

SAN MANUEL BAND OF MISSION INDIANS



**DERON MARQUEZ, CHAIRMAN
SAN MANUEL BAND OF MISSION INDIANS**

BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS

June 28, 2005

INTRODUCTION

Good Morning Chairman McCain, Vice Chairman Dorgan, and Members of the Committee. My name is Deron Marquez. I am Chairman of the San Manuel Band of Mission Indians. I'd like to begin by thanking you for this opportunity to testify before the Committee this morning. Before I get to the heart of my testimony, which is the discussion of our Government's regulatory efforts, and concerns with the Indian Gaming Regulatory Act, I'd like to first provide some background about our Tribe and the benefits that our community has achieved because of Indian gaming.

BRIEF HISTORY OF TRIBE

The San Manuel Band of Mission Indians are descendants of the Yuhaviatam or People of the Pines. Our ancestral homelands began at Cajon Pass, ran easterly past Cottonwood Spring to the border of the Chemehuevi, southerly to the border with the Cahuilla, and northerly to the border with the Kitanemuk.

The first Spanish explorers to the area identified the Yuhaviatam as a clan of the Serrano people, the Spanish term for highlander. The Spanish settlers used the name Serrano to identify the indigenous people of the San Bernardino highlands, passes, valleys, and mountains who shared a common language and heritage.

Our Tribe faced an onslaught of change in the mid-1800s with the passage of the Treaty of Guadalupe Hidalgo in 1848 and the California Gold Rush of 1849. Settlers radically changed the Serrano lands with their ranching, farming, and logging. In 1866, unrest came to the area as militia forces from San Bernardino killed Serrano men, women, and children in a 32-day campaign. Yuhaviatam tribal leader Santos Manuel safely led the remaining Yuhaviatam from the mountainous terrain to the valley floor.

In 1891, with passage of the Act for Relief for Mission Indians, the San Manuel reservation was established and recognized as a sovereign nation with the right of self-government. The San Manuel reservation was named in honor of its courageous leader, Santos Manuel, and our Tribe has since been recognized as the San Manuel Band of Mission Indians by the United States government.

Like many Tribal Nations throughout the country, and due in large part to the misguided policies of Allotment, Assimilation, and Termination: our lands were wrongly taken, our culture suppressed, and our economic way of life destroyed. By the 1960s and 70s, these policies had effectively crippled our community.

Before 1995, the San Manuel tribal community did not have the capability to track social and economic conditions. Anecdotally, however, the tribe was certainly aware that problems of unemployment, alcohol and substance abuse, low educational attainment and other social ills were very much a part of the community. Unfortunately, the tribal government did not have the resources to deal with these issues directly.

In addition to the social ills that plagued the community, efforts to enter into economic relationships with the larger non-Indian community were met with reluctance. To a large degree, these businesses were uncertain about the status of tribal governments, and were unwilling to risk doing business with the Tribe.

BENEFITS OF INDIAN GAMING

Today, our Reservation consists of just over 800 acres and is located on part of our ancestral homelands in the foothills of the San Bernardino Mountains in California, just north of the city of Highland.

In 1986, the San Manuel Band turned to gaming as a means of generating governmental revenue as well as creating jobs for the community. Beginning with a small bingo operation, the Tribe was finally able to generate modest amounts of government revenues, which were used to begin addressing the challenges facing our tribal government.

Like a number of other tribal nations, the San Manuel Band of Mission Indians has been able to utilize the government gaming revenues to make improvements in our community. Just as the Indian Gaming Regulatory Act of 1988 required, we are dedicated to strengthening our tribal government and undertaking economic development in a substantial way.

Infrastructure:

Revenues from the Tribe's government gaming enterprise have provided the tribal government with the means to develop the physical infrastructure on the reservation. Since the majority of the reservation is located on a steep hillside, developing the area for roads, water & sewer, utilities and tribal homes has been an expensive undertaking. In addition, the reservation is located on the San Andreas Fault to the south, the San Manuel Fault cutting through the middle and to the north, the "N" Fault, requiring the Tribe to pay even closer attention to developing and maintaining the physical infrastructure.

Education:

The San Manuel Band of Mission Indians enacted an education ordinance, which provides tuition payment and other support for tribal members in their educational pursuits from pre-school through graduate and post-graduate. Child care services are available for adult members of the Tribe who are continuing their education. The Tribe also assists other tribal students from around the country who may be seeking advanced degrees in such fields as education, medicine, law and other disciplines.

In addition, the Tribe provides financial and other support for schools in the Inland Empire area. Most recently in April 2005, the Tribe was awarded the Educational Medal of Honor by the San Bernardino County Unified School District for exemplary service to public education in San Bernardino County.

The Tribe contributed \$3 million to California State University – San Bernardino, in part, to assist with the construction of a new student center. The student center, scheduled to open in November 2005, will be an integral part of the university community and include resources and amenities to assist students with their educational pursuits.

