

## **SPECIAL REPORT | TRIBAL GAMING: State is losing a casino jackpot**

Part 1: Michigan taxpayers are out millions because of deal with tribes

BY JENNIFER DIXON  
FREE PRESS STAFF WRITER  
May 7, 2006

While battling a tough economy, Michigan has lost out on more than \$300 million in revenue from Native American casinos since the state's deal with seven tribes allowed them to halt payments, a Free Press analysis has found.

The lost revenue could easily double by the time the tribal pact with the state expires in seven years. The tribes were obliged to pay the state a share of profits only as long as they held a slot machine monopoly in Michigan. That monopoly ended when the state opened gambling to other tribes in 1998.

The Free Press also found that the state's 17 tribal casinos -- now a billion-dollar industry -- attract almost no scrutiny from state or federal authorities.

State officials rarely set foot in the casinos. They almost never check to make sure tribes aren't hiring key casino employees with criminal backgrounds. And they only occasionally examine the books to ensure that tribes pay what was promised to neighboring Michigan communities when tribal gaming was approved in 1993.

Federal officials have never once audited a tribal casino in Michigan.

When gaming officials do take a close look, they sometimes uncover problems that mean thousands, even millions, of dollars to Michigan taxpayers.

Dan Gustafson, executive director of the Michigan Gaming Control Board, acknowledged the agency's history of weak oversight. He blamed it on inadequate staff and funding, and the need to be sensitive to the tribes. Federal officials also blamed a lack of staff and money.

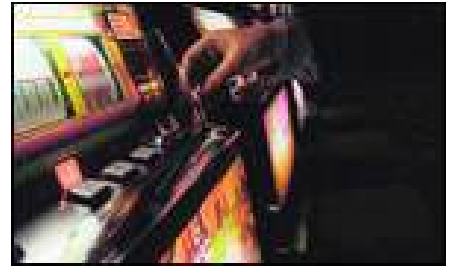
"Given the authority that we have and the resources that we have, we're doing the best job we've done since the casinos opened," Gustafson said.

The tribes counter that they scrupulously regulate themselves, so no outside oversight is necessary.

"Take a look at Indian gaming across the country -- you rarely hear a story about fraud or corruption or mob influence," said Steven Morello, former general counsel to the Sault Ste. Marie Tribe of Chippewa Indians and now a candidate for the tribe's board, which oversees the tribe's five casinos. "I've got to conclude the Indian people have done a fairly good job of regulating themselves."

Kathryn Tierney, a lawyer for the Bay Mills Indian Community, which runs two Upper Peninsula casinos, said "there is every incentive" for tribes to run clean operations, treat customers well and meet obligations to the state.

"The revenue generated by gaming is the tribe's revenue," she said. "You are protecting a tribal asset."



**MONEY MACHINES:** Tribal casinos rake in quarters by the millions, yet they largely police themselves. (DAVID P. GILKEY/Detroit Free Press)

But some legislators say they don't feel assured.

"The whole idea of regulation is it keeps everybody honest," said state Rep. Fulton Sheen, R-Plainwell, a member of the House Government Operations Committee, which oversees the workings of state government. We regulate our Detroit casinos, why are they" -- the tribal casinos -- "treated any differently?"

"To me, it's a travesty."

Rochelle Busbee, a Detroit resident who organizes bus trips to northern Michigan casinos two or three times a year, said she cannot understand the state's hands-off approach.

"You have people traveling from everywhere, spending their money," she said of gamblers. "They should be treated fairly, and the gaming commission needs to oversee it. That's my opinion."

Michigan's loose oversight of the tribes contrasts sharply with its regulation of Detroit's three casinos. The state gaming board receives \$27 million a year to keep tabs on Detroit casinos, including background checks and slot machine inspections, but just \$275,000 annually to oversee the 17 tribal casinos.

Other states have stricter oversight and collect more from tribes. Connecticut regulators, for example, routinely scrutinize the tribes' finances and gambling equipment. They also collect 25% of slot machine profits, far more than Michigan.

A dicey 13-year history

In 1993, Gov. John Engler negotiated a deal that legalized casinos for seven tribes in Michigan. The state, under a federal law passed five years earlier, wrote a compact with tribes that wanted to run casinos.

As part of the deal, the seven tribes pledged to give 2% of slot machine profits to communities near their casinos and another 8% to the state. But the tribes had an out: If they ever lost their slot machine monopoly in Michigan, they could cut off the 8% payments.

Without the agreement, the state had no claim on the tribes' casino revenue. Michigan can't collect taxes from tribes because they are sovereign nations.

The tribes also agreed to open their books to state inspectors, comply with federal gambling laws and state liquor laws and, for certain key jobs, avoid hiring anyone convicted of a gambling offense, fraud or similar crime.

All but one of the original seven tribes stopped their 8% payments by 1999 because the state had agreed a year earlier to let another four tribes open casinos. Those four tribes also promised to pay 8% of profits to the state, though only two -- the Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians -- later opened casinos.

But they too stopped paying, in 2004, claiming the state lottery's new Club Keno game infringed on their deal. The state has sued to force the tribes to turn over the money. The case is pending.

In all, Michigan collected \$216 million in 8% payments before the tribes stopped sharing their profits.

If the first seven tribes had continued to make their payments, the state would have collected another \$337 million through 2005, according to a Free Press analysis of gambling revenue reported to the state. That's enough money to restore state funding of the public university system to 2001 levels. The revenue would have kept rolling in until 2013, when the tribes' 20-year agreement with the state is to expire.

The gaming board has the right to inspect gambling records, but has completed just 12 audits of tribal casinos since 1993. During a five-year stretch from 1999 through 2004, the agency never completed a single audit, records show.

On the rare occasions the state has probed tribal casinos, it has found problems.

In 2004, auditors discovered the Hannahville Indian Community had shortchanged state and local taxpayers for years, an amount they estimated at \$3 million or more. The state sued the tribe and won. The tribe has appealed.

