Indians must give their fair share," Schwarzenegger told viewers.

Our fair share?

It's a too common refrain. Desperate, cash-strapped governors are turning to

tribes in an effort to remedy budgetary problems; often using the compact process under IGRA to extort revenue from tribes equally desperate to provide needed governmental services to their members.

"There could be happier things," Raymond Torres, chairman of the Torres-Martinez Desert Cahuilla Indians said upon signing a compact with outgoing Gov. Gray Davis, "but this is a step in the right direction."

The Torres-Martinez agreement and three other compacts signed by Davis before leaving office all call for the payment of tribal gaming revenues directly into the state's general fund. Schwarzenegger pledges to extract an even bigger share of tribal revenues.

Torres and other tribal leaders cannot be blamed for having succumbed to the extortion demands of state governments. When your people are impoverished, you play the hand your dealt.

State and local governments have been able to violate the Federal law and demand a share of tribal revenues only because the Supreme Court struck down the provision of IGRA that permitted tribe to sue a state for failure to bargain or not to bargain in good faith. A state demand for revenue sharing would, under the terms of IGRA, be bad faith bargaining in and of itself.

to state programs. The committee also discussed the governor's proposal to place a \$15 billion dollar bond proposal on next year's November general election ballot.

Elizabeth Hill, the state's nonpartisan legislative analyst, reviewed the current fiscal condition as well as the additional impacts that will need to be addressed by the state Legislature because of the governor's rescinding of the VLF, the requested additional budget cuts and the bond proposal.

The committee's immediate concern, however, was how the state would solve the backfilling of the rescinded VLF funds. Also, Committee members expressed concern about the governor's proposal for a \$15 billion government bond sale to cover accumulated state debt.

The committee also raised the ongoing question regarding whether or not the state will be engaging in revenue sharing with the state's gaming Tribes.

FOLLOWING THE LAW

Since IGRA was passed nearly 15 years ago, Interior has

approved some 250 Class III (casino-style) gaming compacts in 24 states. Tribal gaming has helped, in accordance with IGRA, to provide "...a means of promoting tribal economic development, self-sufficiency and strong tribal governments."

Section 11 of IGRA reads, "compacting provision of IGRA shall not be interpreted as conferring upon a state or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe, and that no state may refuse to enter into compact negotiations based upon the lack of authority in such state or its political subdivisions to impose such a tax, fee, charge, or other assessment."

"To date, the Department has only approved revenue sharing payments that call for tribal payments when the state has agreed to provide valuable economic benefit of what the department has termed 'substantial exclusivity' for Indian gaming in exchange for the payment," Aurene

Jake Speaks: continued on page 4



Legislative Report

By CHRIS L. GALLARDO

One of Gov.-elect Arnold Schwarzenegger's first acts after being sworn into office was to call what turned out to be an enlightening, if not entertaining, special session of the state Legislature.

Schwarzenegger called the session chiefly to discuss the state's fiscal instability and works compensation reform and to repeal controversial legislation allowing undocumented immigrants the ability to receive a California driver's license.

But much of the news was generated by a Nov. 18 emergency meeting of the Assembly Budget Committee. The session was called to discuss the impact of Schwarzenegger's executive order that rescinded an increase in the vehicle licensing fee (VLF) and consider his demand that the Legislature find an additional \$2 billion in mid-year budget cuts

Assemblyman David Cogdill, R-Modesto, asked Hill about the status of the \$680 million fixed into 2003/04 budgets that is supposed to come from tribal gaming.

Hill said the figure was included in the 2003/04 budgets. But she said she did know how the state would obtain the revenue from gaming tribes. She said the only monies now expected to be generated through revenue sharing would come from three tribes that recently signed tribal-state compacts with outgoing Gov. Gray Davis. Hill said the three tribes agreed to revenue sharing provision of

Session: Continued on Page 4



Jake Speaks: *continued from page 3*

Martin, acting assistant secretary of the Interior, told the Senate Subcommittee on Indian Affairs on July 9.

“As a consequence, if the department affirmatively approves a proposed compact, it has an obligation to ensure that the benefit received by the state under the proposed compact is appropriate in light of the benefit conferred on the tribe.

“In general, the department has attempted to apply the law to limit the circumstances under which Indian tribes can make direct payments to a state for purposes other than defraying the costs of regulating Class III gaming activities.

“Accordingly, if a payment exceeds the benefit received by the tribe, it would violate IGRA because it would amount to an unlawful tax, fee, charge, or assessment. While there has been substantial disagreement over what constitutes a tax, fee, charge or assessment within this

context, we believe that if the payments are made in exchange for the grant of a valuable economic benefit that the governor has discretion to provide, these payments do not fall within the category of prohibited taxes, fees, charges, or other assessments.”

