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Drug Traffickers Find Haven in Shadows of Indian Country

By SARAH KERSHAW

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ST. REGIS MOHAWK RESERVATION, N.Y. — He had eluded the authorities for years. Witnesses against him had mysteriously disappeared. Shots were fired from his highly secured compound here last year when the state police tried to close in.

The man, John V. Oakes, like a fast-rising number of American Indian drug traffickers across the country, saw himself as “untouchable,” as one senior investigator put it, protected by armed enforcers and a code of silence that ruled the reservation.

After he was finally arrested last May, Mr. Oakes was recorded from jail talking on the phone with his estranged wife. “I can’t believe people let this happen to me,” he said, according to Derek Champagne, the Franklin County district attorney who listened to the recorded call. “You can’t touch me. I’m on the reservation, and I do what I want.”

Investigators described Mr. Oakes as an intimidating trafficker who concentrated on stealing drugs and cash from a prosperous and growing cluster of criminals who, like Mr. Oakes, have built sprawling mansions near worn-down trailers on this reservation straddling the Canadian border.

Law enforcement officials say Mr. Oakes and the drug lords he is accused of stealing from are part of a violent but largely overlooked wave of trafficking and crime that has swept through the nation’s Indian reservations in recent years, as large-scale criminal organizations have found havens and allies in the wide-open and isolated regions of Indian country.

In the eyes of law enforcement, reservations have become a critical link in the drug underworld. They have helped traffickers transport high-potency marijuana and Ecstasy from eastern Canada into cities like Buffalo, Boston and New York, and have facilitated the passage of cocaine and methamphetamine from cities in the West and Midwest into rural America.

In some cases, outside drug gangs work with Indian criminals to distribute drugs on Indian and non-Indian lands. And on a growing number of reservations, drug traffickers — particularly Mexican criminals — are marrying Indian women to establish themselves on reservations.

At the Lac Courte Oreilles Reservation in northwestern Wisconsin, for instance, several members of the Latin Kings gang married Indian women while a tribal offshoot of the gang built a \$3 million crack cocaine ring moving drugs from Milwaukee into and around the reservation over the past few years, prosecutors said.

Increasingly American Indians are breaking away to build their own violent, Mafia-like enterprises, according to an examination of dozens of court records and interviews with more than 50 federal and local prosecutors, tribal law enforcement officials and tribal members.

“This is very serious and has created major problems in the community,” said Clifford Martel, a former senior police investigator for the Red Lake Nation in northern Minnesota, who was fired in July and said it was because he had tried to rid that reservation of drug traffickers with close ties to powerful tribe members.

“The amount of drugs was really impacting that community, our community, just as if it were Chicago, and big loads were coming in all the time,” Mr. Martel said.

For traffickers of marijuana, cocaine, methamphetamine, painkillers and people, reservations offer many advantages. Law enforcement is spotty at best. Tribal sovereignty, varying state laws and inconsistent federal interest in prosecuting drug crimes create jurisdictional confusion and conflict.

The deep loyalty that exists within tribes, where neighbors are often related, and the intense mistrust of the American justice system make securing witnesses and using undercover informants extremely difficult. And on some reservations, Indian drug traffickers have close relationships with tribal government or law enforcement officials and enjoy special protection that allows them to operate freely, investigators say.

A Direct Hand in Trafficking

Casino money has also fueled the surge, providing a fast-growing source of customers and well-financed partners for outside drug traffickers. And cutbacks in welfare payments in cities have prompted many Indians to return to reservations, often bringing with them connections to gangs and drug rings.

Some traffickers have given away drugs to Indians as a way of luring them into the trade. The recently convicted leader of a Mexican drug ring had a chilling strategy on five reservations in Wyoming and the Midwest, the authorities said: targeting tribes with high alcohol addiction rates and handing out free methamphetamine, recruiting the newly addicted Indians as dealers and orchestrating romantic relationships between gang members and Indian women.

The surge in drug-related crime stands in sharp contrast to the great strides Indians have made over the past several decades, strengthening their sovereignty and culture, making their way into American politics and government and — for a small but rising number of tribes — growing rich with new casino revenue.

At the same time, American Indians like Mr. Oakes have capitalized on the drug trade, carving out a deep piece of the pie for themselves, after decades in which Indians were typically recruited to help non-Indian traffickers smuggle drugs across the borders and through the country.

“They started out solely as mules, then they realized there was an awful lot more profit in dealing directly” with the upper echelons of organized crime, said Mr. Champagne, the district attorney. “Why should they just get paid for bringing it across the river?”

Here on Mohawk land, a reservation of roughly 6,000 people on the United States side, according to the tribe, investigators estimate that 10 to 15 major Indian criminal organizations, along with outside drug rings, move more than \$1 billion annually in high-grade marijuana and Ecstasy across the Canadian border, through the reservation and into the Northeast. Prosecutors say they are catching only about 2 percent of that contraband.

The drug trade afforded Mr. Oakes a lifestyle that neighbors on this reservation could barely dream of. Stealing from other dealers was inherently dangerous — as Mr. Champagne said, “I was surprised that he

wasn't going to be my next homicide." But for Mr. Oakes the rewards outweighed the risk: He owned a gated compound on the St. Lawrence River, with 16 surveillance cameras, a souped-up Lincoln Navigator and several speedboats.

Yet at his bail hearing Mr. Oakes told a judge that he was supporting himself solely on a Navy pension.

Mr. Oakes eventually pleaded guilty to selling drugs to undercover agents, after investigators seized from the compound 17,000 tablets of Ecstasy, worth \$340,000 on the street, two pounds of high-grade marijuana and several shotguns and rifles. But investigators said Mr. Oakes was a prime suspect in at least a dozen robberies of drug traffickers, netting him hundreds of thousands of dollars in cash, cocaine and marijuana. He is expected to be sentenced next month to 10 years in state prison, the authorities said.

The federal government could not provide comprehensive statistics on drug trafficking through reservations. But overall crime figures point to a much higher rate of violence on the nation's 261 federally recognized reservations compared with the rest of the nation. A 2004 Justice Department report found that American Indians and Alaska Natives experienced a per capita rate of violent crime twice that of the United States population. And the number of police officers per capita on Indian reservations is starkly lower than elsewhere in the country, other reports show.

Steven W. Perry, a statistician with the Justice Department and the author of the 2004 report, a 10-year study of crime in Indian country, said the judicial patchwork that covered Indian reservations had made it impossible to provide an accurate statistical portrait. Of the 561 federally recognized Indian tribes, 171 have their own courts, and only 71 have their own jails, Mr. Perry said.

Other federal officials say they are aware, through anecdotal reports and growing concerns reported to them by tribal leaders, of a marked rise in drug trafficking, particularly involving methamphetamine, and crimes like murder and robbery that come in its wake.

"It appears there is a very significant crime problem on most of the reservations that we are aware of," said Chris Chaney, deputy bureau director of law enforcement services for the Bureau of Indian Affairs. "I am concerned that it might be escalating within the last couple of years."

Addiction, Confusion, Corruption

Although much of the drug trafficking on reservations involves moving the contraband across the nation's borders and from large cities through the states, the drugs often never leave Indian lands.

At the Blackfeet Nation in Browning, Mont., methamphetamine addiction is rampant among the 10,000 members of the tribe, unemployment reaches 85 percent in the winter and drug-related violence is widespread.

"It's destroying our culture, our way of life, killing our people," said Darrel Rides at the Door, a drug and alcohol counselor who uses traditional healing therapies, burning sage and sweet grass during "talking circles," to cleanse the soul of the demons of addiction. "A lot of people, they feel sort of disempowered to do anything about it."

Local law enforcement officials in Montana, including Jeff Faque, the under sheriff of Glacier County, said that with no jurisdiction over the reservation, they could not stem the large quantities of methamphetamine moving through it in a state with one of the highest rates of meth use in the nation. Mexican gangs based in

Washington State are working with Blackfeet Indians and others to traffic methamphetamine into and across Montana, the authorities say.

“It’s disheartening,” Mr. Faque said of his office’s lack of legal authority at the Blackfeet Nation. “I don’t think I’ll see it solved in my lifetime.”

Addiction and a jurisdictional morass are only two of the problems associated with the expanding drug trade. Corruption is another.

At the Wind River Reservation in Wyoming, a tribal court judge was one of 25 people arrested last May as part of a drug ring accused of moving, over a seven-year period, 30 pounds of methamphetamine, worth more than \$1 million, as well as painkillers and marijuana into and through the reservation, said Matthew H. Mead, the United States attorney in Wyoming.