California State University-San Bernardino is the host campus for the annual California Native American Day celebration. The week-long period of educational activity includes some 3,000 students, mostly fourth graders, from the San Bernardino area. The goal is to educate them on the language, culture, history and political environment of tribes in California. The first day is spent educating the educators while the remaining days are reserved for the students to gain a “hands-on” experience. The last day of the week’s activities, always the fourth Friday in September, was designated by the state of California as “California Indian Day” through the efforts of San Manuel.

Health care:

Tribal elders recall a time in the 1930’s and 1940’s when a medical doctor traveled a circuit, which included a stop on the San Manuel Indian Reservation. Once each month or so, the doctor was available to provide medical care to tribal members. Most, if not all, of the tribal members born during this period were born at home sometimes with the assistance of the traveling doctor.

For a number of years until the 1970’s, a small Indian Health Service clinic on the San Manuel reservation provided a limited range of medical, dental and eye care services to our tribal citizens on an out-patient basis. When higher levels of care were required, tribal members were transported to a larger Indian health care facility on the Morongo Indian Reservation some 30 miles from San Manuel. Proper health care, though just miles away, was not always attainable. For emergencies, tribal members were able to get assistance at local hospitals under the contract health care program of the Indian Health Service.

Today, the San Manuel tribal government is able to provide a comprehensive health care program for our tribal member families. The Tribe offers a PPO that grants access to the finest health care programs in the Southland. With such a program, we are able to

address heart disease issues, diabetes, diet, dental care, vision care and simple routine check-ups.

Because of the chronic health issues such as heart disease and diabetes plaguing Native people across the country, San Manuel assists our tribal members with additional programs. Among these programs are those that encourage tribal members to undertake preventive health care measures such as exercise and good diet. Three years ago, the Tribe incorporated a fully-equipped fitness facility into the new Community Center which houses tribal government operations.

Cultural Preservation:

In 2003, San Manuel contributed \$4 million to the University of California Los Angeles (UCLA) to supplement their Indian studies program. As a part of the effort, the Serrano tribal language program was instituted to teach tribal students.

The Tribe also established a cultural preservation effort to preserve and enhance the tribal language and culture. As a part of the efforts, the “Yaamar’a” or spring celebration is held each year in the tribal community. San Manuel invites other California tribes to share their traditions at the spring celebration.

Additionally, the Tribe has developed various educational tools – books, DVD’s and CD ROM’s, to assist teachers and others in their teaching of tribal history and culture.

Contributions to local charities and nearby local governments:

We are well aware of the recent good fortune of our community. Now that we are beginning to revive our reservation and provide the essential programs needed to serve our citizens – we acknowledge the importance of contributing to our surrounding community and where needed throughout Indian country. In addition to contributions to non-gaming Tribes and to the Special Distribution Fund, which goes to mitigate off-reservation impacts of gaming (both of which were agreed to in our compact), San Manuel has made it a priority to aid other Tribes in need throughout the Nation, to help our neighbors, and to contribute to local charities. The following is a partial list of the contributions that we have made over the past five years.

April 2005 – A \$178,000 donation to purchase land for the children and parents of Lori Piestewa who received a home from the television program Extreme Makeover: Home Edition. Lori Piestewa is a Native American (Hopi Indian) soldier and mother of two young children. She died serving her country in Iraq in April 2004.

January 2005 – A \$500,000 contribution to KVCR, a PBS and NPR affiliate station, as part of its capital campaign to purchase new master control equipment for its conversion from analog to digital technology.

FY 2004- Scholarship Program - \$150,000 of an \$800,000 endowment was distributed to San Manuel employees.

FY 2004 – Total Education Giving - \$105,000 to local primary, secondary and higher education institutions and extra circular activities.

October 2004 – A donation of \$5.5 million to the city of San Bernardino Calif. for local public works improvements.

March 2003 – A donation of \$4 million to the University of California Los Angeles to establish the Tribal Learning Community and Education Exchange: a training and policy center dedicated to prepare students to work for tribal communities and governments.

November 2003 – A \$200,000 donation was made to the San Bernardino Valley Lighthouse for the Blind.

November 2003 – A \$1 million donation to aid wildfire victims following the blazes that swept through many parts of Southern California, including the San Manuel Indian Reservation, causing extensive damage. Another \$1 million was donated to Habitat for Humanity to rebuild homes on the San Pasqual Indian Reservation. More than 2/3 of the San Pasqual tribal members lost their homes to the wildfires.

March 2003 – A \$3 million donation was made to partly fund the construction of a new student union facility on the Cal State San Bernardino Campus. This is one of the largest gifts from a Native American tribe to any of the 23 California University campuses. The student union will be named the Santos Manuel Student Union.