Auditors also discovered some tribes spent a share of their profits -- money that was earmarked for communities near casinos -- on themselves or pet causes. One tribe used \$700,000 to pay its members' property taxes, rather than giving it to a community as they'd agreed.

And in 2003, a state gaming employee noted that Fred Dakota, a member of the Keweenaw Bay Indian Community tribe who had served prison time for accepting bribes from a slot-machine vendor, had won a seat on the tribal council, which oversees the tribe's casinos. He remains on the council.

Some records also showed some tribes had failed to ensure their slot machines were making the proper payouts. Other tribes refused to provide records, but the agency did nothing.

Gustafson, the gaming board chief, and Eric Bush, who oversees tribal gaming enforcement for the state, said the gaming board has become more aggressive in recent years, having completed six audits since 2004, including the one in Hannahville.

Gustafson said the agency faces roadblocks in scrutinizing tribal records. One key concern, he said, is that the state is trying to respect the tribes' sovereignty while protecting its own interests. He and Bush, in interviews, repeatedly stressed the need to be sensitive in dealing with the tribes.

"In fact, they won't even let us call them audits," Gustafson said. "They want us to call them inspections. They're very sensitive about the word 'audit.'"

Bush said, "You have to have infinite patience with the tribes. You can't tell the tribes to do anything."

Tierney, the Bay Mills attorney, counters that state officials can be "overzealous."

"When we think that does occur," she said, "we say you're acting beyond the scope of your authority."

Other states keep eyes open

William Thompson, a Nevada professor who writes about the gaming industry, said casinos -- tribal or not -- need strict oversight because the cash involved creates endless opportunities for skimming, money laundering or other corruption.

"It demands a lot of security. This means multiple eyes watching, people with different interests watching to make sure it's safe," said Thompson, a professor of public administration at the University of Nevada, Las Vegas.

Several states contacted by the Free Press reported having more employees who inspect and audit casinos than Michigan does.

In Arizona, more than 100 employees oversee 22 tribal casinos. Michigan has just three. New York has 54 workers assigned full-time to roam four tribal casinos, looking for violations. Michigan has no one in that role.

Bush and Gustafson contend that their agency is doing the best it can with the meager budget set aside for tribal oversight. Under deals negotiated with the state in 1993 and 1998, tribes pay either \$25,000 or \$50,000 a year to fund state

oversight of their casinos.

The state, until recently, did so little it refunded part of this modest budget to the tribes each year.

By contrast, the state assigned 102 employees to Detroit's casinos after Michigan voters approved them in 1996. Under state law, the three Detroit casinos paid a combined \$27 million last year to the gaming board -- or 98 times the \$275,000 the tribes paid the state to monitor their casinos. The state spent \$16 million of the \$27 million on regulation of Detroit casinos. Put more starkly, that's \$5.3 million a year to oversee a Detroit casino -- compared with a little more than \$16,000 annually for a tribal casino.

Bush and Gustafson said the National Indian Gaming Commission, which monitors casinos on the federal level, needs to take a tougher stance in monitoring casinos to help reinforce the state's efforts.

Federal officials have never conducted their own audit of any Michigan tribal casinos. The commission's annual budget is capped at just \$12 million and it has a staff of 95 -- and must oversee about 400 casinos and other gaming operations nationwide.

"Tribal gaming is too big," Bush said. "The feds have to tighten up, show some leadership in working with state regulators and the tribes."

But Shawn Pensoneau, a spokesman for the commission, said federal officials aren't the primary casino regulators, either. "The tribes are the primary regulator," he said.

Speaking of Michigan, he said, "There isn't anything that I'm aware of, at this time, that resembles a crisis."

Not everyone is so satisfied.

John Wernet, deputy legal counsel to Gov. Jennifer Granholm and her liaison to the tribes, said the state gaming board has been more assertive but frustrations remain:

"Am I satisfied with the progress we've made? No. It's been a lot slower and more difficult than I would have preferred."

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# The Press Democrat

## Casinos creeping south

'Reservation-shopping' tribes jockey for land near urban centers  
May 13, 2006



By TOBIAS YOUNG  
THE PRESS DEMOCRAT

Since Indian casinos were approved by voters in 1998, rural tribes have made repeated efforts to push gambling closer to the potential customers in big Bay Area cities. A Healdsburg tribe plugged in 1,600 electronic bingo machines last year at its San Pablo casino.

One North Coast tribe failed in a bid to place a casino next to Oakland International Airport, and yet another is pursuing a proposal to build in Richmond.

Now a proposal is on the table for a casino south of Petaluma - at the same spot where a casino was proposed a dozen years ago - leapfrogging past a proposal for Rohnert Park.

With crowded tour buses rolling into Sonoma, Lake and Mendocino county casinos, tribes scouting for Bay Area locations see 7 million residents and none of the competition that already exists near home. But some call the practice "reservation shopping."

"It's what gives a bad name to Indian gaming," said Howard Dickstein, a lawyer who represents tribal interests. "It undermines the public support so essential to the long-term survival of this industry."

The 931-member Dry Creek Rancheria band of Pomo Indians already operates the River Rock Casino near Geyserville. Its state gaming compact allows it to open a second casino.

In the past two months the tribe has bought 265 acres between Highway 101 and the Petaluma River about a mile south of Petaluma, according to county records.

The land is valued at \$6.1 million on the property tax rolls.

A spokesman for the tribe, who wouldn't give his name for publication, said acquiring the land makes economic sense.

"I think any business likes being close to its customers," he said. "The tribe seeks no acrimony with any other tribe."

Though the business advantages may be obvious, experts say it won't be easy for the Dry Creek tribe to

obtain the necessary approvals to build a casino near Petaluma. There are a number of hurdles to clear: The tribe needs approval from the Secretary of the Interior for the land to go into federal trust, a process that includes justifying gaming on new land.