The tribal judge, Lynda Munnell Noah, the sister of one of the drug ring’s leaders, was accused of threatening to assault and murder a Bureau of Indian Affairs law enforcement officer, prosecutors said. About half of those arrested have pleaded guilty so far; the judge has pleaded not guilty and is expected to go to trial soon.

At the Red Lake Reservation in northern Minnesota, four former tribal law enforcement officials and the nation’s current chairman said in interviews that internal tribal politics and resistance among court and police employees had created enormous obstacles to ridding the reservation of cocaine traffickers.

Investigators say four or five tribal families are controlling the drug trade, most of it in partnership with drug gangs from Minneapolis.

Mr. Martel, the former senior police investigator at Red Lake, which gained widespread attention last March when a teenager killed nine people and himself at the reservation’s high school, said he was fired after three years on the force because he clashed with tribal leaders when he tried to investigate suspects. While the federal government and not the state has jurisdiction over Red Lake, tribal detectives like Mr. Martel are typically the first to investigate criminals and to notify federal prosecutors.

Mr. Martel’s partner, Russ Thomas, who resigned in October, said Red Lake police dispatchers “would narc us out,” or alert suspects to criminal investigations.

Eventually, Mr. Thomas said, he and Mr. Martel stopped telling others in the police department whom they were investigating, worked their cases at night instead of during the day so they would not be spotted as easily, and changed cars often.

“We quit using our own people,” he said. “We were doing our job with our hands tied behind our backs.”

Tim Savior, who served only three months as the Red Lake police chief before the Tribal Council voted him out in January, said he, too, felt that drug-fighting efforts were thwarted by lower-level officials in the courts and police department with support from tribal politicians.

“I was trying to hold people accountable for their duties and responsibilities in the department,” Mr. Savior said. “Politicians are trying to control it, and without a separation of powers, law enforcement is expendable. That’s why there’s a tailspin on reservations — there’s no stability there.”

Mr. Martel accused the tribal chairman, Floyd Jourdain Jr., of pressing him to drop investigations of rela-

tives, friends and political associates, and he contended that he was fired when he refused to back off.

But Mr. Jourdain said Mr. Martel was fired for just cause, after portraying himself as an F.B.I. agent during an investigation. Mr. Martel said he was appropriately accompanying an F.B.I. agent, which is standard protocol. The chairman also said there were numerous complaints of rudeness against Mr. Martel and that critics like him were motivated by a political “smear campaign” in advance of tribal elections in May.

Mr. Jourdain acknowledged that his reservation had a serious problem with crack cocaine dealers, but he said he had no role in allowing the drug trade to expand. The problem, he said, lies with lower-level law enforcement employees resistant to change, although he said he had no proof of any illegal action that could lead to their firing.

“I’ve done nothing wrong,” Mr. Jourdain said. “I’ve followed all procedure and gone through the appropriate steps.” He also said he was disheartened that Mr. Savior had been removed as police chief and had voted against the majority to keep the police chief on.

The United States attorney in Minnesota, Thomas B. Heffelfinger, whose office prosecutes major crimes on the state’s reservations, said one of the reasons few drug criminals had been prosecuted at Red Lake was that the tribal leadership, citing concerns over sovereignty, had removed its two police officers, including Mr. Martel after he was fired, from a federal drug crimes task force in the area.

The tribe has yet to sign an agreement it received last fall that would put the Red Lake officers back on the task force, which Mr. Heffelfinger said would go a long way toward cracking down on the drug trade there. The agreement, he said, is “adequate” for two other Minnesota tribes, at the White Earth and Leech Lake reservations, where the federal task force’s work has led to a series of arrests and prosecutions.

‘The Black Hole’

In upstate New York and across the Canadian border, the roughly 11,000 Indians living here now have long dipped their hands into the rewarding till of smuggling, moving goods as varied as diapers and tobacco across this lightly patrolled frontier, 12 wide-open miles of water and land separating the two countries. Some here say that smuggling, dating back to before the days of Prohibition, is a birthright.

While much of the nation’s drug enforcement effort has focused on the Mexican border, the reservation has become a pipeline for the flow of drugs and guns between Canada and the United States. In warmer weather, speedboats cruise across the St. Lawrence River, ferrying drugs south and weapons and cash north; in the winter cars and vans race over an ice bridge on the river, the authorities say.

A retired special agent here for the Border Patrol’s former antismuggling unit, Edward Barrett, said that when he was working undercover along the Mexican border in Texas, a drug smuggler told him that if he could not move narcotics across the southern border, he could easily do it through Canada and “the black hole,” the traffickers’ nickname for the Mohawk land. “It’s guaranteed to go through,” he said.

On the 14,000-acre reservation, evidence of the drug trade is easily visible from the million-dollar mansions with high gates and elaborate fences that are being built in a place with an unemployment rate of about 50 percent, and where tumbledown government housing was once the common sight.

Despite the many obstacles, prosecutors have had some success in combating drug rings here. In November, Lawrence Mitchell, a member of the Mohawk tribe, pleaded guilty to orchestrating the movement of large

quantities of marijuana across the United States-Canada border. Numerous times, according to his plea, Mr. Mitchell, 35, arranged for the transportation of loads averaging 50 to 100 pounds, destined for Syracuse, Utica and other parts of New York; Massachusetts; and Florida.

Prosecutors say he also laundered tens of millions of dollars in marijuana trafficking money over three years, through his construction company and car dealership. He was sentenced in November to 10 years in prison.

Mr. Mitchell — who owned two houses on the reservation, one on each side of the border, until the authorities seized the American house — earned at least \$2.2 million in drug money from 2001 to 2004, investigators say, but the money trail was hard to follow.

Along with Mr. Mitchell, five other people, including a New York State Police dispatcher who was accused of tipping off Mr. Mitchell's drug runners to police presence on the border, have pleaded guilty so far in the case.

Mr. Mitchell's lawyer, Stanley Cohen of New York City, who also represented Mr. Oakes and is best known for representing terrorism suspects, said law enforcement officials had used such arrests to wrongly portray the reservation as infested with drug traffickers. And Mr. Cohen objected to investigators' contentions that his clients were involved in criminal activities that went beyond what they admitted to.

"If they had evidence of more significant or more egregious or more disturbing activity by either of these clients, they would have proved it," he said.

Meanwhile, as prosecutors say drug traffickers are doing business in Indian country at a rapidly growing pace, many tribes are responding on their own to the drug crime and addiction epidemic.

At the Mohawk Reservation, the tribe spends more than half the revenue from its casino and other enterprises — roughly \$2 million annually — on border patrol and other law enforcement. Tribal leaders say they could fight the trafficking here better than outside law enforcement, given adequate resources. "We feel like that's our responsibility," said James W. Ransom, a Mohawk tribal chief. "That's our goal."

The Mohawk tribe has received \$5,000 annually from the Department of Homeland Security and used the entire grant over the last two years to build a security fence around the new police headquarters, tribal officials said.

Working with stretched resources and huge barriers, many tribal detectives across Indian country say they are facing an impossible task.

"If I were a drug trafficker, I'd choose this place," said Brian Barnes, deputy chief of police for the Mohawk tribe, as he headed out on the police department's lone working speedboat to patrol the St. Lawrence River.

Gangs Hit Home

In Wisconsin, Paul DeMain, the managing editor of News From Indian Country, who is married to a member of the Lac Courte Oreilles tribe, confronted the fact that his own son and stepdaughter were initiated members of the Latin Kings. After the gang gained a foothold on the reservation in 1998, Indian criminals set up an affiliate, the Lion Tribe Set, which ran one of the largest crack-cocaine trafficking rings in the history of the state, said John W. Vaudreuil, an assistant United States attorney in Wisconsin. So far, 37 of 40

tribal members have been convicted and sentenced in the case.

Mr. DeMain took the painful step of reporting his son's activities to the authorities, he said. His son left the gang, Mr. DeMain said, but his stepdaughter is serving a 20-year sentence in federal prison.

"It requires reaching out of that little box of self-protection that the Indian community has always had," Mr. DeMain said. "A reluctance to engage in supporting the federal government, to call in outside resources."

Darrel Hillaire, chairman of the Lummi Nation in Northwest Washington, said, "We've got to step up."

"It's not the federal government's fault," Mr. Hillaire said. "It's us, the leaders. Until it becomes the No. 1 priority in Indian country, we'll continue to play this blame game, and we'll get nothing done."

Still, there is fierce debate over possible solutions: more money from the federal government for manpower, or more legal authority for tribes that insist they know better how to fight crime within their own borders. Mr. Heffelfinger, who is also the chairman of the Native American Issues Subcommittee of the nation's United States attorneys but has just announced that he is stepping down to return to private practice, acknowledged that drug crimes were "disproportionately high" on reservations.