March 2003 – A donation of 10 Eagle Imager Thermal Cameras to eight local fire departments and one fire academy to aid fire response to Southern California communities.

September 2001 – A donation of \$500,000 to the September 11 Red Cross Relief Fund.

June 1999 – A \$1.2 million contribution to provide fire fighting equipment to the city of San Bernardino, including three fire trucks and one hazardous materials vehicle.

Diversification:

In the September 7, 1988, *Congressional Record*, the Honorable Senator John McCain acknowledged that, like other Members of Congress, he would rather see Indian tribes involved in other revenue-raising activities aside from gaming. The San Manuel Band of Mission Indians agrees with Senator McCain and have taken a course of economic diversification in an aggressive way to provide for a reliable and consistent revenue stream for the tribal government.

It is, therefore, the goal of the Tribe's economic development efforts to ensure that revenues for the tribal government can be secured for the long term. The mindset is simple: In 20 years, the current 1999 gaming compacts in California are due to expire. At that time, the Tribe will be in a position to decide if it wishes to remain in gaming or not. We are working diligently on our economic diversification program so that the Tribe can rely on a diverse revenue streams with which to operate our government operations.

To enable us to reach these fiscal goals, we have adopted several key principles to guide the Tribe during deliberations over project proposals.

1. The proposed project must be able to succeed on its own merits and not depend on the Tribe's government gaming enterprise for its viability or success;
2. The proposed project must make economic sense so as not to place the resources of the tribal nation at a mid-to-high risk with the investment;
3. The proposed project must be in line with the Tribe's economic diversification efforts.
4. The proposed project must conform to the Tribe's own moral and ethical standards.

Today, San Manuel employees, directly and indirectly – some 5,000 individuals - are making a difference in the regional, state and national economic landscape. According to the California Employment Development Department, tribal governments have been the leaders in creating new jobs – percentage growth in double-digit numbers - for the past four years. Tribal governments, including San Manuel, are the second strongest job creators in the state; second only to the state itself.

Below is a partial list of the Tribe's economic development ventures:

1. San Manuel Indian Bingo & Casino – The Tribe's government gaming enterprise is operated in full compliance with the California Tribal/State Gaming Compact signed in 1999, and provides revenues for the tribal government as intended by the Indian Gaming Regulatory Act of 1988. It is also owned and operated by the Tribe.
2. Residence Inn by Marriott – Washington, DC – The hotel project was developed by the Four Fires partnership, an intertribal group involving the Viejas Band of Kumeyaay Indians, Forest County Potawatomi of Wisconsin, Oneida Tribe of Wisconsin and the San Manuel Band of Mission Indians. The hotel, located just three blocks from the new National Museum of the American Indian, opened in January 2005.
3. Residence Inn by Marriott – Sacramento, CA – The hotel project is being developed by the Three Fires intertribal partnership involving the Viejas Band of Kumeyaay Indians, Oneida Tribe of Wisconsin and the San Manuel Band of Mission Indians. Three Fires broke ground on the new project in December 2004. It is located across the street from the State Capitol Building in Sacramento.
4. San Manuel Bottled Water Group – The Company began operations in April 2002 on the San Manuel Reservation. It produces Big Bear Mountain Premium Spring

- Water and provides private-label bottling for a number of national retailers. The plant produced more than 140 million bottles in 2003.
5. Twin Palms Restaurant – San Manuel Band of Mission Indians and Twin Palms Restaurant have joined in a strategic business partnership with San Manuel as a new cooperative owner of the famous restaurant in Old Pasadena. The partnership is an investment project for the Tribe designed to create a strong and sophisticated presence in the food and beverage industry.
 6. Washington, DC Congressional Building – The Tribe, in an effort to continue building a positive and mutual working relationship with the federal government, purchased a 12,000 square-foot, three-story building near Capitol Hill. The Tribe uses the third floor for its government relations work and leases the remainder of the property to other tenants.
 7. Norton Re-Use Project – The Tribe acquired 91.5 acres of the former Norton Air Force Base in San Bernardino, CA, and continues discussions on how best to develop the property.
 8. Sterling and 5th Street Project - The project involves some 25 acres of usable land near the former Norton Air Force Base. Project planners are considering a number of possible developments for the property.
 9. Colton Warehouse Building – The new 123,000 square-foot building serves as the new home for the San Manuel Bottled Water Group. The new state-of-the-art building was acquired in June 2004.
 10. Bake Orchard Parkway Project – The Tribe purchased two commercial office buildings in Irvine, CA. With a total area of 53,000 square-feet of space, the buildings are ideal for commercial use.
 11. Wireless Reservation – In 2002, the Tribe invested in a communications tower on the reservation. The tower provides fixed wireless broadband service to tribal homes and buildings on the reservation as well as the Colton Warehouse.
 12. San Manuel Village – The commercial real estate investment project is designed as a multi-use project, including a hotel, office buildings, retail and specialty use stores.
 13. Property Management – The Tribe has acquired various office buildings, private residences and warehousing for its own use. These acquisitions have appreciated tremendously.