It also needs concurrence from Gov. Arnold Schwarzenegger, who last year proclaimed he would consider such proposals only if a local advisory vote were successful and the benefit was more than economic. It has to undergo federal environmental review.

“Proposals are a dime a dozen and investors are easily fooled,” Dickstein said. “They would have to show it’s a necessity for them to get this land for gaming. I don’t think it is, given they already have a successful casino.”

Karen Passalacqua, past president of a Geyserville group opposed to River Rock casino, said she thinks the Dry Creek tribe could benefit from the controversy alone.

If the backlash is strong enough, Congress could bar tribes from obtaining new land for gambling. That could eliminate the Graton Rancheria’s Rohnert Park proposal and leave River Rock as the North Bay casino closest to San Francisco.

“They would still have a monopoly up here,” Passalacqua said. Assemblyman Joe Nation, D-San Rafael, is proposing an amendment to the state Constitution to require county or city government approval and voter referendums for casinos on land acquired by tribes after January 2000.

“The problem is we’re seeing an explosion of reservation shopping (as tribes are) trying to get closer to urban areas,” he said. “We have to make sure elected officials and voters have the opportunity to vote “no” or to deny an attempt to reservation shop.”

On the federal level, a proposed amendment to a bill by Sen. John McCain, R-Ariz., and Rep. Richard Pombo, R-Tracy, would prohibit tribes from building off-reservation casinos if they aren’t already far along in the process.

In a letter dated Friday, Rep. Lynn Woolsey urged acting Interior Secretary Lynn Scarlett to reject the Dry Creek tribe’s application.

Approval “would give the green light to this most egregious type of reservation shopping, and encourage other tribes to do the same,” said Woolsey, D-Petaluma.

For its part, the tribe said it may not build a casino at all. Tribal officials say they are applying for trust status to build a casino, hotel or resort.

If the tribe seeks to build a hotel or resort, the process would be different and potentially not as difficult. But it would still need federal approval, Dickstein said.

The governor’s office said it hadn’t received a Petaluma proposal or taken a position.

Despite his objection to off-reservation casinos, Schwarzenegger did support a move by the Big Lagoon Rancheria in Humboldt County to locate a casino in Barstow, 700 miles away. In that case, he said Big Lagoon’s land is environmentally sensitive and shouldn’t be developed.

In the lone advisory vote to date, 84 percent of voters in Amador County rejected new casino development. Other votes are pending in Glenn and Colusa counties.

Despite having congressional authorization to take land into trust, the Federated Indians of the Graton Rancheria has yet to obtain final state and federal approval for a casino. Its environmental impact report is due later this year.

The Lytton Indians from Healdsburg also obtained congressional approval before taking over a San Pablo cardroom, but have been caught up in an ongoing battle over plans to convert it to a casino.

The bingo machines installed last year resemble slot machines, but operate differently. As a result, they don't fall into the same regulatory classification, which allowed the tribe to move ahead while the dispute over other gambling continues.

The Lyttons don't operate any other gambling facilities.

"There's no precedent in California, none whatsoever, for a tribe with no act of Congress to take land outside their historic area for a second casino," Dickstein said. "In my view it will never happen in the foreseeable future. The politics and law are going in the opposite direction."

But the Dry Creek Pomos are claiming the Petaluma land, and all land in Sonoma County, as ancestral right. "The way the Pomo lived, they roamed throughout the whole area," the tribal spokesman said. "There weren't specific rancherias, bridges or county lines or freeways. That's not how areas were determined historically. This has been historic Pomo land for 10,000 years."

That view is contested by the Coast Miwoks, who claim the same land. Dickstein doubts the Dry Creek claim will stand.

"Lake County tribes have been arguing with equal futility that the Bay Area is their historic territory, because they went to trade or traveled through there," Dickstein said.

# Ledger Dispatch

**OPINION - Letters to the Editor**

## **Buena Vista Rancheria mail-out not good neighborly**

Wednesday, May 10, 2006

On April 20, a special courier came into our place and delivered a certified mail that cost \$4.88. She had a large box filled with these envelopes for a great number of people.

It was from the Buena Vista Rancheria of Me-Wuk Indians that was a questionnaire about our personal water source. The questionnaire wanted to know the depth of our well, what depth does it draw from, how much water does it pump per minute, does the level change at different times of the year and had we ever run short of water during dry seasons?

Included was another form which they wanted us to sign - and send back giving them the right to obtain more information from the Department of Water Resources on our personal business.

We strongly feel that this is an invasion of our business. They have said that they want to be good neighbors, but good neighbors don't stick their nose into neighbors' business. No one wants this casino here and now they want to get information from us on our private lives.

The tribe is really stepping way over the line now. We have taken great offense to this.

Robert Gomez  
Ione

## My Kingdom for a Casino

Walter Olson

05.08.06

If you thought Jack Abramoff was suspect, look at the latest land claims filed by Indian tribes.

As everyone now knows, courtesy of Jack Abramoff, sleazy tactics abound in the fight over where and whether Indian tribes build casinos. Too bad more attention hasn't been paid to one of the worst abuses: tribes' filing of massive land-claim lawsuits against property owners, to be traded off in settlement in exchange for casino rights.

The new wave of Indian land litigation began in the Northeast but has now spread around the country. Claims by the Miami Indians spill over large portions of Illinois and Indiana. The Eastern Shawnee want 4 million mislaid acres in Ohio. New York's Onondaga, Oneida and Cayuga have claimed the land under such cities as Syracuse and Binghamton. In Colorado the Cheyenne-Arapaho managed to top that with a filing for 27 million acres including Denver. Near Allentown, Pa. the Delaware Indians failed in a bid for a tract that includes Binney & Smith's famed Crayola factory.

In virtually all these cases tribes have made clear that they would settle for a casino permit.