But he said tribes with significant casino revenue now had new options for financing drug addiction recovery and law enforcement programs. Many tribes have funneled gambling and other business revenue toward those needs.

Mr. Heffelfinger described crime fighting on the Mohawk Reservation as a "success story" because of the recent partnerships between tribal, local, state, federal and Canadian law enforcement agencies, which helped lead to the arrest of traffickers like Mr. Mitchell and Mr. Oakes. But investigators vehemently disagreed that there was anything resembling a success story here.

One afternoon, tribal and county detectives were preparing to take what was their lone speedboat — they recently obtained another one confiscated from a drug trafficker — out for a patrol on the St. Lawrence River.

They tried to start the boat, but the battery was dead. They spent hours trying to drag the boat through the mud and up onto a riverbank with a pickup truck. The detectives shook their heads and said they suspected that the traffickers were crossing the river at that very moment, with loads of drugs stashed on their many speedboats.

Tribal secrets

OPINION

February 1, 2006

Jack Abramoff, who has pleaded guilty to five counts of conspiracy and wire fraud, is not typical of big-time Washington lobbyists. I refer not to his slimy methods or capacity for deception – which, regrettably, are in abundant supply among lobbyists, both Republican and Democrat – but to the magnitude of the fees he charged his clients: casino-owning Indian tribes.

From 2001 through 2004, according to findings of a Senate investigation, Abramoff and his partner split more than \$60 million in fees charged to Native American tribes seeking to protect and expand their gambling monopolies.

For a corrupt lobbyist with grandiose ambitions, casino-rich tribes were the perfect clients. Indian gaming has grown from a handful of bingo parlors in the late 1980s to a \$19 billion industry with more than 400 gambling establishments in 30 states. And the tribes spend lavishly on politics.

In 1998, California tribes with casino interests spent \$70 million on a ballot measure to permit the building of large, Las Vegas-style casinos. In 2000, tribes in California spent another \$30 million to secure the passage of a ballot initiative to remove remaining legal obstacles to casinos, while prohibiting competition from nontribal casinos.

The Wall Street Journal recently labeled tribal gambling the “least transparent large industry in the United States.” Shielded by tribal sovereignty – a legal doctrine giving them the status of quasi-independent, sovereign governments – gambling-rich tribes are exempt from the Freedom of Information Act and federal disclosure requirements applicable to public companies that own casinos in Las Vegas, Reno, and Atlantic City.

In California tribes are exempt from the Brown Act and the Public Records Act. And in two cases now pending before the California Supreme Court, tribes even claim to be exempt from state laws mandating the disclosure of political spending in statewide elections. The tribes argue that they may spend on a California election without limit – effectively purchasing victory in their ballot initiatives, as they did in 1998 and 2000 – yet may ignore disclosure requirements that apply to all other campaign contributors.

Abramoff’s tribal clients were, to be sure, victims of the lobbyist’s corrupt dealings. But the tribes might not have been so vulnerable to being ripped off if they had been less fond of secrecy. Tribes that operated openly and were accountable to tribal members might have faced skeptical questioning about their huge payments to Abramoff’s firm. Questions like “What are the lobbyists doing with our money?” “Why pay so much more than the fees paid by other lobbying clients?”

Contrary to what tribal leaders believe, sovereignty does not require secrecy. In fact, greater transparency for their casino operations is in the tribes’ interest. Transparency would enhance tribes’ credibility and the value of their casino holdings. Most important, a policy of openness would empower tribal members, who are too often in the dark about essential tribal business. SFBG

Peter Scheer

Peter Scheer, a journalist and lawyer, is executive director of the California First Amendment Coalition.

Non-Indians protest stops by tribal police

By Lynn Thompson

Times Snohomish County Bureau

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Tulalip, WA - Emboldened by an informal state attorney general's opinion on the limits of tribal police authority, some non-Indian residents of the Tulalip Reservation say they will challenge Tulalip officers who stop them for traffic violations.

"It's intimidation. It's harassment," said Mike Whitehead, who got a speeding ticket in August on the reservation.

He said that if he is stopped again, he'll call the Snohomish County Sheriff's Office or the State Patrol and ask one of those agencies to handle the matter, not officers from the Tulalip Tribes.

State Sen. Val Stevens, R-Arlington, said she supports the protest. She said non-Indians stopped by tribal police should hold up a card that reads: "You don't have authority over me. I'm calling a law-enforcement officer from my own government."

"The card wasn't my idea," Stevens said last week. "I just told them [non-Indian residents] that it needs to be in large enough print so an officer standing in the rain can read it."

Stevens emphasized that motorists should stop if police lights are flashing in their rearview mirrors, but she said non-Indians don't have to roll down their windows if they are stopped by Tulalip officers.

At the request of Stevens and two other state legislators, a deputy attorney general last month issued an informal opinion that concluded tribal police officers "generally lack authority to issue citations to non-Indians for traffic activity on public roadways and highways" on reservations.

The opinion doesn't have the force of a judge's ruling but does offer the views of the state's lawyers.

The conflict over tribal police power dates at least to last summer, when a number of county residents complained about Tulalip officers stopping motorists on Interstate 5 near Marysville as part of a State Patrol effort to inform motorists of a lowered speed limit in the area.

Around the same time, a number of non-Indian residents of the Tulalip Reservation contacted Sheriff Rick Bart over the legality of traffic stops by tribal police on the reservation.

The residents' protests followed moves by the tribes to assert their authority over a range of issues on the reservation, including ending leases held by non-Indian homeowners and asserting regulatory authority over tidelands.

The issue of police authority appeared to have been resolved in favor of the Tulalips in late August, when Mark Roe, then the chief criminal deputy in the Snohomish County prosecutor's office, said tribal officers have authority to stop non-Indians for traffic violations.

County Prosecuting Attorney Janice Ellis said the issue of tribal-police authority should be decided by the courts or the Legislature, not by the side of the road.

Bart weighed in last summer, warning residents that "a uniform is a uniform" and that they should stop for tribal police.

But Bart, after reading the recent comments from the Attorney General's Office, said non-Indians have legitimate questions about the authority of some tribal police to cite them for violations.

One issue is that only Tulalip Police Chief Jay Goss is cross-commissioned as a deputy sheriff, Bart said. Under current practice, the 20 patrol officers on the Tulalip force write tickets, which are then signed by Goss and forwarded to the appropriate court. Traffic citations to tribal members are handled in tribal court. Those involving non-Indians are referred to county District Court.

"I've commissioned Jay Goss. I haven't commissioned the rest of his officers," Bart said.

But Goss said his officers may legally stop anyone who commits a crime or traffic violation on the reservation in their presence. He cited a 1993 state Supreme Court case, *State v. Schmuck*, which held that a tribal officer has "inherent authority" to stop drivers on public roads within a reservation.

To be forced to release non-Indians, the court wrote, "would be to subvert a substantial function of Indian police authorities and produce a ludicrous state of affairs which would permit non-Indians to act unlawfully, with impunity, on Indian lands."

Goss said all of his officers have received training from the Federal Law Enforcement Training Center and that many have attended the state police academy.

"We follow the law. We're a professional police department," Goss said. "We're trained to the same standards" as other police in the state.

Last week, tribal police detained a suspected non-Indian drug dealer who was driving recklessly. Goss said officers confiscated two guns, cocaine, methamphetamine, scales, brass knuckles and a roll of \$100 bills. The previous week, officers stopped a felon wanted for an alleged parole violation.

"Do we let these guys drive off because they're not Indian, or do we keep the community safe?" Goss asked.

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Tribal Fee to Trust Steeped in Fraud

Results in Make Believe Reservations

By Marlene Dawson

If you were guaranteed a life of poverty through honesty or a life with success through fraud, what path would you choose? Many people employed by the Bureau of Indian Affairs have left fearing for their life because of the secrets held within. One of the biggest secrets and lies within is contained in the fee to trust process. This is where lands held in an individual's name are said to be converted to lands held in title by the United States for use by the individual. The new trust status will largely leave the property outside the regulation of the state and more important exempt from state and federal taxes. The lands are said to be sovereign and consequently under tribal governance. Tribal police, tribal courts, tribal land use, tribal control and tribal regulation of resources operate due to this recognized "sovereignty" associated with trust land status. It is this recognized sovereignty that permits tribes to operate casinos. Unknown to the general public is that neither the State Gaming Commissions, the National Indian Gaming Commission nor Interior verifies land status for the placement of casinos. If verification isn't occurring here at this most important level, the question must be asked whether it is occurring at all.