INDIAN GAMING REGULATION

The Indian Gaming Regulatory Act of 1988 (IGRA) provides the statutory framework for the conduct of government gaming by Indian Tribes on Indian lands. As a part of this

framework, the Act acknowledges that tribal governments are the primary regulators of the tribal government gaming activity.

In order to fulfill its primary regulatory obligations, IGRA requires that the tribal government establish a system of tribal laws, rules and regulations that provide for effective regulation of the gaming activity. First, The tribe must adopt a tribal gaming ordinance, which establishes the tribal gaming commission with the appropriate regulatory powers and authorities.

If the Tribe is to engage in Class III gaming, the IGRA requires that the tribe negotiate a gaming compact with the state government. IGRA requires that the tribe and the state negotiate 1) scope of gaming that is to be conducted at the tribal gaming facility; and 2) a system to regulate the tribal gaming activity.

The San Manuel Band of Mission Indians is aware that the benefits discussed above would not be possible without appropriate and effective regulation of the gaming enterprise. We realize the importance of protecting the integrity of the San Manuel Indian Bingo and Casino operation. As a result, the Tribe has dedicated significant financial resources to ensure that the highest levels of capability and professionalism are the standard at the San Manuel Gaming Commission. The Tribe also believes in the separation of the Commission from the Tribal Business Committee with a requirement that the two shall meet only once every three months. In addition, the Gaming Commission is required to report to the General Council once each month.

San Manuel Regulatory Infrastructure

Generally speaking, the San Manuel Gaming Commission is comprised of three (3) members. The San Manuel Tribal Gaming Ordinance requires that the Commission Chairman be a member of the Tribe and that two be non-Indian Commissioners who have backgrounds that are essential to effective regulation.

Organizationally, the Commission is comprised of three (3) major divisions: 1) Licensing Division; 2) Compliance Division; and 3) Surveillance Division. Each division has its own set of responsibilities, however, the entire Commission works interdependently to provide effective regulation of the casino activity.

Licensing Division

The Licensing Division has a full-time staff of ten (10) Background Investigators, four (4) Investigator Assistants; one (1) Investigations Supervisor; and one (1) Investigations Manager. Their primary function is to conduct background investigations on prospective employees of the Tribe and the casino facility. Investigations are conducted in accordance with the NIGC Minimum Internal Control Standards (MICS), the Tribal Gaming Ordinance and the Tribal/State Gaming Compact. The scope of the background investigations includes review of the following:

1. Criminal History
2. Financial History
3. Department of Motor Vehicles
4. County, State and Federal Courts
5. Social Security
6. Immigration and Naturalization Services
7. Internal Revenue Service and California Franchise Tax Board
8. Employment History – last 15 years
9. Personal References
10. Residences – last 15 years
11. Certifications, Permits, Licenses, Registrations
12. Education
13. Business Interests
14. Military Enlistment
15. Character, Integrity and Reputation

Once the Background Investigators complete their investigation and the results reviewed and approved by the San Manuel Gaming Commission, the investigation report is forwarded to the National Indian Gaming Commission (NIGC). Upon receipt of approval from the NIGC, the San Manuel Gaming Commission issues a gaming license that is valid for two years. Each licensee must renew their gaming license biannually.

In addition, licensees who work directly in Class III gaming are required to receive a suitability clearance from the State Gaming Office. For these employees, the San Manuel Gaming Commission forwards their background investigation report to the California Gambling Control Commission (CGCC). The CGCC, in conjunction with the California State Division of Gambling Control, conducts a background investigation for suitability.

Compliance Division

The San Manuel Gaming Commission – Compliance Division includes a staff of nine (9) full-time compliance auditors. Two are supervisor personnel whose focus is the tribal

gaming enterprise. Among their duties and responsibilities are auditing various departments of the casino to ensure compliance with the NIGC MICS, the IGRA, the Tribal Gaming Ordinance, the Tribal/State Gaming Compact and other applicable regulations. Any findings from the audits are presented to the casino management in writing for corrective action as required. The Compliance Division will follow-up with the casino management to ensure that the findings have been appropriately addressed.

Of the nine full-time auditors, three (3) are also highly trained slot technicians who ensure that access to the logic board and other sensitive, non-public areas of the gaming devices are restricted to authorized personnel only. Their duties also include verification of logic authenticity as confirmed by outside, independent testing laboratories prior to installation in the gaming devices.