Occasionally one of these suits will make national news, typically when it impinges on a playground of media folks, as with last summer's claim by the Shinnecock to be the rightful owners of large tracts in the Hamptons. More often the claims drag on in obscurity--many of the upstate New York claims have been pending since the 1970s and 1980s--posing hardship to farm families and other innocents whose title to the land had rested undisturbed for 100 or even 200 years. While major disruptions to mortgage and title-insurance markets have been reported in extreme cases, many owners are convinced that the cloud on title plays a subtler role in scaring off potential buyers.

How could this have happened? Until lately Anglo-American law sought a careful balance between the goal of restoring wrongfully taken property to its rightful owners, on the one hand, and the equally valid goal of securing everyone's property against the danger that a claimant will show up some day to assert a speculative defect in title. Hence doctrines aimed at preventing old disputes from staying alive indefinitely: statutes of limitation, adverse possession, "acquiescence" in unchallenged political boundaries.

In a series of rulings over the past 30 years, however, the U.S. Supreme Court has decided that Indians are wholly different from other land claimants. Law professors have cheered: What cause is more romantic than that of dispossessed Indians? (Somehow owners of small farms in upstate New York never seem to merit the underdog label.) The rulings also constitute a stunning victory for a scrappy cadre of Legal Services lawyers; a few of these antiestablishment types have found themselves, over the arc of a career, gradually transmuted through their tribal connections into highly paid casino promoters, in a transformation worthy of a Balzac or Stendhal novel.

By now, with fortunes at stake, big law firms are lining up to help with the claim suits; among those that have assisted tribes are Philadelphia's Cozen O'Connor and New Jersey's Lowenstein Sandler. Far more disturbing is the role of the wealthy backers, including Rochester mall developer Thomas Wilmot and Detroit pizza magnate Marian Ilitch, who bankroll the would-be land grabs in exchange for a share of the resulting settlements or casino action. Financing others' litigation--"champerty"--was long illegal at common law, and you can kind of see why.

Congress, deeply entangled with Indian gambling money, isn't rushing to fix things. Last summer, in a stunning ruling of potentially broad significance, a panel of the Second Circuit Court of Appeals threw out the Cayugas' suit and suggested that the time had come to bring down the legal curtain on claims that tribes waited a century or more to press. So who's asking the Supreme Court to review and reverse that decision? The Bush Justice Department, that's who.

Before we lecture Venezuela or Russia yet again on the evils of a system in which property rights are a matter of whim, maybe we should clean up the mess we've made of them at home.

Walter Olson is a senior fellow at the Manhattan Institute. His books include *The Rule of Lawyers*.

# THE BUFFALO NEWS

Seneca Gaming Corp. has given contracts to companies led by Senecas in name only

By MICHAEL BEEBE  
News Staff Reporter  
5/4/2006

Seneca Indians serving as fronts for established construction and supply companies at the Seneca Nation's casinos have attracted the attention of FBI agents.

Seneca Gaming Corp.'s approval of multimillion-dollar contracts to joint venture companies led by Senecas in name only, as detailed by The Buffalo News, also has raised questions among Senecas living on the Cattaraugus and Allegany territories.

And awarding contracts to Seneca tribal leaders and relatives of Seneca officials also appears to violate ethical codes of the Seneca Nation and Seneca Gaming.

Robert Jones, a Seneca dissident who serves as co-chairman of Senecas for Justice and Preservation, said his group has been able to learn details from tribal and gaming officials about casino contracts.

"We want to know how contracts are awarded, and what, if any, is our Seneca law regarding corruption," Jones said.

While the FBI has not launched a formal investigation, the agency confirmed that agents are looking into the practice of Senecas serving as heads of companies over which they have little or no daily control.

"I can't talk about any case in particular," said FBI agent Paul Moskal, the spokesman for the Buffalo FBI office, "but we are aware of allegations that have been made, and where appropriate, we'll follow up on them."

"We'd be interested in hearing all bona fide allegations of impropriety," Moskal added, "so we can make a determination if a full FBI investigation is warranted or not, and ultimately turn the information over to the U.S. attorney's office."

Philip Pantano, a spokesman for Seneca Gaming Corp., said of the preference law, "This is a [Seneca] Nation law that we need to comply with and did so based on information that we received."

The News reported last week that among the Seneca joint venture companies getting contracts at both the Seneca Niagara Casino & Hotel and the Seneca Allegany Casino are several companies owned by Marie Williams.

Williams is the common-law wife of Scott Snyder, the son of Barry E. Snyder Sr., president of both the Seneca Nation and Seneca Gaming. And Scott Snyder and Williams have a daughter who is Barry Snyder's granddaughter.

The Seneca Gaming Corp.'s 16-page code of ethics warns its employees and officials against doing business with, among others, in-laws, children or life partners.

One of Marie Williams contracts, for a \$3.3 million job with Baring Industries for kitchen appliances at the \$250 million Niagara Casino & Hotel, leaves little doubt that Williams runs the joint venture in name only.

The contract, as detailed by The News, showed that Baring was responsible for the entire job, with William's role limited to attending meetings and "trouble shooting." Neither Williams nor Baring would comment.

A Seneca preference law authorizing the contracts - the Tribal Employment Rights Ordinance - gives cost advantages to Indian-owned or joint-venture companies with at least 51 percent Seneca ownership. The bid advantage ranges from 10 percent on contracts less than \$100,000 to one percent for those more than \$7 million.

But that 1993 law, set up to help Senecas eventually start their own companies, forbids the practice of companies seeking out Senecas purely to gain Indian business. The joint venture companies have to be at least 51 percent Indian-owned, and when they dissolve, the assets are to go to the Indian owners.

Barry Snyder, The News learned, sent a letter to the Seneca commission that oversees the preference law in March, saying he learned some of the companies may not meet the requirement of being Indian-owned.

"To continue to give preference to some non-Indian-owned vendors creates a violation of our internal control policies, which have been designed to prevent fraud and ensure financial integrity," Snyder wrote.