Today, as tribes convert lands to trust, they are said to be establishing, re-creating or enlarging their reservation. But where in the Constitution does it permit the Federal government to own land for the purpose of citizen reservations based on race? The U.S. Constitution supercedes all common law. Consequently, one would think that tribal governments, as addressed in common law, would be illegal. What about the 1924 Citizenship Act, does this not now mandate that political relationships that may have at one time treated lands as sovereign be viewed differently? Article IV, Section 4 of the U.S. Constitution states every state is guaranteed a republican form of government so as to protect its citizens. Tribal governments are not republican forms of government. In deed, it appears they are nothing more than pretend governments. I maintain and will explain how tribes, with the help of the Bureau of Indian Affairs, are creating make believe reservations. Why is this important to you and me as American citizens? Because make believe reservations are dismantling America, piece by piece. They putting the tax burden on fewer numbers of people and economically creating uneven playing fields.

Federal Laws for Land Acquisition

You can find the federal rules for moving land from fee simple status to trust at 25 CFR Chapter 1 Part 151. These rules were established in 1934 as part of what is referred to as the Indian Reorganization Act. The rules apply to all tribes, provided that nothing superseded any previous Act of Congress. With the exception of the Metlakatla Indian Community of Annette Island Reserve, the Bureau has taken the position that the Alaska Native Claims Settlement Act precludes the Secretary from taking land into trust for Natives in Alaska. I maintain there are other Acts of Congress that preclude the majority of Indian tribes reacquiring land in trust. Under the treaty written, we must ask whether the tribe ceded all their lands in the U.S. territory. Did the treaty permit allotment language? If these two factors exist, then certainly no tribe can maintain they were forced to give up governance authority. The present legal test of whether a Congressional Act, like a treaty, prevents a tribe from acquiring lands into trust occurs when the trust applicant's information is reviewed for compliance with the Federal Justice Title standards. When the applicant complies with those standards, the trust deed is issued a volume and page where it is then filed or recorded in the federal trust deed book.

Assessors are Being Duped

With the exception of properties to be used for gaming, the authority to approve all acquisitions has been delegated to the Bureau's Area Directors. The Secretary of Interior provides acceptance for lands to be used in gaming. The important thing to understand is that these parties are providing only an "initial" approval. The "formal" final approval can only occur when the applicant satisfies the Federal Justice Title standards. Satisfaction means the applicant will be able to get Alta Title Insurance which has no exceptions for treaty or purposes of aboriginal lands. Currently, Interior will acknowledge that neither they nor the National Indian Gaming Commission confirm trust status of lands being sited for casinos. (See reference 1)

Communication with Washington State's gaming commission will verify they work in good faith with the tribes and consequently are not required to verify land status. Communication with state tax revenue departments across this nation will verify they have provided little or no direction or guidance to assessors on what constitutes an appropriate trust conveyance. With such poor government oversight, it is a fact that the majority of federal gambling casinos are going in on fee lands. Assessors are recording deeds that purport to be trust after the applicant has received the "initial" stamped acceptance. These deeds do not have the volume or page where they are recorded in the federal registry. Neither do these deeds contain a restrictive phrase that prevents the property's alienation unless approved by the Secretary of Interior. Neither has the applicant been providing copies of Alta Title Insurance. Interestingly, the Bureau of Indian Affairs in Portland, Oregon is making their trust deed books off limits to review by assessors.

General Acquisition Application Process

The first step in the acquisition process requires the trust applicant identify the existence of the statutory authority for the acquisition, the need for the land, the purpose for which the lands will be used, the degree of assistance needed if applicant is an individual, the impact on the state and its political subdivision and potential jurisdictional problems.

The second step requires the State and political subdivisions be notified. Interior provides 30 days for submission of comments. If no 30 day comment period has been initiated by Interior, the Interior Indian Appeals Board will vacate any purported fee to trust that ends up being recorded by the County. But it appears this vacation can only be done by the body with jurisdiction over the property. That leaves the common citizen without an immediate and cost effective resource to correct the record. Steps 3 and 4 are spent by the BIA reviewing and responding to comments. Step 5 is notification to the applicant and interested party of BIA's decision. The decision is accompanied by notification that "official" acceptance will not occur until the applicant has satisfied all requirements of the Federal Justice Title Standards. There is also mention made in the Bureau notification that a 30 day appeal on the acceptance is available through the Interior Indian Appeals Board. Once all appeals are satisfied and compliance has been satisfied with the title standards, BIA is suppose to execute an appropriate instrument accepting title. This is where the hoodwinking occurs. Local assessors know no more about what constitutes an appropriate trust instrument than their prosecuting attorneys and state tax revenue departments and local legislators are providing no guiding legislation. This leaves the review and acceptance of these deeds to the discretion of each assessor and their local prosecutor.

The fact is, purported trust deeds are being recorded as trust when they have not complied with the Federal Justice Title Standards. Valid trust deeds must have a restrictive phrase that prevents the property from being alienated without the approval of the Secretary of Interior. But tribes want to be able to leverage their property, so this phrase will not be found. The deeds must have with Alta Title Insurance. Certainly assessors are not checking the kind of insurance the trust applicant has acquired. Alta title insurance means there will be no exceptions in the deeds, no exceptions even for treaty or for purposes of aboriginal lands. But most important, the deed must designate the volume and page where the deed is recorded in the federal reg-

istry. Acknowledgement of a filing along with a letter that addresses the type of jurisdiction being accepted by the federal government, have been addressed as far back as 1943 in the U.S. Supreme Court case of Adams v. U.S. But more important than Adams is the U.S. Supreme Court case of United States v. Fox (1876). Here the Court affirms that the State legislature must approve transfer of land title and jurisdiction to the United States. The fact this approval is needed by the State legislature is not even addressed in the Title 25 U.S.C fee to trust rules. This creates one of the biggest hoop holes of all in the fee to trust and put all Indian casinos at risk of creating race base based monopolies using public lands.

While things are drastically amiss for our native citizens in the fee to trust, it is more amiss when it comes to protection of their civil rights. Under the Constitution, it appears that much can be done to salvage the personal constitutional rights of Indians if local jurisdictions only looked at what I have labeled as phony trust deeds being used to create make believe reservations. Getting things right at the local level must be our priority. We can only begin to get things right when the local jurisdictions demand proof of exemption. After all isn't every other American citizen required to bare the burden of proof for certain property tax assistance? Knowing that good faith efforts has led to duping and fraud in fee to trust, it's time we take a more responsible review of what is really happening with our fee to trust transactions. It time to say enough is enough and set our records straight.

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Marlene Dawson – former two term Whatcom County Council Member and present member of Whatcom County's Board of Equalization.

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<http://www.intellectualconservative.com/article4486.html>

The 'Untouchables': Wealthy Tribal Casino Interests
by Gary Larson

The Indian Gaming Regulatory Act intended to improve the lot of impoverished Indians on reservations. Instead it created a new, superrich class of savvy capitalist Indians.

Eliot Ness's "Untouchables" were incorruptible lawmen battling mob crime in 1930s Chicago. Some viewers of the ABC-TV series starring Robert Stack as Ness assumed the "untouchables" were the bad guys stalked by Ness's T-men. Not so. That notion sprung perhaps from the safety net of crooked lawyers, bought cops and paid-off politicians in real life Chicago in the 30s.

Consider now a new class of "untouchables." Not lawmen, certainly not gangsters. Far from it. They are ethical, upfront businesspeople, loyal, law-abiding Americans, suddenly wealthy beyond their wildest dreams.

They are the superrich who happen to own Indian casinos. Their forefathers, the first Americans, were cheated, lied to, lynched and murdered during the nation's darkest hours. They were victims of the largest land grab in history, thus denied their spiritual homelands, then made to reside on barren patches called reservations.

Not until the Indian Citizen Act of 1924 did most Indians get to be citizens. Previously, a few property-holders were "conferred" citizenship under the Dawes Act of 1887. They had to renounce their tribal ties.

(Historical note: Black males became citizens formally with the Fourteenth Amendment in 1868. This Reconstruction amendment excluded "Indians not taxed." Native Americans had to wait another 56 years for their shot at full rights, in 1924, five years after women gained theirs in the Nineteenth Amendment.)

Fast forward to 1988. A law signed by President Ronald Reagan changed things forever -- at least for a fortunate few. The Indian Gaming Regulatory Act (IGRA) reshaped the landscape of legalized gambling. It invited Indians to participate fully in the American Dream. It swung open the door to casino-style gambling to every American tribe.