Surveillance Division

The Surveillance Division is a “24/7” operation and reports to the San Manuel Gaming Commission. There are 42 employees in this division. The surveillance staff is classified into two major job categories:

1. Surveillance Operators – Responsibilities include watching surveillance monitors for suspicious activities or deviations from policies and procedures, creating and maintaining affiliated documentation, and reporting observations to superiors.
2. Surveillance Technicians – Responsibilities include installing and maintaining more than 2,500 surveillance cameras throughout the casino. They are also responsible for maintaining components of the digital system which receive images from the surveillance cameras.

Our state-of-the-art surveillance system is among the best at any gaming operation in the Nation. It is a fully-digitized system and among the most advanced available in the market today. In recent meetings with industry experts at trade seminars, the San Manuel Gaming Commission staff received confirmation that tribal casinos generally have the newest systems due to the fact that they are the most recent constructions. The older and more established Las Vegas properties are likely to be using older video tape-based systems and few have invested the funds to convert to digital equipment.

The San Manuel Gaming Commission continues to receive requests from other casinos for tours of the surveillance systems. During the week of June 27, 2005, security executives from Las Vegas representing such properties as the Luxor, Mirage, Excalibur, Circus Circus and Mandalay Bay will visit San Manuel for a tour of the security and surveillance systems.

Tribal Public Safety/State and Local Law Enforcement Cooperation

The Tribe has created the Department of Public Safety (DPS), a security force and support staff of some 450 professionals. The DPS is instrumental in providing a safe and

secure environment on the San Manuel Indian Reservation. Among their primary duties is to provide the first line of security for the tribal gaming facility. The DPS provides patrols around the clock to ensure that tribal government properties, private tribal residences, and other tribal property holdings both on and off the reservation are protected. An ancillary benefit of the “24/7” tribal DPS patrols is the added security provided for the homes of non-reservation neighbors who live near the San Manuel reservation.

California is a Public Law 280 state thereby creating a situation where tribes are not allowed to have their own police departments. In order to provide for the safety and security of all persons on the San Manuel Reservation, our DPS interacts with the tribal community as well as the local police agencies. A strong and productive relationship has been developed between the three agencies: the San Manuel DPS, San Bernardino County Sheriff and the San Bernardino Police Department.

Local USA and FBI Offices

At the April 27th Senate Indian Affairs Committee hearing, the U.S. Department of Justice (DOJ) highlighted the establishment of the Federal Indian Gaming Working Group (FIGWG). The Group consists of the FBI, Interior’s Inspector General’s Office, the IRS, the Financial Crimes Enforcement Network (FinCEN), the Bureau of Indian Affairs’ Office of Law Enforcement Services, and the NIGC. Mr. Heffelfinger stated that the “purpose of the Working Group is to identify resources through a multi-agency, multi-program approach to address the most pressing criminal violations in Indian gaming.” As Chairman of DOJ’s Native American Issues Subcommittee, he also highlighted the development of a “Best Practices” document for the U.S. Attorneys Offices. The Best Practices document encourages both the FBI and US Attorneys offices with jurisdiction over Indian country and Indian gaming to attend training on issues related to gaming crimes; and to use more “flexibility when considering the prosecution of theft cases with loss amounts lower than what the Office would typically accept. Cases which have a ‘significant impact’ on tribal organizations and enterprises, including Indian gaming operations, should be considered for prosecution despite lower loss thresholds in order to facilitate prosecution and deterrence.”

We applaud these and the other provisions put forth by DOJ in the Best Practices document. The Federal Indian Gaming Working Group and the U.S. Attorneys Best Practices Protocol are both positive steps towards consolidating federal resources to protect the integrity of Indian gaming. However, we recommend that Congress urge DOJ to take additional steps to coordinate with tribal gaming commissions and tribal law enforcement agencies. Tribal regulators are the primary day-to-day regulators and enforcers of Indian gaming laws and the daily watchdogs of tribal gaming operations. They are best able to provide the federal regulators with needed information about where the soft spots are, where more help and coordination is needed, and should be provided a seat at the Federal Working Group Table to further communication and coordination to protect Indian gaming.

AMENDMENTS TO THE INDIAN GAMING REGULATORY ACT

We understand that the Committee is considering a number of amendments to the Indian Gaming Regulatory Act. The Tribe strongly supports the intent, spirit and goals of the Act. While we believe that IGRA has worked, for the most part, to help rebuild tribal communities, there are several provisions of the Act that may need some clarification.

Because Indian gaming is the one proven method of generating governmental revenue for Indian Tribes, amending IGRA is generally not the desired method of achieving such clarification. However, we also understand that IGRA has been amended in the past, and we appreciate the Committee's desire to narrowly address its concerns through the Act. In addition to the number of issues that the Committee will address in developing its bill to clarify IGRA, we respectfully offer the following comments and recommendations on two issues of concern to San Manuel, that I hope will be considered for inclusion in your bill.