ENOUGH IS ENOUGH

“Because of gaming, some tribes have been very successful, employing thousands of people, both Indian and non-Indian, and reducing poverty and the welfare rolls in their areas,” said Sen. Ben ‘Nighthorse’ Campbell, chairman of the Subcommittee on Indian Affairs. “This success has attracted the attention of other governments, cash-strapped and hungry for new revenues. “Many states are looking to gaming tribes to help eliminate their deficits, and some States are reportedly refusing to enter or renew compacts required under IGRA until tribes agree to revenue sharing provisions.”

“Congress never envisioned that kind of pressure would be applied to tribes,” Campbell said. As a result, he called for amendments to IGRA “to ensure that tribal gaming revenues are first used to meet the needs of tribal governments and their members. Only after satisfying those needs, would states and tribes be able to negotiate a revenue-sharing agreement.”

Frank Ducheneaux, former counsel to the House Committee on Interior and Insular Affairs, said, “Nothing is said (in IGRA) about supporting state or local governments. It is true (IGRA) provides that one allowable use of net gaming revenue by Indian tribes is to help fund operations of local government agencies, but this is a discretionary decision of the tribes involved. “It was the clear intent of Congress that states, in negotiating compacts, not be able to hijack tribal revenues by requiring revenue sharing provisions.”

Session: *continued from page 3*

5% of the net winnings. However, those revenues are still far from fruition due to the fact that the tribes that signed those compacts currently do not have casinos in operation. The compacts also are subject to review by the U.S. Department of the Interior.

Donna Arduin, Schwarzenegger’s finance director, generated a bit of publicity when she appeared before the committee to lay out the findings of an audit she performed before the Republican governor appointed her.

Arduin’s first appearance went less than smoothly. Assemblywoman Jenny Oropeza, a Long Beach Democrat who chair’s the committee, asked her to stand behind a lectern. Arduin said she preferred to sit.

Arduin eventually stood behind the lectern. However, after she mentioned that she was feeling ill, members of the committee insisted that she sit while giving her testimony.

Arduin’s appearance before the committee had been delayed by earlier testimony. Minutes into Arduin’s talk, with Assemblywoman Jackie Goldberg, D-Los Angeles, asking her questions, the finance director told the committee that she was running late for a meeting with the governor and subsequently got up and left.

“It would have been nice if you could finish with this one question,” Oropeza said. Afterward, Oropeza said Arduin appeared nervous and otherwise did fine.

As for leaving in the middle of a question, Oropeza said, “It could have been handled better.” A finance spokesman said Arduin had been scheduled to appear at 10:30 a.m. but had to wait more than an hour.

“The committee knew beforehand that Arduin was scheduled to meet with the governor at noon,” he said.

“You don’t want to be late for a meeting with a governor,” the spokesman said. “You

definitely don’t want to be late for a meeting with Gov. Schwarzenegger.”

During her testimony, Arduin defended the governor’s proposal to ask voters in March to approve a bond of up to \$15 billion to cover accumulated state debt.

She emphasized that the state had already spent or obligated general fund money, and that the \$15 billion bond issuance would restructure the debt to the best advantage of the state. Because the bond would be backed by the general fund and approved by voters, Arduin said, the state could get a break on interest.

But Democratic lawmakers said the bond and a spending limit that would be tied to it would do little to solve a yearly imbalance between spending and revenue of about \$14 billion.

With Schwarzenegger vowing to protect school spending, they said, the remainder of the budget would have to absorb a 27 percent cut to balance the books.

Lohse Gets NCAI Post

Leslie Lohse of the Paskenta Band of Nomlaki Indians has been elected National Congress of American Indians area vice president by the California tribes caucus.

Leslie was not the only tribal official involved in elections at the NCAI annual meeting in Albuquerque, NM during the week of November 16. Chairman Tex Hall

from the Three Affiliated Tribes from North Dakota and Chairman Ernie Stensgar from the Coeur d’Alene Tribe in Idaho sought the NCAI presidency. Chairman Hall won re-election with 60 percent of the votes cast by the member tribes.

A resolution ushered by Chairperson Priscilla Hunter, Coyote Valley Tribe, opposing the nomination of William G. Myers, III to the Ninth Circuit Court was

passed by NCAI. The resolution was prompted by CNIGA action that also opposed the nomination at a regular meeting on October 23 at Cabazon.

Leslie vowed to continue working to improve communications with the NCAI member tribes in California. CNIGA has offered to assist her in any way to improve the communications mechanism that would benefit tribal governments in the state.