Infamously, IGRA set the table for a race-exclusive monopoly. In some states, including my native Minnesota, the new law fathered a casino monopoly, mostly tax-free, with no expiration. For a business enterprise, that is Nirvana; it does not get better than tax-free forever.

Designed as if by a committee, IGRA intended to improve the lot of impoverished Indians on reservations. Instead it created a new, superrich class of savvy capitalist Indians. No problem with that, naturally, but it left behind an underclass of still dirt-poor native Americans. Today, one-third on reservations live in poverty, their suicide rate four times other Americans, their high school dropout rate three times national average. Hope can be a rare breakout thing on reservations.

IGRA (Ig-rah) was compelled by *California v. Cabazon Band of Mission Indians* (480 US 2021987). Indians then running ramshackle bingo halls and card clubs, could engage freely in "gaming" not prohibited by state laws, the Court ruled. Congress in effect codified Cabazon for all states.

State-tribal compacts set terms for certain types of "gaming" on reservations, and on land "taken into trust" (i.e., off tax rolls) for "Indian gaming" (IGRA Sec. 20). Compacts had this in common: No state or local

government units can “impose any tax, fee, charge or other assessment” on “Indian gaming” (IGRA Sec. 2710(d)(4)). As ordered by IGRA, this would lead to the largest tax give-away in our nation’s history. Who knew?

By early 1989, tax-free casinos started cashing in on the allure of gambling to Americans. Suddenly casinos were no more than a few hours drive. Since IGRA was signed, tribes launched 405 casinos in 28 states.

Last year these casinos enticed \$19.1 billion in gross revenue, according to the Analysis Group, a respected Los Angeles-based research firm. Gross revenue means the “win/take” amount after payouts to so-called “winners.”

Now you may ask, how much do tribal casinos give to candidates for national offices? Gambling Magazine on May 14 reports:

In 2004, the casino-gaming industry ranked 35th among the 80 industries charted. . . accounting for \$110.2 million in total contributions.

Of this amount, 6.6% came from the “Indian gaming subdivision.” Your answer: \$7.3 million to federal office-seekers. (Tidbit: Senator Tom Daschle collected \$189,900 from tribes in his losing bid.)

At state levels, often not well reported, tribes with casinos ante up incalculable sums. Typically, but not always, the chief recipients are Democrats. That’s no secret. This known fact is muted by liberal mainstream media (MSM). Not eager to report non-Halliburton largesse, particularly to their Democrat Party allies, MSM tends to downplay or simply not report the lavish contributions from the wealthy tribes.

Minnesota tribes last year contributed \$356,520 to Democrats in state races, and \$11,000 (2.9%) to Republicans. These numbers, from the Minnesota Campaign Finance and Public Disclosure Board, go largely unreported. One Twin Cities’ TV station, the CBS-TV-owned affiliate, boldly stepped forward with the information in a “Reality Check.” Otherwise it was Katie-bar-the-door.

In an overtime legislative session, a “racino” -- a racetrack-casino hybrid -- was declared a “non-starter” by Minnesota Democrats. Why, it seems they’d shut down state government rather than yield to a “racino” to compete with their generous benefactors. Dems called racetrack slots an “expansion of gambling.” Media bit on it. What? Gambling at state-licensed Class 1 horse racing gambling venue?)

Thus was a casino monopoly preserved. So what if polls say 70% of Minnesotans want a “racino?” To heck with new taxes, too. Who needs \$218 million in new taxes from a “racino” for an ailing state budget deficit? Democrats here as elsewhere are tax-hikers-and-big-spenders. Yet they leave on the table \$218 million in taxes. Go figure.

Intransigent tribal leaders don’t budge much on sharing their newfound wealth, beyond public works on their reservations. No one, no law, says they must. Paying their fair share, whatever, seems a foreign -- er, rather, a sovereign? -- concept. Except in Connecticut, where Indian casinos chipped in \$417 million in fiscal 2004 to state coffers, tribal tight-fistedness prevails.

Despite relative media silence, the public is “getting it.” In California, the “pay-to-play” politics of Governor Gray Davis and his Sacramento pals, in deference to that state’s 54 casinos, was decidedly a factor in his recall loss.

Gross revenues from California’s 54 -- yes, 54! -- casinos will soon eclipse Nevada’s. This trend will “create

the richest people on earth,” predicts author Jan Golab in “The Festering Problem of Indian Sovereignty” in *The American Enterprise*, September 2004.

That’s a partial reality in Minnesota. Thanks to a sweetheart compact negotiated -- if that is the word -- under a Democrat attorney general* in 1989, each fully “enrolled” member of the tiny Shakopee Mdewakanton Sioux tribe is a millionaire-plus-plus. Each draws about \$936,000 a year -- called “per capita” -- from casino proceeds. That’s a tidy \$36 grand every two weeks in case you’re wondering.

Cost is no object to preserve legal casino monopolies. The stakes are sky-high. Casino profits over years will certainly aggregate into billions, with a proportionate loss in taxes. Meanwhile, MSM whine about the current President Bush’s “tax breaks for the wealthy.” Rich irony in that, naturally, but who will tell the people? With MSM mute, who will tell Joe & Mary Taxpayer about the largest tax giveaway in their nation’s history? Will they be left to figure it out on their own?

* Minnesota’s attorney general in 1989 was Hubert H. (“Skip”) Humphrey III, son of the 1940s founder of the state’s Democrat Farmer Labor (DFL) Party, former Vice President Humphrey. On “Skip” Humphrey’s watch, the state inked compacts with its tribes providing for no state taxes, in return for limits on types of “gaming” offered on reservations -- i.e., only blackjack and slot games. The compacts had no expiration dates. Only if both sides agree to re-negotiate can the tax-free feature be reviewed. Of course, only the foolish would re-negotiate such a deal -- tax-free casinos, forever. Humphrey lost his bid to be Minnesota governor in 1998, finishing third in a three-way race to eventual “world-shocking” Governor Jesse Ventura. Second in that race was current U.S. Senator Norm Coleman (R-MN).

Gary Larson is a retired association executive in Minnesota, a former newspaper and business magazine editor, and a USAF veteran of Vietnam (1965-66). He is not the cartoonist of the same name. Larson’s article on a related subject is “Bruce Babbitt’s Nemesis: Death of an Indian Casino.”

Tribal lobbying produced results

By SEAN GONSALVES
STAFF WRITER

MASHPEE - Several key members of Congress from across the nation sent letters to Interior Secretary Gale Norton in 2003 urging her to speed up the Mashpee Wampanoag federal recognition review process.

See chart showing who gave and who got in the Wampanoag push for federal recognition. The letters came around the same time tribe members and their lobbyists gave the federal legislators thousands of dollars in campaign contributions.

Wampanoag Tribal Council President Glenn Marshall, frustrated by the decades-long lack of action on the tribe's petition and the loss of a lawsuit to speed up the review, decided it was time to pay to play.

The tribal council was looking to get a foot in the door of congressional movers and shakers. So it hired the king of the K Street lobbying firms - Greenberg Traurig LLP - and campaign contributions followed.

Documents obtained by the Times from the Bureau of Indian Affairs under the Freedom of Information Act contain several letters, most written in October 2003, from those congressmen and senators, including Massachusetts Democratic Sens. Edward Kennedy and John Kerry; U.S. Reps. Tom Cole, R-Okla; George Nethercutt Jr., R-Wash.; John Doolittle, R-Calif; U.S. Rep. Don Young, R-Alaska; and U.S. Rep. William Delahunt, D-Mass.

On Oct. 7, 2003, Doolittle, deputy whip and House Appropriations Committee member, wrote to Norton in support of the Wampanoag after he was briefed by tribal members.

"It appears that they have been forced to wait too long to receive an answer to their petition for recognition. I ask that you do everything in your power to work with the tribe to resolve this matter."

He also noted the "substantial contributions to the history and freedom of the United States," referring specifically to Wampanoag Chief Vernon Lopez's military service that landed him on Omaha Beach on D-Day and Glenn Marshall's service in Vietnam with the U.S. Marine Special Forces. Marshall was a "hero of the Battle of Khe Sanh," Doolittle wrote.

Two months later, Herb Strather, a Detroit real estate developer with ties to Michigan casinos and a Wampanoag benefactor, sent Doolittle a \$2,000 contribution.

Strather bankrolled \$40,000 to the tribe when it hired a lobbyist from Greenberg, the same firm that once employed Jack Abramoff who has since pleaded guilty to fraud, public corruption and tax evasion in connection with defrauding Indian clients.

Over a span of several years, beginning in 1999, Doolittle received \$45,000 in contributions from Abramoff.