"We are not aware of the [Seneca] Nation's employee policies concerning potential conflicts of interest," wrote Snyder, who is in his third term as Seneca Nation president.

"However, our own corporate policies, specifically our Code of Business Conduct and Ethics," Snyder wrote in his other role as president of Seneca Gaming, "prohibit our employees from participating in a certified joint venture. . . ."

Until the commission could assure Seneca Gaming that those companies listed as Indian-owned are certified by the commission, Snyder wrote, "we must immediately stop giving any of these businesses preferential treatment until such time as the TERO commission certifies such businesses as "Indian-owned." "

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## Counting up what American Indians are owed

By JOHN HEILPRIN | Associated Press

May 7, 2006

LENEXA, Kan. -- Seventy feet beneath the prairie, the government is filling limestone caverns -- protected by guards and a bomb-sniffing dog -- with truckloads of American Indian financial and cultural records.

What is ground zero for an accounting that will take seven years and cost \$335 million owes its existence to a bitter class-action lawsuit brought against the Interior Department a decade ago. Still, it's only a short version of the historical accounting that Indians demanded but no longer want -- because they don't think it can be done properly.

The Indians say the government mismanaged a trust in their names for 120 years and now owes them tens of billions of dollars.

The dispute dates to 1887, when Congress made the Interior Department trustee for 145 million acres of Indian lands. Indians were supposed to benefit but the government gave most of the land to white settlers.

Today, Interior manages 10 million acres of trust land for individual Indians and 46 million acres for tribes. In 1996, the Indians sued to reconcile their historical accounts. They, and Congress, demanded an audit. The Indians may be owed a century's worth of grazing rents, oil and gas royalties and timber sales from the land, plus interest.

Both the Indians and the Interior Department agree \$13 billion was collected between 1909 and 2001.

The Indians had claimed the unpaid interest could be more than \$150 billion, but they've offered to drop the whole thing if the government coughs up \$27.5 billion. That money would be spread among individual Indian accountholders, about a fifth of the nation's 2.5 million Indians who live mainly in the West.

No way, the Bush administration replied: The government has been forwarding most of the rents and royalties to tribes and individual Indians all along.

"It could be just \$30 million that's owed to the Indians," said Ross Swimmer, the Interior Department's special trustee for American Indians and also a member of Oklahoma's Cherokee Nation.

During a tour of the Kansas cave, Swimmer and other Interior officials were eager to show that many more Indian records exist than people realize. They also wanted to demonstrate their ability to check the accuracy of financial transactions with Indians.

"They're finally going to get their accounting," Swimmer said. "For once we've gotten something right for the Indians."

In an irony befitting an Alice's Adventures in Wonderland legal war, the government is relying on the Indian-demanded accounting -- actually, it's a statistical sampling -- to come up with figures that Indians claim lowball what they're owed.

"It's a number in the m's, not the b's," said Fritz Scheuren, who oversees Interior's statistical sampling and was president of the American Statistical Association last year.

The Indian plaintiffs now say too many records have been destroyed to come up with an accurate figure. Before 1990, the Treasury Department routinely destroyed the Indian trust's canceled checks, and court documents attest to numerous destroyed trust records.

"The documents that the government has preserved are a fraction of those that have been lost and destroyed," said Dennis Gingold, an attorney for the suing Indians. "Massive hard copy and electronic destruction ... make the accounting legally and factually impossible."

The Indians' biggest ally is embattled U.S. District Judge Royce Lamberth, a former Reagan administration official whose strongly worded rulings condemn the Interior Department. After nine years presiding over the case, Lamberth concluded last July the agency is a "pathetic outpost" that has bungled its fiduciary duty.

"For those harboring hope that the stories of murder, dispossession, forced marches, assimilationist policy programs, and other incidents of cultural genocide against the Indians are merely the echoes of a horrible, bigoted government-past that has been sanitized by the good deeds of more recent history, this case serves as an appalling reminder of the evils that result when large numbers of the politically powerless are placed at the mercy of institutions engendered and controlled by a politically powerful few," the judge wrote.

Not surprisingly, the Interior Department wants Lamberth removed from the case and another judge assigned to it.

### **Semi-secretive facility**

Down the rabbit hole, tractor trailers disappear into an obscure grassy knoll just off the Prairie Star Parkway. Situated in an industrial park a half hour southwest of Kansas City, the cave offers few indications it houses a semi-secretive government facility.

Several minutes of driving through the dark, and the corridors get curiouser and curiouser. A faint dankness and dust fill the nostrils. Pocked walls climb into shadow. Painters have brightened them, like gardeners painting red roses white.

In dimly lit parking spaces, trucks disgorge box after box of documents to be cataloged, computerized and stashed away.

Two years and \$120 million into the accounting, the archive has amassed 140,000 boxes with 300 million pages of old leases, bills, ledgers, account statements, school records, maps, letters and black-and-white photographs.

In a space the size of Kansas City's Arrowhead Stadium and managed by the Interior Department and the National Archives, boxes extend close to the ceiling and down aisles so long they fade into the caverns -- reminiscent of the fate met by Indiana Jones' recovered ark.

“People come in and ask, ‘Where is the Lost Ark?’ “ said Jeffrey Zippin, deputy executive director of Interior’s Office of Historical Trust Accounting.

The shelves are coated with an electrostatically charged powder to resist corrosion or chemical action. The air within the painted cavern walls is kept at 60 degrees Fahrenheit and 40 percent humidity. High-efficiency air filters catch 99 percent of all microscopic particles.

The facility is leased for \$900,000 a month from Minneapolis-based Meritex Enterprises Inc. Its security and climate controls are matched only by the National Archives itself in Washington and an annex in College Park, Md.

The cavern teems with a small army of federal contractors -- five accounting firms and 15 other businesses -- assisting about a dozen Interior and National Archives employees. Thirty students at Haskell Indian Nations University, in nearby Lawrence, use the documents for training. It is closed to all but federal workers, contractors, Indian tribal representatives and researchers; privacy laws protect the names of living account-holders.