Summit: *continued from page 1*

various layers of regulatory agencies involved in tribal gaming in California,” said Michael Lombardi, gaming commissioner for the Augustine Band of Mission Indians and a summit conference coordinator.

“There is often confusion over where jurisdictional boundaries begin and end. Summits like the one we held in November will help alleviate the confusion.”

Phil Hogen, chairman of the National Indian Gaming Commission; Michael Palmer, commissioner, California Gambling Control Commission; and Robert Lytle, acting director, California Division of Gambling Control, all gave overviews of their agencies.

Attorney Robert Faiss, chairman of the administrative and gaming law department for Lionel Sawyer & Collins

of Nevada, told attendees at a keynote lunch there are similarities in the history of gaming in Nevada and on Indian lands.

“Like the Indian nations of California, Nevada relied on its inherent right to have gaming because of its sovereignty,” said Faiss, author of the Silver State’s modern regulatory system.

As a consultant to a number of states and foreign countries seeking to launch gaming industries, Faiss said there is one crucial element to success.

“In my experience, the jurisdictions that have the least problems are those with a philosophy that casinos are businesses to be regulated, not evils to be controlled,” Faiss said.



From left: Michael Palmer, Bob Lytle, Norm DesRosiers, Phil Hogen, Michael Lombardi, Bob Faiss



From left: Bob Faiss, Jacob Coin, Frank Ducheneaux

The California Tribal Gaming Regulatory Summit drew an impressive array of tribal, federal and state regulators.

Those participating in the event included:

- ✓ Frank Ducheneaux, former legal counsel, U.S. House Interior and Insular Affairs Committee.
- ✓ Phil Hogen, chairman, National Indian Gaming Commission.
- ✓ Robert Faiss, chairman, administrative and gaming law department, Lionel, Sawyer & Collins.
- ✓ Michael Lombardi, gaming commissioner, Augustine Band of Mission Indians.
- ✓ Norm DesRosiers, gaming commissioner, Viejas Tribal Gaming Commission.
- ✓ Michael Palmer, commissioner, California Gambling Control Commission.
- ✓ Robert Lytle, acting director, California Division of Gambling Control.



Michael Lombardi (left) Bob Faiss (right)

California Nations Indian Gaming Association
9th Annual Western Indian Gaming Conference
January 14-15, 2004
Palm Springs Convention Center • Palm Springs, California

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To Enter: Each fully registered conference attendee will receive a Grand Prize #1 entry form in the complete registration packet at the Registration Booth. Completed entry forms should be deposited in the drawing Grand Prize #1 Bin at the Registration Booth. One winner will be randomly selected: drawing to be held during the last hour of the conference on Thursday, January 15, 2004 in the trade show hall. Winner must be present to claim prize. If first winner not present, drawing will continue until prize is awarded.

Grand Prize #2

7 Relaxing days at ***Westward Look Resort***, set high in the foothills above **Tucson, Arizona** where you'll experience a rejuvenating resort environment inspired by the beauty of its pristine natural surroundings. Home to an amazing variety of birds, plants and wildlife, this lush 80-acre oasis is ideal for nature lovers, romantics or those seeking a serene escape from daily pressures. Enjoy suite-sized accommodations with spectacular views plus available gourmet dining and luxurious spa treatments in a naturally beautiful setting and unpretentious atmosphere. www.westwardlook.com

To Enter:

Each fully registered conference attendee will receive a Grand Prize #2 Logo Entry Form in the complete registration packet at the Registration Booth. Take the Logo Entry Form with you as you visit the CNIGA Associate Members Conference Booths and have Logos validated at the respective booths. When each Logo has been validated, complete the entry form on the reverse and deposit it in the Grand Prize #2 Bin at the Registration Booth. One winner will be randomly selected: drawing to be held during the last hour of the conference on Thursday, January 15, 2004 in the trade show hall. Winner must be present to claim prize. If first winner not present, drawing will continue until prize is awarded.



9th Annual Western Indian Gaming Conference
 January 14 - 15, 2004
 Palm Springs Convention Center, Palm Springs, CA

Conference Registration Form

Fill out form completely and fax to CNIGA at 916-448-8758

Tribal Government or Company Name: _____

Street: _____

City: _____ **State:** _____ **Zip:** _____

Phone: () _____ - _____ **Fax:** () _____ - _____ **Email:** _____

Contact Person: _____

Title: _____

EARLY BIRD DISCOUNT
DECEMBER 5, 2003

Early Bird Registration _____ (Qty.) @ \$400 = _____
 (On or before December 5, 2003)

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Yes!!! Please register me for the 9th Annual Western Indian Gaming Conference.
 Please make badges for the following: (copy form for additional names)

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