* In November 2003, Strather also gave \$1,250 to U.S. Rep. Nethercutt, who wrote Norton on Oct. 15, 2003.

* On Oct. 16, 2003, U.S. Rep. Cole, the former chairman of the House Resources Committee, which has budgetary oversight of the Bureau of Indian Affairs, wrote a letter to Norton saying he was recently briefed by the tribe.

“I want to ask you to personally review the situation and ensure that prompt action occurs on the petition.”

Since 1999, Cole has received \$5,000 from Abramoff.

* On Nov. 25, 2003, Troy A. Eid, a shareholder with the lobbying firm of Greenberg Traurig LLP. wrote Norton.

“Thanks for taking the time to visit last week. I really enjoyed seeing you,” the letter begins. “The Mashpee would like to meet with Interior to discuss the concept of developing a timetable for resolving the tribal recognition issue one way or another.”

Instead of agreeing to a meeting, Norton sent back a letter detailing the status of the tribe’s petition.

Tribal council spokesman Scott Ferson said that the congressmen and senators who wrote letters to Norton and other BIA officials were briefed in Washington by tribal leaders over the course of a year in 2003.

“The letters clearly prove the sincerity of their sentiments,” he said.

Tribe takes a new tack

Political campaign contributions from tribe members were far and few between before Marshall was elected in 2000. But after the tribe lost a 2001 U.S. Appellate Court case that would have ordered the BIA to rule on the Mashpee petition by the end of 2002, tribal council leaders, with the financial help of Strather hired lobbyists and began giving thousands of dollars to members of Congress.

Beyond what Cole and Doolittle received, a Cape Cod Times review of campaign finance records reveals the congressman and senators who wrote letters on behalf of the Mashpee tribe, each received contributions to their campaigns or political action committees from tribal officers or lobbyists beginning in 2003. The contributions ranged from \$250 to \$11,500.

The congressman who received the most money from tribe members - a total of \$18,000 from Marshall, tribal council Vice President Shawn Hendricks and council secretary Desire Moreno - was U.S. Rep. Richard Pombo, R-Calif., chairman of the House Resources Committee.

Tribal lobbyist Kevin Ring also donated \$1,000 to Pombo, according to Federal Election Commission data posted at www.opensecrets.org.

There were no letters of support for the Wampanoag from Pombo among the bureau documents released to the Times. But Pombo did sponsor legislation in 2004 that would have compelled the bureau to review and issue a decision on a dozen petitions submitted before 1988, including the Wampanoag’s.

In December, the Associated Press reported that Sen. Byron Dorgan, D-N.D., received \$11,500 from Abramoff associate Michael Smith, the Mashpee tribe’s lead lobbyist.

Dorgan is the top Democrat on the Senate Indian Affairs Committee. The AP reported that Dorgan met sev-

eral times with Abramoff's lobbying team and arranged congressional help for the Mashpee tribe.

Strather, who could not be reached for comment, told the Times in an interview last summer that he gives "a substantial amount of money" to the tribe to help shoulder the cost of seeking federal recognition because he was dismayed to learn they had not yet been federally recognized and was grateful for the tribe's history of helping fugitive slaves.

Lobbying vs. bribery

All of the congressman and senators who received campaign funds from Mashpee tribe members and supporters have told the Times or other news outlets that tribal campaign contributions are not only legal but make sense, given the committees on which the various congressman sit.

Massie Ritsch, communications director for the Center for Responsive Politics, a nonpartisan campaign finance watchdog organization, said that while the general public may be suspicious of lobbying, the political reality is: "There's a fine line between legal campaign contributions and a bribe.

"The difference is, with campaign contributions you can express something like a hope for support on a particular issue. It's when you say, 'If you'll vote for this, I'll give you \$2,000' that it becomes bribery."

The reason tribal lobbying has become a focus is "not because they necessarily did anything wrong," Ritsch said, "but because a lot of (Abramoff's) lobbying was on behalf of Indian tribes who he admitted defrauding."

The Center for Responsive Politics, so far, has not found any evidence that any tribal donations were illegal.

"We did a report on Abramoff tribal clients because we thought it was important to show the reach he had," Ritsch said.

Marshall unapologetic

Tribal Council President Marshall has been criticized recently for his Marine-like approach to charging Capitol Hill in the hopes of jump-starting the BIA review of the Mashpee petition.

"I hired a lobbyist to move the issue from the back burner to the front burner, and that's what they did. It's that simple. ... People are dying in my tribe without access to the social programs that federal recognition brings," Marshall told the Times in November.

With the recent backing of a unanimous vote of confidence from tribal elders, Marshall said through a spokesman he has nothing new to add, nor anything to defend.

The Mashpee petition is now under "active review." A preliminary finding is due by March 31 with a final determination to come in March 2007.

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(Published: February 21, 2006)

BIA takes stab at off-reservation gaming regulations

Wednesday, February 1, 2006

The Bureau of Indian Affairs is considering regulations to clarify how land is taken into trust for gaming but the proposal wouldn't go as far as a bill pending in the Senate.

George Skibine, the BIA official in charge of gaming, revived the proposal last year, nearly four years after the original regulations were pulled by the Bush administration. Since then, controversy over gaming and the land-into-trust process has grown while tribal casinos have become an \$19 billion business.

As Skibine said during the Global Gaming Expo last September, the proposal establishes criteria for the two-part determination process for off-reservation casinos. In these cases, the Interior Department and the state governor where the casino would be located have to approve the tribe's land-into-trust application after consulting with local governments and nearby tribes.

The regulations being circulated also establish criteria for the four exceptions contained in Section 20 of the Indian Gaming Regulatory Act. The exceptions apply to newly recognized tribes, restored tribes, tribes in Oklahoma with former reservations and tribes with a land claim settlement.

In both situations -- the two-part determination and the Section 20 exceptions -- the proposal seeks to clarify existing policy rather than break new ground or impose stricter requirements on tribes. The National Indian Gaming Association supports this regulatory approach, the group's executive director said earlier this month.

"We think that if these rules were laid out in a Department of Interior regulation, it could provide a clear framework and allay some of the concerns that have arisen about off-reservation gaming," Mark Van Norman said at the Western Indian Gaming Conference.

As such, the approach -- which is not final and could be changed in the future -- stands in contrast to a bill introduced by Sen. John McCain (R-Arizona), the chairman of the Senate Indian Affairs Committee. McCain's bill would eliminate the two-part determination process and the exceptions for newly recognized tribes, restored tribes and tribes with a land claim settlement. The Oklahoma exception would remain intact.

The issue will be debated today as McCain holds a hearing on off-reservation gaming. It is the sixth gaming or gaming-related hearing the committee has held since McCain took control in 2005 with a pledge to re-examine IGRA, the law he helped write 17 years ago.

"I have always been and continue to be a supporter of the rights of Indian tribes to conduct gaming," McCain said when he introduced his amendments, "but I also continue to believe that effective regulation of these enterprises are critical to tribes' continued success."

For two-part determinations, the notable parts of Skibine's proposal would:

- require consultation of local governments within a 10-mile radius of the proposed off-reservation casino.
- require consultation of nearby tribes within 50 miles of the proposed off-reservation casino.
- require tribes to submit financial projections, consulting agreements and financial agreements, and require

tribes to disclose possible adverse impacts and plans to address those impacts.

- create a 60-day comment period, with possible extensions, to consult with local governments, state officials and nearby tribes

For the exceptions, the notable parts of the proposal would:

- define “contiguous” as “land(s) sharing a common boundary, or adjoining with nothing intervening. However, parcels of land are contiguous even if separated by roads, railroads, other rights of way, or streams.” This definition applies mainly to the Oklahoma former reservation exception.
- require tribes to obtain Congressional approval for a land claim settlement and obtain state or federal court approval of the settlement before gaming on land acquired through the settlement.
- require newly recognized tribes to stay within their service area for an off-reservation casino. If no service area is defined, the tribe must demonstrate “significant historical and cultural ties” to the land being sought for an off-reservation casino.
- require restored tribes to obtain an act of Congress to acquire restored land, or demonstrate a “modern connection” to the land being sought for an off-reservation casino. Several criteria are laid out to determine the modern connection.

Skibine has previously stated there is no time frame for the consideration of the regulations. It could take several months, or even more than a year, to develop and finalize them.

Meanwhile, regulations to establish criteria for non-gaming land-into-trust applications are still not on the radar screen. The Bush administration shelved an earlier proposal in November 2001 despite complaints from tribal leaders.

Today’s hearing starts at 9:30am and will be held in Senate Dirksen Room 106. It will be broadcast online at <http://indian.senate.gov>.

