

Final 3/31/05

**TESTIMONY OF MARGIE MEJIA, TRIBAL CHAIRWOMAN,
LYTTON BAND OF POMO INDIANS
TO THE SENATE INDIAN AFFAIRS COMMITTEE, APRIL 5TH, 2005**

Thank you for inviting us today, and thank you in particular, Senator McCain, for the understanding and support you've shown for Native Americans.

My name is Margie Mejia, and I am the chairwoman of the Lytton Band of Pomo Indians. To understand why we are here today, it's important to understand something about the history of our tribe.

Like most California tribes, we are a small group, with about 275 members. Like many other California tribes, most of our members live in poverty. Many have no or inadequate health care. Alcoholism and substance abuse is a continuing problem. Living as we do in the San Francisco Bay Area, where housing is very expensive – we have many families living together in tiny apartments. Only one of our member's owns a home.

But until the 1950s, we did have land. That land was in Sonoma County, and today this is the site of some of the most prestigious wineries anywhere in the world. But the reason that today there are vineyards on that land, instead of our homes – is the result of actions taken by the federal government.

In the 1950s, the government decided to “terminate” small Native American bands like ours. The government gave tribal members individual titles to land and houses, in exchange for a promise to provide needed infrastructure – water, electricity, roads and sewage. The tribe was dissolved as a legal entity. But the government did not fulfill any of its promises to make improvements on our land, and the government gave those titles to individuals with no experience of managing either property or money.

The result was that we lost both our legal identity and our land, which in fact, was the intended outcome. (As a historical aside, the same government official who presided over this policy at the Bureau of Indian Affairs, had also been in charge of the government's policy of interning Japanese-Americans during WWII.)

But we never lost our existence as a community. Many of us continued to live together, and to take care of tribal members in need, as we do to this day. Eventually, we sued the United States, and the outcome of that suit was that the federal government admitted it had broken its promises during termination. In 1991, our tribal status was restored. However, that settlement effectively barred us from returning to our tribal lands in the Alexander Valley by prohibiting us from operating a gaming facility in the area. We had little choice but to agree to this condition because otherwise, with little or no resources of

our own, we would have been forced to fight a protracted legal battle against a group of wealthy wineries and the county.

After restoration, we re-established our tribal government, passed a constitution and elected a tribal council. We also began to look for a means out of the relentless poverty many of our members faced, and to rebuild our tribal community. The Tribal Council conducted a needs assessment to determine what alternatives were available to finance our tribe's mission of buying the land, building homes, providing roads, electricity, water, sewer and the other infrastructure necessary for our tribal community.

We turned to gaming because the government offered that to us as a means of economic development, and because it generates enough money to allow us to get a loan and finance the rebuilding of our tribe and tribal community.

Let me take a moment to explain the connection between Native Americans and gaming, and specifically about our tribe, and the gaming business. We are a poor people with few options for economic development. If we went to a bank and asked for money to build houses for our people, or a school, or even a business venture – they would show us the door. We have nothing to guarantee such a loan, and trust land cannot be used for collateral. Revenues from gaming will help us get members off welfare and provide them basic health care, education, job training and housing in a new small community on rural land in Sonoma County.

The 1991 restoration agreement while barring us from operating a gaming facility in Sonoma County did not foreclose our right to find another community that might welcome us as partners. We found our road to economic self-reliance in the City of San Pablo where with help from private investors we purchased an existing card club that had been approved by local voters in 1994.

The city and the tribe then negotiated a Municipal Services Agreement. At the time, such an agreement was unprecedented in California, and was the most protective arrangement between city and regional interests and an Indian tribe in California.

But there were other hurdles to come. Although it was the government's wrongful actions which resulted in the loss of our land, by the time the government had admitted that, and prepared to make good our loss – the legal landscape for tribes had changed. A law had been passed which made it extremely difficult for tribes to operate gaming on lands taken into trust after 1988 unless Congress made the land eligible. Even though it was not our fault that we were in this position, and although the law had not been intended for landless tribes, but rather tribes with existing reservations, our efforts to seek help from the Department of Interior went nowhere.

Finally, Congress acted to take that land into trust for us as it has in the case of many other tribes in California and other states. This was the final option, after we had tried everything else. Thanks to the efforts of Congressman George Miller, who represents the district which includes our land, that proposal was introduced in legislative form, as an

amendment to a large piece of Indian legislation. That was October, 2000. On December 27th of that year, the president signed the bill into law.

There were newspaper articles about this at the time, and subsequently, there were two attempts to repeal this proposal. Neither of those met with success. Senator Feinstein's legislation represents the third time there has been a proposal to take this land from us. And, as I explained earlier, given the economics of tribal life, to leave us with the physical earth, but to take away our right to do business on it -- gaming in this case -- makes the granting of the land an empty gesture. We believe it would be legally wrong to do that. Section 819 conferred a highly valuable property right on our Tribe by specifically entitling us to acquire land into federal trust for Indian gaming. The Feinstein bill would deprive us of this right to conduct gaming on the land and would be a "taking" under the 5th Amendment of the United States Constitution. And most certainly it would be morally wrong.