1. Off Reservation Gaming

One issue that has come to the forefront with regard to IGRA, is off-reservation gaming – or reservation shopping as it's been termed. It is our belief, which is supported in the legislative history to IGRA that Indian gaming was and is to be conducted on "Indian lands." For that reason, Congress included in IGRA a general prohibition against gaming on certain lands acquired after October 17, 1988. Acknowledging the complexities and concerns of landless Tribes, newly acknowledged or restored Tribes, and the policy supporting tribal land restoration, IGRA provides for several exceptions to the general prohibition.

In recent years, the abuse, either in practice or theory, of one exception has the potential to swallow the rule. That exception is often referred to as the two-part determination process. IGRA's Section 20(b)(1)(A) permits Tribes to conduct gaming on after-acquired lands located far from their existing reservation if: (1) the Secretary determines that gaming on such lands would be beneficial to the Tribe seeking the land, and "not detrimental to surrounding community"; and (2) only if the Governor concurs in the Secretary's determination.

Over the past several years, the number of two-part determination proposals has increased dramatically. Regrettably, the vast majority of these proposals are driven by non-Indian developers, whose sole purpose is to obtain an unreasonable percentage of revenues derived from the proposed tribal gaming operation – at any cost. These developers do not understand Indian Tribes. And they are not concerned with tribal sovereignty. Their only concern is profit, thus removing the tribal government element from the IGRA process.

Developers realize that they need the support of both the local communities and the State in order to succeed in acquiring the land for the Tribe. To gain this support, they offer a

percentage of the Tribe's gaming revenue, and they offer up pieces of tribal sovereignty – permitting the application of State or local laws on the newly-acquired Indian lands.

These deals affect all Tribes nationwide. Once a State Governor obtains a revenue sharing agreement from one Tribe, it sets a new bar that all other Tribes are expected to follow. Likewise, once a concession of tribal sovereignty is given, it's assumed that all Tribes will follow.

San Manuel is not opposed to fellow tribes seeking and acquiring rightful and much-needed lands to rebuild their homelands, and we respect each tribe's sovereign right to conduct government gaming on their reservations. However, the abuse of the two-part determination process is hurting these legitimate land acquisitions. The efforts to acquire lands far from existing reservations has brought added scrutiny from the general public and Congress to all tribal land acquisitions, and makes such efforts more difficult.

Moreover, in areas rich with Native American history, such as California, off-reservation land acquisitions also may encroach on land claims from other neighboring tribes. This is our primary contention with reservation shopping: the encroachment on our ancestral lands by Tribes residing far away from their existing reservations for the sole purpose of acquiring our homelands to build a casino.

The Serrano ancestral lands include a large geographic area in what is considered Central California, ranging from as far north as Barstow south to the San Bernardino valley; and from Los Angeles to as far east as Twenty-nine Palms. Since time immemorial, the Serrano people have used these homelands to carry on our traditional, religious and cultural practices as well our daily living. Now, one Indian tribe from Eureka, California, some 600 hundred miles to the north is making plans to build a casino in Barstow. Another tribe from the San Diego area, more than 100 miles to the south, has also been working with developers to build a casino in the same area. Still yet another tribe from Death Valley is working on plans for a casino project in Hesperia, California, an area that is well within our Serrano ancestral territories.

It is critical to understand that tribal government is a tool, not a toy. Tribal sovereignty should be exercised responsibly, for history shows that Congress and the courts have little patience when such powerful rights are abused. I urge tribal governments to exercise their sovereignty carefully and responsibly, so as to avoid additional loss of rights and jeopardizing tribes' sovereign status.

Thus, I recommend that Congress amend the two-part determination process (IGRA Section 20(b)(1)(A)) to require that a Tribe seeking off-reservation land for gaming purposes prove an ancestral tie to the land being sought. Additionally, I ask that the Secretary's consultation requirement be expanded to include consultation, not only with nearby Tribes, but also with tribal governments whose ancestral lands are being sought for acquisition. The position of these Tribes, whose ancestral lands would be affected by the land acquisition, should be given the equal weight as the determinations of State Governors.

2. Tribal-State Compacting Process—Revenue Sharing, Sovereignty Concessions

For hundreds of years, Tribes maintained an exclusive government-to-government relationship with the federal government. Tribes entered into treaties with the United States, not individual States. In these treaties, Tribes ceded hundreds of millions of acres of tribal homelands to the United States in return for protection of their inherent right to self-government, and promises to aid tribal governments with education, health care, and other essential government services. Indian lands and other resources were managed by the federal government. Through these and other dealings, a trust relationship developed between the United States and Indian Tribes.