Draft BIA Regulations:

Gaming on Lands Acquired After October 17, 1998

Our workers vote, Oneida Nation warns

Elizabeth Cooper
Observer-Dispatch
February 2, 2006

The Oneida Indian Nation said Wednesday it is using the voting power of its 4,600 employees, which make up the Mohawk Valley's largest private work force, as leverage to get local politicians to stop working against the Nation's plan to put its land into federal trust.

The Nation says it will help Turning Stone Resort and Casino workers register to vote and provide "candidate education programs" for employees, even as it warns them the federal government's rejection of the land-into-trust proposal could cost them their jobs. The Nation's push for federal trust status could help it circumvent March's U.S. Supreme Court ruling that the city of Sherrill could tax Nation properties.

"The region's representatives at the federal, state and local levels had better understand that the Nation's employees are informed, motivated and engaged politically, and are now ready to hold their elected representatives accountable for their votes, statements and actions," Nation Government Relations Director Diane Stirling said in a prepared statement.

Several Central New York politicians said their stance doesn't mean they want to see any jobs taken away. But they said they believe there are ways of saving those jobs other than placing thousands of acres of Nation land into trust, which would exempt it from local taxes and regulations.

"I'm doing what I believe is the right thing, and that's everyone being treated equally under the law," said Oneida County Legislator Jack Gardner, R-McConnellsville. "If that's wrong, then I guess I'll have to be voted out of office."

Two Nation employees said Wednesday politicians' stance on the land-into-trust application would affect how they vote in the future.

Brian and Kelly Marino of Blossvale criticized Gardner, who was among a majority of Oneida County legislators who recently came out against the land-into-trust plan. They noted that 150 Nation employees live within Gardner's Western Oneida County district.

"He expresses his views but he has not called a meeting to maybe speak with us," Kelly Marino said of her own county legislator. "To me, he's not representing all his constituents. He hasn't asked me."

She and her husband spoke with the Observer-Dispatch from their jobs at the Nation. Nation spokesman Mark Emery was on the line during the conversation.

The Nation's decision to enlist its employees as foot soldiers in the battle for trust status marks a new tactic in the larger, ongoing land-claim case that dates to the 1970s. It has brought out crowds and strong opinion on both sides in ways reminiscent of the conflict seven years ago after the Nation sought to sue 20,000 individual landowners who lived on property the Oneidas' claim.

In its statement, the Nation criticizes the county legislature for opposing the push to put land into trust, and it predicts dire consequences for Turning Stone employees, 2,400 of whom live in Oneida County. Stirling is quoted as saying a failure to put land into trust “could abruptly end their employment.”

Asked Wednesday if the Nation would close Turning Stone if trust status were not granted, Nation spokesman Mark Emery said, “the resort cannot stay open if the land doesn’t go into trust.”

Certain types of gaming are illegal in New York state, including much of what Turning Stone offers, except on Indian land. Placing the footprint of Turning Stone Resort and Casino into trust would keep the casino legal and protect the jobs of those who work there, Nation officials say.

Some politicians said they think the Nation’s rhetoric has gone too far.

“It’s unfortunate that the Oneida Indian Nation is using scare tactics with their employees to promote the idea that they do not have to pay their fair share of property and sales taxes,” Oneida County Board of Legislators Majority Leader James D’Onofrio, R-New Hartford, said. “The county of Oneida has no recourse but to utilize all legal means to force the federal government and the courts to act because recent history tells us at a fair negotiated settlement is unachievable.”

But in using their workers’ political views as a weapon in battle, the Oneidas are following a long-standing American tradition, two professors from Cornell University’s Industrial and Labor Relations School said.

“It doesn’t seem to me that it’s particularly unusual for any type of business, particularly a large economic entity in an area, that they would indicate that their employees might vote in the interest of their jobs,” said Sally Alvarez, director of labor programs at the school.

Professor Esta Bigler, director of the school’s labor and employment law programs, agreed.

“Why is it different from the way many organizations act?” she asked. “It seems to me that these kinds of things happen across the board in a democracy.”

Bigler said groups as diverse as the National Rifle Association and the auto industry use their membership or employment totals as a way to flex political muscles on issues important to them.

Still, Alvarez noted, “I can see why the politicians would accuse the tribe of using scare tactics. You could certainly argue that it’s not as upfront a tactic as it could be, but it’s a fairly normal part of the rhetorical battles.”

Alvarez and Bigler said the solution was for both sides to be as open as possible with the public so residents can draw informed conclusions.

Tribe, city at odds over expansion

Officials want to further negotiate plans for high-rise hotel at casino

An artist's rendering of Agua Caliente's proposed addition to its casino on Interstate 10 and Bob Hope Drive, which would include a 14- to 16-story hotel tower, a 2,000-seat showroom, parking garage and added floor space to its casino.



WHAT'S IN PLAY

The impact of an addition to Agua Caliente Casino in Rancho Mirage with these amenities:

High-rise hotel, having as many as 400 rooms. It would include a 100-seat coffee shop, 40-seat pool bar, meeting and function space.

Expanded casino floor space. A 2,000-seat showroom and parking garage.

Deleted from earlier plans was a 350,000-square-foot retail center on 40 acres of trust land west of Bob Hope Drive, with a pedestrian bridge linking the development to the casino resort on the east side of Bob Hope Drive.

Debra Gruszecki
The Desert Sun
February 5, 2006

RANCHO MIRAGE - The city of Rancho Mirage and the governor's office are taking a hard line on a tribal decision to build a high-rise hotel next to Agua Caliente Casino.

The Agua Caliente Band of Cahuilla Indians is poised for final action Tuesday to authorize immediate construction of the 14- to 16-story hotel tower, a 2,000-seat showroom, parking garage and added floor space to its casino at Interstate 10 and Bob Hope Drive.

But as late as last week, Rancho Mirage officials asked the tribe to slow down. Rancho Mirage wants to negotiate a mutually satisfactory intergovernmental agreement seeking:

Fair-share contributions toward \$7.5 million in road improvements to handle a projected crunch in traffic, particularly an I-10 interchange.

A new, fully furnished public safety center with a three-bay fire station on a three-acre site donated by the tribe, a fire engine and paramedic unit costing about \$515,000 and annual payments of \$4.1 million to pay for police and fire personnel.

Yearly contributions in lieu of bed tax.

A 40-acre land donation to the Rancho Mirage Housing Authority to enable it to build 250 affordable family homes.

Tom Davis, the tribe's chief planning officer, said last week that he was reluctant to comment on the city's requests.

This is a "government-to-government" issue, he said.

"I'm giving the city the benefit of the doubt that this is a wish-list," Davis said, meant as a springboard for talks outside the scope of the Tribal Environmental Impact Statement, a document required through the Tribal Environmental Policy Act and the tribe's gaming compact with the state of California before construction can begin.

Standards met

Davis said the tribe has met all these standards so there does not appear to be a reason to delay action any longer.

The tribe in its final report said it would impose a bed tax at the new hotel, pay an \$800-per-acre developer mitigation fee as part of its habitat conservation plan, make an in-lieu contribution to the commercial fire fee, pay for traffic improvements at key intersections, and contribute on a "fair-share" basis funds - 13.7 percent and 40.2 percent, respectively, for the Date Palm Drive and Ramon Road and I-10 eastbound ramps and Ramon Road intersections.

"We're not shirking from anything," he said. "We're dealing with it in the same process everyone deals with it."

Rancho Mirage City Councilman Dana Hobart said the city isn't shirking, either.

"We mean business," he said. "It's going to cost an arm and a leg to have this at our doorstep."

City officials have also expressed concern about the tone of a letter Davis sent to Rancho Mirage City Manager Patrick Pratt on Jan. 19.

Davis' letter said the tribe shares the city's interest in developing a mutually beneficial mitigation agreement.

But it characterized the city's requests as "very comprehensive" and "surprisingly bold."

It suggests some of the issues relate to "social and economic conditions," and do not cite clear justification or empirical data to back "fairly detailed cost estimates."

Because city public services are provided through the county, the letter asked, "Does the county support the city conclusions?"

With regard to affordable housing, Davis' letter asked if the city imposed similar requests on other developers, like Eisenhower Medical Center, The River or JW Marriott's Shadow Ridge.

"The request to provide 40 acres for 250 units of 'affordable housing' is either a typographical error, or an error in math," the letter states. "Forty acres of land can easily provide over 600 units of affordable housing. What is the basis of these numbers?"

The tribe had originally proposed a retail development on 40 acres of land owned by tribal allottees, located

on the east side of Bob Hope Drive.

The tribe said it had no definite plans yet for such a center but when it does the development would be subject to environmental review.