The boxes come from about 100 of Interior’s Bureau of Indian Affairs offices and National Archives’ record centers around the country. At a nondescript warehouse nearby, 100 workers sort through the boxes and log their contents into computers.

The records are an eclectic mix: 1943 photographs of Navajo women cooking; a handwritten appeal from a Great Plains Indian for compensation because some of his cattle died; and a 16-page list of Sioux Indians killed and wounded -- bearing ill-fated names like Black Moon, Sore Eyes Woman and Afraid of Left Hand -- on Dec. 29, 1890 at Wounded Knee.

Some boxes are tattered, faded or water-damaged. A few were decontaminated because of animal droppings.

### **Loss of trust**

Concerns about the how the trust accounts are managed are almost as old as the trust itself.

In 1915, the Joint Commission of Congress on Indian Funds warned of “fraud, corruption and institutional incompetence almost beyond the possibility of comprehension.” In 1928, the Interior Department found Indian trust data unreliable and almost useless. Dozens of other, scathing reports followed.

Finally, in 1994, Congress demanded Interior fulfill an obligation to account for money received and disbursed. A year later when account statements still hadn’t been reconciled, Elouise Cobell of the Blackfeet Indian tribe in Montana joined with the Boulder, Colo.-based Native American Rights Fund and others in filing suit.

So-called “fractionalization” of accounts is a major obstacle in managing the trust. As ownership of the 160-acre and smaller land parcels transferred from generation to generation, proceeds from the trust accounts had to be divided among more and more descendants. Interior officials say 90 percent of the transactions are for less than \$100.

“In every category it has cost us more to find the errors than the total amount of the errors we found,” said departing Interior Secretary Gale Norton. “When you consider that we have millions of transactions under \$1, you’re spending \$3,500 to find out if we handled \$1 correctly.”

Norton's plan for the accounting includes checking half the 57 million transactions and a quarter of the \$5 billion at stake between 1985 and 2000.

"We don't have every single record of every single transaction that has occurred since the 1800s. We certainly do have enough records to do a complete accounting," she said.

Accountants are examining nearly all financial transactions over \$100,000 in the 1985-2000 window. That represents \$276 million -- or about 5 percent of all the money at stake. Also being checked is nearly every payment an Indian tribe made to its members or resulted from a lawsuit or settlements. They total \$784 million -- or 16 percent of the transactions.

Another 4 percent of the money -- 19 million transactions, most for less than \$1 -- is considered interest. That represents \$177 million. All those transactions are checked, too.

For the other half of the transactions -- three-quarters of the \$5 billion at stake -- the department uses statistical sampling to check the accuracy. It's a method the Indians and Lamberth rejected, but a federal appeals court approved for use as a tool. The courts must sign off on any final accounting.

### **'Just pick a number'**

After 10 years of battling in court, no one knows exactly how much was collected or paid out to the Indians.

"The previous administration as well as ourselves tried in good faith to tackle this problem. It was a much larger undertaking than anyone imagined," Norton said. Early in her tenure, Norton half-joked about how she divided her time. "Indian trust, Indian trust and Indian trust," she told the AP.

Geoffrey Rempel, an accountant working for Indian plaintiffs, said the evidence is undisputed that trust records were destroyed over the past century, so there is no way Interior officials can claim to have enough of them for a proper accounting.

"All they're doing is matching bad documents to bad documents, showing you what they want you to see," he said. "People would be thrown in jail if they audited banks like this. This is completely unacceptable -- unless it's for the Indians."

Most people agree the only acceptable solution will come from Congress. Senate Indian Affairs Committee Chairman John McCain, R-Ariz., and House Resources Committee Chairman Richard Pombo, R-Calif., co-chaired a recent hearing to find the quickest and fairest way to end the dispute.

Experts urged them to study the legal arguments -- then arbitrarily pick a settlement figure.

Stuart Eizenstat, a former deputy treasury secretary in the Clinton administration, believes Congress should create an Indian claims settlement commission to process claims, similar to the reparations made after World War II.

"It would be a disaster to go back to court. It would just resign the Indians to another decade of fruitless litigation," he told The AP. "This cries out for an administrative, rough justice solution."

Eizenstat negotiated the historic agreement with Switzerland's two largest banks to pay Holocaust survivors

\$1.25 billion. He said Congress should pick a figure that errs on the side of overpay to handle both accounting claims and anticipated claims from Indians challenging how the government actually managed the lands.

“You presume that if the records weren’t there, it’s because of mismanagement,” he said. “If they themselves as trustees mishandled records, then they have to handle the burden.”

Even Swimmer, who wants Congress to give Interior some “clear direction on its responsibilities,” agrees with the concept of a big, somewhat arbitrary payout.

“Just pick a number,” he told The AP. “It’s reparations, not repayment.”

#### On the Web

Interior Department: [www.doi.gov/ost](http://www.doi.gov/ost)

Indian plaintiffs: [www.indiantrust.com](http://www.indiantrust.com)

Senate Indian Affairs: [indian.senate.gov/public](http://indian.senate.gov/public)



Dianne dial-up: Sen. Dianne Feinstein warned Tuesday that California may need a new statewide initiative to halt the proliferation of off-reservation gambling if tribes continue to find ways around current regulations.

“What people believed were small gaming establishments have grown into a syndicate of Las Vegas-style establishments with little oversight,” Feinstein said from her office in Washington, D.C.

In turn, she said, the lack of supervision has opened the door to corruption -- “skimming, fixing machines and the like.”

Feinstein’s comments come as tribes in California and elsewhere are rushing through a loophole that emerged in pending Senate legislation that would limit off-reservation gambling. Among the 37 tribes that have put in applications:

- The Karuk Tribe, which hopes to designate 34 acres in Siskiyou County for off-reservation gambling.
- The Manzanita Band of the Kumeyaay Nation, which wants 60 acres set aside in Imperial County, some 60 miles from its reservation.
- The Los Coyotes Band of Cahuilla and Cupeno Indians, the Big Lagoon Rancheria and the Chemehuevi Indian Tribe, all of which want to open casinos in Barstow.