Congress, through IGRA, struck a delicate balance in the tribal-state compacting process. Tribes were required to enter into gaming compacts with State governments in order to conduct class III gaming. States that regulated gaming within their borders were required to negotiate in good faith with tribal governments to reach a gaming compact. If a State failed to negotiate in good faith, the Tribe could bring suit against the State in federal court. When Congress debated the passage of S. 555, which was to become IGRA, several Senators acknowledged the apparent danger in the new relationship.

The Honorable Senator Daniel Inouye, then-Chairman of the Senate Indian Affairs Committee, issued a caution over the tribal-state compact provisions in the pending federal legislation. His statement published in the *Congressional Record* reads in part:

“It is a long- and well-established principle of Federal-Indian law as expressed in the U.S. Constitution, reflected in federal statutes, and articulated in decisions of the Supreme Court, that unless authorized by an Act of Congress, the jurisdiction of state governments and the application of state laws do not extend to Indian lands. In modern times, even when Congress has enacted laws to allow a limited application of state law on Indian lands, the Congress has required the consent of tribal governments before state jurisdiction can be extended to tribal lands....

“Consistent with these principles, the Committee has developed a framework for the regulation of gaming activities on Indian lands which provides that in the exercise of its sovereign rights, unless a tribe affirmatively elects to have state laws and state jurisdiction extend to tribal lands, the Congress will not unilaterally impose or allow state jurisdiction on Indian lands for the regulation of Indian gaming activities.

“The mechanism for facilitating the unusual relationship in which a tribe might affirmatively seek the extension of state jurisdiction and the application of state laws to activities conducted on Indian land is a tribal-state compact. In no instance, does S. 555 contemplate the extension of state jurisdiction *or the application of state laws for any other purpose....* The relinquishment of such rights shall be specific to the tribe so making

the election, and shall not be construed to extend to other tribes, or as a general abrogation of other reserved rights or of tribal sovereignty.

134 Cong. Rec. S11922 (Sept. 7, 1988) (emphasis added).

Congressman Tony Coelho also expressed concern about the compacting requirement, but added Congress' intent to limit the purposes for which States could use the compacting process:

This bill establishes a framework in which Indian tribes and States can meet as equals, government-to-government, to negotiate an agreement-a compact-for a mutually acceptable method of regulating high-stakes gambling on Indian reservations. The bill requires the States to negotiate in good faith and it provides for legal recourse if they do not.

It is important to make it clear that the compact arrangement set forth in this legislation is intended solely for the regulation of gaming activities. *It is not the intent of Congress to establish a precedent for the use of compacts in other areas, such as water rights, land use, environmental regulation or taxation. Nor is it the intent of Congress that States use negotiations on gaming compacts as a means to pressure Indian tribes to cede rights in any other area. Congress also assumes that the States will be reasonable in negotiating gaming compacts and not simply insist that tribes submit to complete State regulation.*

134 Cong. Rec. H8146-01 (Sept. 26, 1988) (emphasis added).

The Honorable Senator John McCain was equally concerned as his statement in the September 7, 1988, *Congressional Record*, reflects:

“The State and gaming industry have always come to the table with the position that what is theirs is theirs and what the Tribes have is negotiable.... I understand ... the concerns regarding the potential overextension of the intended scope of the tribal/state compact approach. Toward this end, I believe it is important to underscore the following statement: ‘The Committee does not intend to authorize any wholesale transfer of jurisdiction from a Tribe to a State....’ Under our Constitutional system of government, the right of Tribes to be self-governing and share in our federal system must not be diminished.

134 Cong. Rec. 11922 (Sept. 7, 1988).

A number of similar discussions were made during the floor debate before IGRA's passage – all clarifying that the tribal-state compacting process was intended to include only provisions directly related to Indian gaming. Several Senators and Congressmen added that they would revisit IGRA, if the States abused the compacting requirement.

To carry out the intent discussed above, the direct language of the Indian Gaming Regulatory Act specifically limits the provisions that can be included in tribal-state compacts. IGRA Section 11(d)(3)(C) lists the provisions that may be included in a compact – all of which require some direct relation to the regulation of gaming activity. In addition, Section 11(d)(4) specifically prohibits States or its political subdivisions from imposing any “tax, fee, charge, or other assessment upon an Indian tribe.... No State may refuse to enter into [compact] negotiations ... based on the lack of authority in such State ... to impose such a tax, fee, charge, or other assessment.”

Unfortunately, the concerns discussed above have proven true. The Supreme Court’s decision in Seminole Tribe v. Florida, 116 S. Ct. 1114 (1996), has destroyed the delicate balance set forth in IGRA’s compacting process, and essentially given States veto authority over the compacting process. With the negotiating leverage solely in favor of State governments, a number of Governors have used the tribal-state compact requirement as a vehicle to exact revenue and sovereignty concessions from tribal governments.

In our initial compact with the State of California, the Tribes agreed to share revenues so that all federally-recognized Indian Tribes in the state benefit from tribal government gaming. Additionally, the Tribes agreed to establish a Special Distribution Fund (SDF) which is used to mitigate the impacts of tribal gaming to local governments as contemplated within IGRA.