Hobart said he fears a review would no longer apply, as it would no longer be connected to the casino project or reservation land.

“I want assurance this can’t happen,” he said.

‘Chump change’

Cheryl Schmit, director of Stand Up For California, a statewide alliance that focuses on gambling issues, filed 27 concerns in the tribe’s environmental report. One of her concerns was that a July 2006 Phase I completion schedule was “suspiciously aggressive.” She also said the city’s requests do not seem to be out of line.

For the scope of this project it’s “chump change,” she said.

While a request of this size may be unusual in Riverside County, Schmit said mitigation costs elsewhere have been in the \$10 million range, not counting annual service donations in lieu of property tax and public safety costs.

The United Auburn Indian Community in Newcastle agreed to one-time mitigation impacts in that range, Schmit said, plus annual contributions in lieu of property taxes and public safety services.

The Cabazon Band of Mission Indians struck a deal, as part of its agreement to get municipal bonding for its high-rise hotel, to charge a 10 percent visitor tax on hotel rooms, which would bring \$20 million to the county over the 18-year life of the bonds and offset public safety costs. It also agreed to spend \$1 million on traffic improvements, and roughly \$5 million to the cities of Coachella and Indio.

Davis said the tribe has met all the appropriate standards required by tribal regulations and the compact with the state, so he believes the Agua Caliente tribal council will adopt it with all the mitigation measures that were noted.

His Jan. 19 letter also said there is “no reason to delay.”

When the Agua Caliente Casino was built, the tribe contributed \$2.9 million in actual or in-kind dollars toward traffic improvements, Davis said.

Tribes also participate in revenue sharing plans that ensure a portion of tribal gaming funds go directly to local governments impacted by casinos.

“We hope the county works with us on an agreement like we have in the city of Palm Springs, where we can get funds from our own tribal transient occupancy (hotel bed) tax to pay for public safety or tourist-related facilities,” Davis said.

Schmit said it is up to the governor to determine if an environmental impact report fulfills the tribe’s compact.

Paul Dobson, the governor's acting legal affairs secretary has also raised questions over the status of the land. In an Oct. 11, 2005, letter he asked the tribe to confirm aspects of tribal and project site history to determine the appropriateness of development under the Indian Gaming Regulatory Act.

The city also questioned the status of the land.

Davis said that the land "since 1877, and now, is part of the reservation."

Fresno County Passes Casino Expansion Resolutions

February 28, 2006 - The Fresno County Board of Supervisors has passed two resolutions opposing any kind of Indian casino expansion.

One resolution opposes casino expansion. The other opposes so-called reservation shopping, where gaming centers open off Indian land. Mono Wind Casino is looking to build a mega casino just one mile from Table Mountain Casino. The resolutions don't necessarily kill that project.

But, the board hopes to send a strong message to the governor that environmental concerns over water and roads could keep the project from becoming a reality. Right now, there are five casinos throughout the Central Valley. Some say they want it to stay that way, while Indian tribes are fighting to create more casinos.

Indian gaming is a lucrative business, which is why local tribes seek to build new mega-resorts. But, a political analyst believes one tribe may have an unfair advantage in this latest battle. The gaming itself isn't the problem, according to Fresno County Supervisor Bob Waterston. He says the board must make a stand because of environmental concerns in the foothills.

Table Mountain Casino already must truck in water to meet its daily demand. "That's telling you there's no water," said Waterston. "We have another casino that wants to build right down the road from it and there's no water. I don't care what they say, there is no water there."

Mono Wind Casino has teamed with Harrah's on plans to build a \$250 million casino just a mile from Table Mountain. But, the county resolution opposes any casino expansion.

Table Mountain is a major campaign contributor. Last year it donated to \$2,500 to Supervisor Judy Case, \$8,500 to Henry Perea, \$12,000 to Bob Waterston and \$23,000 to Susan Anderson.

"The fact is, they are using that income in order to guarantee they don't have a lot of opposition to what they want to do," said political analyst Don Larson. "Political contributions are an effective way to cease the opposition."

But, Henry Perea says the county resolution could also impact Table Mountain's future, "I understand their long term plans are to expand their casino, to possibly build a hotel on their site."

Larson believes that even though the resolution passed, Table Mountain still won this round.

"If the choice is expand and have Mono Wind as a competitor, or not expand and not have Mono Wind as a competitor, I think they would choose not to expand, because Mono Wind a mile away would really be a competitive force," says Larson.

Harrah's wouldn't comment on how the resolution could affect its partnership with Mono Wind, but remains confident the project will move forward.

TRIBAL ELECTION MOVE STIRS QUESTIONS

February 28, 2006

By Chris Keegan - The Sun Staff

CHARLESTOWN - A former Narragansett Indian leader is denouncing the Tribal Council's decision to cancel January's biennial elections.

Former Tribal Secretary Lawrence E. Ollivierre said Monday that tribal elections - which are held every two years - were canceled late last month, just months after the council's decision to tighten membership standards.

The move - which allegedly disenfranchised more than 100 tribal members and denied some access to health services - fueled enough discontent among Narragansetts in the northern part of the state to topple the tribe's leadership in the election.

"(Chief Sachem) Matthew Thomas and the council have stirred up enough opposition that if elections were held tomorrow, they would be out," said Ollivierre, who served as tribal secretary from 1984 to 1987. "You can't tell someone whose been a Narragansett their whole life that they're no longer part of the tribe."

On Saturday, more than two dozen people of tribal descent - many of whom were affected by the new standard - staged a protest at the Four Winds Community Center on Route 2, as council members met inside.

"It would be good if folks just simply got some kind of collective group together because there is a class action lawsuit that should be had regarding tribal members' rights to vote," he said. "The council is not informing people of anything, when in fact it's the membership that determines the direction of the elected (body). This is worse than the political situation in Haiti."

Earlier this month, both a representative for the federal Bureau of Indian Affairs Eastern Region and Charlestown Indian Affairs Solicitor Joseph Larisa said they were unaware that the council had canceled elections.

"The tribe controls its own tribal matters," said Larisa, who has served as liaison to the tribe since 2002. "There's nothing that any law of the state or interpretation by the courts can do about that. It's their business."

"There have been instances around the country where tribes take action that would be considered illegal if governed by state or federal law," he added. "And yet since the tribe has its own sovereignty with its own affairs, there's nothing anyone can do about it."

The controversy comes in the days and weeks after Thomas announced a bid for a statewide referendum on Rhode Island casino. Harrah's Entertainment Inc. of Las Vegas, Nevada - which is backing the tribe's request - has hired constitutional scholar and former Providence College Professor Emeritus Patrick T. Conley to push for changes to Rhode Island's Constitution.

Though the tribe would hold a stake in a new facility in the town of West Warwick, Brown said in an interview at The Sun last month that the lion's share of money generated at the resort-style facility would go to

the state.

Under membership standards adopted by the council late last year, tribal members must prove a connection to an 1880 list that Thomas reportedly claims to be an official tribal roll.

But Ollivierre said the document is not a roll at all: rather, it is a list of tribal members who were each set to receive \$15.43 in compensation for the sale of about 3,500 acres of tribal land in Charlestown.

In 1978, the tribe received \$3.4 million to purchase more than half of those lands back, he said.

“The state said the land belonged to the membership of the tribe,” Ollivierre said. “Out of that listing came a number of folks that were to be compensated for the sale of property. There was no tribal roll at the time.”

Ollivierre said the only valid roll compiled by the tribe was created in 1978, and contained just under 1,200 names. The tribe’s membership currently stands at about 2,800, though he said it is difficult to quantify how many members have been removed off tribal rolls since 1994 - the year that the tribe stopped accepting new members.

Tribal Records Clerk Shirley Christy - who currently heads tribal genealogy - could not be reached for comment this morning.

Ollivierre - a 63-year-old resident of South Kingstown who was ousted from the tribe’s roll in 1995 - called the council’s decision to tighten membership standards “dictatorial” and “despotic.”

“You can’t kick a Narragansett Indian off his own land,” he said. “It’s a civil rights issue when it comes down to it. I don’t need a card or anything to tell me who or what I am. Thomas or anyone on the council can’t change that.”

“This is not just about taking people off the tribal rolls. This is about taking off their generations of children and grandchildren.”

But Ollivierre said larger issues exist for the tribe: the group has never been dually represented as a tribe consisting of both Narragansett Indian and Eastern Niantic Indian lineage.

“There’s a lot of problems going on that have never been addressed,” Ollivierre said. “The Narragansett side has never been properly addressed and represented under Matt Thomas.”

Thomas did not return a phone message left at his office on Monday.

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