That act, of taking land into trust for us in San Pablo, was not the beginning of this story. It was the end of a very long story – a story of poor treatment of our tribe at the hands of the federal government. That was an act of redress, making good the wrong that had been done to us more than fifty years before. To have simply said, "We're sorry," and offered up a paper apology for the treatment of our tribe would have been wrong. Taking that land into trust represented a meaningful act of redress; taking that land out of trust would make that gesture so many empty words – and Senators, whatever you may think of this issue, I am sure you know our people have heard many empty words from this government over the years.

That is the background to our proposal for a casino project on our land in San Pablo.

Our initial proposal in 1999 was for a modest gaming operation with something on the order of 1,000 slot machines. In the proposed compact that we signed with the Governor last year, that number was originally 5,000, which was then revised down to 2,500 machines. Since there has been some controversy about the change, let me address that for a moment.

When we made our initial proposal in 1999, no compact, not ours or any other tribe's, provided for any revenue-sharing with the state of California. Nor did these compacts provide local and state governments opportunities for substantive environmental review, mitigation of local impacts or involvement in gaming regulation.

We stepped up to the plate to do just that, reaching an agreement to pay an unprecedented (not just in California, but anywhere in the nation) 25 percent of net gaming revenues to state and local government to pay for our fair share of public services and environmental mitigation. But that commitment also required more slot machines than originally envisioned.

Along with various provisions to pay for mitigation measures required by our project, we agreed to two exhaustive environmental impact reviews prior to anything being built.

Potential traffic and environmental problems would be identified and addressed. These provisions are modeled on the California Environmental Quality Act such as the inclusion of project alternatives and citizen participation in the process. But the compact took one further step by requiring the Tribe to complete agreements on mitigation measures identified in this environmental review with its neighbors in the City of San Pablo, the local county and the state transportation department.

The tribe also agreed to participate in the state workers' compensation, unemployment compensation and disability benefit systems. The tribe has agreed to strong state oversight and review of gaming operations, including independent audits, background checks on employees, and prohibitions on gambling by anyone under 21.

Over and above our compact obligations, the Tribe spent the past months engaged with the community to hear their hopes and concerns about our project. We spoke with more than 3,000 individuals, met with dozens of elected officials and community leaders, and participated in more than 50 community meetings and forums.

As a result, we reduced the size and scope of our project, to make it a better fit for the community, while still offering the creation of more than 6,600 new jobs and generation of an estimated \$618 million each year in economic benefits, regionally and statewide. These jobs were particularly important in the city of San Pablo and surrounding region, where unemployment is high and there are not other major employers offering good jobs with health and retirement benefits. The tribe also committed to a local preference hiring policy, to help steer jobs to where they were most needed.

We promised the Bay Area that our project would not include a hotel or nightclub, convention facility, amusement arcade or other facilities that would generate additional traffic. We also committed to advance \$25 million to the state once our project was approved, to jump start necessary work on the freeway interchange closest to our facility.

We negotiated and signed that compact with the governor of California. We had the strong support of the city of San Pablo, where the casino would be located. We believe that the proposed compact represented a good deal for all parties. But notwithstanding all that, as you know, California's state Legislature has chosen not to act on the compact.

As a result, we will now focus on exercising our rights under federal law to operate a wider variety of Class II gaming activities at Casino San Pablo. We will renovate the interior of the existing building to make it more attractive and to offer a wider variety of Class II gaming activities, including Class II electronic bingo games. These are not video lottery terminals. They will fall well within the definition of what constitutes Class II gaming. We don't intend to push the envelope.

For decades we worked to regain our name and our land. We obeyed the law, even when it was used against us. We followed the law. When the law allowed us to pursue gaming on our restored land in San Pablo, we did so. But already twice since then, there have

been attempts to undo what you rightfully did. This legislation represents the third attempt to undo that act of justice towards our tribe. I ask you to say enough.

I know that we are a small group, without much money, power or influence. We have received more attention in the last year, over this casino proposal – than anyone paid to us for the decades that went before. I understand that there are many issues involved here today. I hear the talk about Indian gaming and all the other questions. What I don't hear, is any talk about our people, and Senators, this hearing is also about us.

Senator McCain, we did not ask to be in this situation. We did not ask the federal government to take away our name and our land. But that happened. Now, decades later, when this government has finally acted to right those wrongs – we believe it would be wrong to take away our right to pursue economic self-sufficiency – which is effectively what Senator Feinstein's bill would do. As I explained earlier, without the right to operate gaming on our land, which is a right given to us by both the federal government and the state of California, we cannot use that land to help ourselves.

If this body wishes to address the various issues associated with Indian gaming, so be it. But I respectfully ask you, Senators, not to go back and retroactively change the rules for us. What this body did in 2000, was to do the right thing. It was to make good a wrong the federal government had committed against our tribe. I ask you to let that act of justice stand. Thank you.