In our own area – San Bernardino County – surrounding local governments receive mitigation funds from the SDF through legislation created by State Senator Jim Battin. The SDF is appropriated by the state legislature as directed by the tribal/state gaming compact to all the counties where the tribal gaming facilities are located. Under the same Act, the Indian Gaming Local Community Benefit Committee is created in each county and they are charged with ensuring that the money is used to mitigate the impacts. Tribal governments are a part of the committee as well as the county and local municipalities that are near the reservation. For our committee, the monies have been spent on police and road improvements. The SDF will continue for the life of the compact, providing approximately \$24 million to local governments over that time. Beyond the SDF obligations, San Manuel provided a one-time contribution of \$5.5 million to the City of San Bernardino to assist with mitigation efforts.

However, this generosity was met with greed. In recent years, the State of California has made increasing demands for more tribal government revenues to solve the State’s fiscal crisis. The California situation has deteriorated to a point where the state government has a distorted sense of entitlement to tribal government gaming revenues.

During the 2003 California recall election, gubernatorial candidate Arnold Schwarzenegger made statements characterizing Indian nations as “special interests” and demanded that Tribes pay their “fair share” to the state government. Then, during the 2004 special election, the governor further alienated Tribes by stating that for years, the

tribes have been “ripping off the state”. He has made no apology or effort to explain his offensive remarks to the tribes.

Tribal leaders are understandably incensed by the remarks. Since his election, Governor Schwarzenegger has continued to make revenue-sharing demands that are beyond reason and we believe, prohibited by federal law. Demands that seek to address the state’s budget deficits on the backs of tribal government gaming is a growing phenomenon and surely was not the intent of the federal Act.

The State’s demand for revenue is growing every day, extending well beyond its need to resolve its financial uncertainties. For example, new compacts proposed in California are now connecting revenue sharing schemes to tribal enrollment. Under this scheme, if tribal membership falls below a threshold of members and the tribe’s gaming generates an established amount, the Tribe will be required to pay more to the State of California.

IGRA clearly prohibits taxation of tribal gaming revenues. Yet there is a trend escalating with each new compact that mandates tribes to pay amounts to the states in excess of what is needed to mitigate the impacts of tribal gaming as IGRA intended. Just as troubling is that these new “revenue sharing schemes” are being approved by the Department of Interior. With each new compact, a new “standard and practice” paradigm is created only to be captured by others. This practice places other tribal nations in an “uphill” negotiation session. We in California know this practice quite well given our compact and initiative history. That’s why such negotiations must be limited to the gaming-related issues as outlined in IGRA, which does not contemplate a wholesale concession of sovereignty. This activity is empirical.

Thus, I recommend that as the Committee develops its bill to amend IGRA – that it include a provision to limit revenue sharing in tribal/state compacts. The Department of Interior should be given more direction and less discretion regarding revenue-sharing aspects of the compacting process. The Department of Interior should be given the tools to uphold IGRA as designed by Congress which specifically prohibits taxation of tribal gaming revenues. Tribes can agree to financially assist other governments if that is their choice, but it should not be mandated in the tribal/state gaming compact.

I do not recommend that revenue sharing be prohibited, but only that the practice be limited to require that tribal gaming revenues be used in the first instance to meet the needs of the tribal community – as IGRA intended. If revenue sharing provisions are approved by the Secretary, then I recommend that IGRA require that such provisions be accompanied by a substantial benefit to the Tribe from the State. Again, it is our belief that IGRA intended that assessments be limited to defray costs of services received by the Tribe from the State, not to balance a state budget. Thus, I hope that Congress will restore this original intent to IGRA – to ensure that gaming revenues are used first to benefit Indian Tribes, their governments, and communities.

CONCLUSION

Thank you for the opportunity to provide testimony today. Indian gaming is working and is beginning to turn around our once forgotten community. It is creating great benefits for our neighbors and for the State. As noted earlier, tribal nations are providing jobs in areas of the country that desperately need economic opportunity. In California, tribal governments have become the second strongest job creator.

We understand that the benefits of Indian gaming are only possible through the solid regulation of our operation. Thus, our government annually appropriates more than \$6 million to protect the integrity of our operation, and to shield it from outside corrupt influences.

We also understand and appreciate the task that is before this Committee. We acknowledge that we are only one voice in this process, and this Committee will hear from many more from Indian country and others.

Therefore, I state again that we support the Indian Gaming Regulatory Act as it was intended. However, the spirit and soul of the IGRA must be salvaged. The delicate balance of federal/tribal/state interests that the Congress worked so hard to establish in 1988 must be restored. As this Committee moves ahead to address the various areas of concern, we stand ready to provide our thoughts.