The Senate legislation, sponsored by Arizona Republican John McCain and backed by Feinstein, would have limited off-reservation gambling to 13 tribes whose applications were in the pipeline several months ago. But by time the bill was approved in committee, the cutoff date had been pushed back, and more tribes had rushed in.

Feinstein said she may now back a move on the Senate floor to block the rush of new tribes.

But she also said it may be time for Californians -- who voted in 1998 and 2000 to allow gambling on tribal lands -- to go back to the ballot to make clear that tribal lands don’t refer to newly declared reservations.



## **Deal with tribes ‘gave away the store’**

BY JENNIFER DIXON  
FREE PRESS STAFF WRITER  
May 7, 2006

In 1993, then-Gov. John Engler and the chiefs of seven tribes reached an agreement allowing the tribes to run casinos legally in Michigan.

Engler presented the compacts as the best deal possible when he asked the Legislature for approval.

“When the word came to the Senate that this was as good as the governor could get, a lot of people felt that with Engler’s past as a daunting adversary, that brought with it a credence,” said Oakland County Sheriff Michael Bouchard, then a Republican state senator.

“I can’t say anyone was excited about it,” Bouchard said. “Among other things, we wanted random access to the books,” with no 48-hour notice, as the compacts allowed.

Despite their reluctance, lawmakers approved the deal, and four nearly identical compacts in 1998.

Engler, through a spokesman, declined comment.

The compacts essentially gave the tribes the right to regulate their own casinos. The state accepted a monitoring role. It could inspect casinos and gambling records but, if it found violations, could not fine or sanction the tribes. If the tribes refused to correct violations, the state could sue in federal court.

Engler’s office also negotiated a meager oversight budget for the state. The tribes pay \$25,000 to \$50,000 a year for the state to monitor their operations. By contrast, Detroit’s three casinos, all nontribal, paid the state \$9 million each last year for regulation.

As part of the deal, the tribes also promised to give 2% of slot machine profits to communities near casinos -- and 8% to the state as long as they had a monopoly to offer slots. Today, only one tribe currently pays the state.

Other states secured much better deals from tribal casinos -- getting more money for oversight and for taxpayers.

Art Miller, the Democratic Senate leader at the time, said in an interview this year that Michigan “gave away the store.”

“The casinos are the real winners,” said Miller, now a Lansing lobbyist. “They’re the ones that hit the jackpot.”



## **Governor reaches out to tribes**

**MENDING FENCES:** Inland tribal leaders get no promise of new pacts but see the meeting as a start.  
Wednesday, May 10, 2006

By **JIM MILLER** and **MICHELLE DeARMOND**  
The Press-Enterprise

Gov. Schwarzenegger met for the first time ever with Inland tribal leaders Wednesday, signifying a marked change in his approach to tribes he once accused of “ripping off” taxpayers and not paying their “fair share” into the state’s general fund.

Tribal leaders emerged from the nearly 80-minute private talk with cautious praise for the governor but with no promises of new agreements on gaming or other issues. Schwarzenegger told the tribes he wants to talk to them individually about renegotiating the pacts that allow them to operate casinos, which the tribes said they are willing to consider.

Mark Macarro, chairman of the Pechanga Band of Luiseño Indians, said the governor’s October 2004 comment about the tribes “ripping us off” came up, although Schwarzenegger didn’t actually apologize for that and other critical remarks he made during his gubernatorial campaign, budget talks and a 2004 ballot-measure battle.

“It would have been nice to hear something like that,” he said. “It was basically an acknowledgement that, in the heat of battle, people said stuff that people say in the heat of battle.”

A governor’s spokesman called the meeting positive.

“It moved the discussion forward and led to a better mutual understanding of each other’s positions and issues. The atmosphere was one of mutual respect, and the governor committed to continue working with them,” spokesman Darrel Ng said.

The governor previously argued that California gaming tribes were not giving the state enough of their casino profits and needed to do more to help with its money troubles. His change in tone follows voters’ resounding rejection of Schwarzenegger-backed propositions in the special election he called last year, and it comes as he gears up for his November re-election bid.

### **Tense Relations**

Inland tribes’ relationships with Schwarzenegger have been tense since he launched his first campaign in the 2003 recall of Gov. Gray Davis and made extracting money from gaming tribes a plank in his platform.

Several Southern California tribes, which typically are some of the state's most-generous campaign contributors, poured money into Lt. Gov. Cruz Bustamante's failed bid for governor that year. Many have publicly criticized Schwarzenegger's actions as governor, including his decision to hire numerous members of former Gov. Pete Wilson's administration and his initial plan to get \$500 million from tribes during his first fiscal year in office.

In fall 2004, the governor and Inland tribes clashed over Prop. 70, which voters defeated. The proposal, bankrolled by a trio of Inland tribes with casinos, would have lifted limits on slot machines in return for tribes paying the state the equivalent of the corporate income tax, 8.84 percent.

The tribes and the governor, meanwhile, have been unable to agree on how to renegotiate the state gaming agreements, known as compacts.

In 2004, several Inland tribes collectively offered to pay the state \$1 billion and 10 percent of their slot-machine revenue in exchange for licenses that would allow them to operate more slot machines.

The deal was rejected by Schwarzenegger's negotiators, who wanted concessions on nonmonetary issues, such as giving local governments more say over tribal casinos and making it easier for unions to organize casino workers. Other tribes, including some in San Diego County, agreed to the concessions, but tribes in Riverside and San Bernardino counties did not.

There was no indication Wednesday that Schwarzenegger will change his position on those nonmonetary issues.

"It was a long overdue meeting," Macarro said. "It sends some encouraging signals. We'll wait and see. If the governor is interested in pursuing negotiations beyond this, we'll evaluate it."

### **Points With Voters**

One political analyst said Schwarzenegger could earn points with voters if he's able to reach new deals with tribes that will pump more money into the state's coffers.

"My sense is, as long as they offer him some good money to help balance the budget and relieve the deficit, even in the face of increased tax revenues, he will listen. He really needs to get done what he promised to get done, which is to lower the deficit," said analyst Sherry Bebitch Jeffe. "He's responding smartly by reaching out."

Tribes may be inclined to sit out this year's governor's race if they see things they like from Schwarzenegger, said Michael Lombardi, gaming commissioner for the Augustine Band of Mission Indians, near Coachella, and a longtime figure in the Southern California Indian gaming market. He was not at the meeting with the governor.

A decision not to get involved could help the governor's re-election bid by reducing the amount of campaign money available to his Democratic opponent, Bebitch Jeffe said.

Tribal leaders took advantage of Wednesday's meeting to vent their concerns, tout tribes' community involvement and to invite the governor to visit their reservations, said Henry Duro, chairman of the San Manuel Band of Mission Indians.

“What really came across was the uniqueness of all tribes and that it just isn’t one fit for all,” Duro said.

Tribal leaders who attended the meeting said they did not talk in specific about their gaming compacts, but political insiders consider the meet-and-greet event the first step toward restarting negotiations.

“It’s essential; it would not happen without this meeting,” Lombardi said. “They probably are going to find a way to work together. At the very least, they’re talking to each other, not yelling at each other.”

Maurice Lyons, chairman of the Morongo Band of Mission Indians, described the meeting as productive.

“We are ready to move forward,” said Lyons, whose tribe would like more slot machines for its new resort casino near Cabazon. “The next step is the governor’s, and we will wait for his office to contact us.”

“It’s a new day,” Lynn Valbuena, chairwoman of the Tribal Alliance of Sovereign Indian Nations, said upon leaving the meeting. “I know that a lot of tribal leaders walked out of the room thinking it was good we were here today, but we’ll have to wait and see.”



# The Columbian

## Casino proposals come fast, furious

Thursday, May 4, 2006

By JEFFREY MIZE, Columbian staff writer

A list of pending Indian casino proposals circulated Wednesday raises the possibility that the Klamath Tribes of southern Oregon will seek to build a casino in Aurora, Ore., some 20 miles south of Portland.

Federal officials have been deluged with Indian casino applications in response to a bill sponsored by Sen. John McCain, R-Ariz., that would shut the door on off-reservation gambling.

Nineteen tribes, including the Colville, Muckleshoot and Spokane tribes here in Washington, submitted applications last month before the April 15 cutoff date in McCain's legislation.

Federal officials could not be reached Wednesday to verify the list of 52 pending applications, some of which date back several years.

The Klamath, which already operate a small casino in Chiloquin north of Klamath Falls, Ore., could be the latest tribe trying to get a toehold in the lucrative Portland-Vancouver market.

The Cowlitz Tribe wants to build a \$510 million casino complex near La Center. The Confederated Tribes of Warm Springs applied last year to build an off-reservation casino in Cascade Locks, Ore.

The list indicates the Klamath have applied for a casino on a 153-acre site in Clackamas County.

Taylor David, a Klamath tribal spokeswoman, said she wasn't aware of the application but would check with other officials.

Chuck Cushman, a Battle Ground-area resident opposed to the Cowlitz Tribe's project, distributed the list of pending applications Wednesday afternoon. Cushman declined to say where he got his information, except to joke that it came from the "Midnight Document Supply."

Len Bergstein, a Portland consultant working for the Warm Springs, said he has reviewed the same list.

The list indicates 19 applications were submitted after the Senate Indian Affairs Committee's March 29 vote to approve McCain's bill. The legislation was partially prompted by tribes seeking more lucrative locations for casinos, a trend some have dubbed "reservation shopping."

About half of the 19 applications are for off-reservation casinos.

Bergstein said he has no doubts the April 15 cutoff date triggered a flood of last-minute applications.

“Clearly, McCain meant to send a signal out that the door is going to close,” he said. “And people wanted to be on the right side of the door.”

Bergstein and other observers said McCain mentioned that the April 15 date could be rolled back if it triggers a flood of applications. The full Senate has yet to vote on McCain’s legislation.

The list circulated Wednesday contained no date for when the Klamath submitted their application.

Bergstein said his clients wouldn’t be particularly worried if the Klamath receive approval for a casino close to the Portland-Vancouver area.

“I don’t think there’s anything in terms of their application that would affect us one way or another,” he said. “We’ve run the numbers with a potential Cowlitz facility. We understand what the market would be if there were a couple of casinos in the metropolitan area.”

David Barnett, a Cowlitz tribal member who is spearheading the La Center project, said the Klamath’s application is “the kind of thing that the Senate Indian Affairs Committee is trying to prevent.”

“It’s very interesting,” he said. “But I think they would have a long ways to go, especially since they already have an operating casino and a reservation a long, long ways from that property.”

The Cowlitz aren’t seeking to build an off-reservation casino. Instead, the landless tribe is asking the federal government to designate 152 acres along the west side of Interstate 5 as its initial reservation, a decision that would allow it to build a 134,150-square-foot casino.

The Warm Springs already operate the Kah-Nee-Ta High Desert Resort & Casino in central Oregon, but the tribe proposes to close that gambling center and open a 500,000-square-foot casino complex in Cascade Locks that would attract 3 million visitors a year.

The Cascade Locks proposal, which enjoys the backing of Oregon Gov. Ted Kulongoski, has drawn heated opposition from the Confederated Tribes of Grand Ronde, owner of Spirit Mountain Casino.

The Grand Ronde are bankrolling an advertising campaign that includes TV commercials attacking and praising Oregon gubernatorial candidates for their positions on the Warm Springs’ project.