AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

S. HRG. 109–18

LYTTON RANCHERIA OF CALIFORNIA

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

ON

S. 113

TO MODIFY THE DATE AS OF WHICH CERTAIN TRIBAL LAND OF THE LYTTON RANCHERIA OF CALIFORNIA IS DEEMED TO BE HELD IN TRUST

APRIL 5, 2005
WASHINGTON, DC

U.S. GOVERNMENT PRINTING OFFICE

★ **(Star Print)** 21–799 PDF WASHINGTON : 2005

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON INDIAN AFFAIRS

JOHN McCAIN, Arizona, *Chairman*
BYRON L. DORGAN, North Dakota, *Vice Chairman*

PETE V. DOMENICI, New Mexico
CRAIG THOMAS, Wyoming
GORDON SMITH, Oregon
LISA MURKOWSKI, Alaska
MICHAEL D. CRAPO, Idaho
RICHARD BURR, North Carolina
TOM COBURN, M.D., Oklahoma

DANIEL K. INOUYE, Hawaii
KENT CONRAD, North Dakota
DANIEL K. AKAKA, Hawaii
TIM JOHNSON, South Dakota
MARIA CANTWELL, Washington

JEANNE BUMPUS, *Majority Staff Director*
SARA G. GARLAND, *Minority Staff Director*

CONTENTS

	Page
S. 113, text of	2
Statements:	
Arner, Rock, city manager, city of San Pablo, San Pablo, CA	14
Brown, Sharon J., council member, city of San Pablo, San Pablo, CA	14
Dorgan, Hon. Byron L., U.S. Senator from North Dakota, vice chairman, Committee on Indian Affairs	3
Feinstein, Dianne, U.S. Senator from California	4
Hancock, Loni, assembly member, 14th Assembly District, Sacramento, CA	19
Inouye, Hon. Daniel K., U.S. Senator from Hawaii	4
Macarro, Mark, chairman, Pechanga Band of Luiseno Indians	21
McCain, Hon. John, U.S. Senator from Arizona, chairman, Committee on Indian Affairs	1
Mejia, Margie, chairperson, Lytton Rancheria, Santa Rosa, CA	17
Miller, Hon. George, U.S. Representative from California	7
Skibine, George T., acting deputy assistant secretary for policy and economic development for Indian affairs, Department of the Interior	11

APPENDIX

Prepared statements:	
Brown, Sharon J. (with attachment)	37
Hancock, Loni	30
Macarro, Mark	31
Mejia, Margie	32
Miller, Hon. George, U.S. Representative from California	27
Sammut, Dennis J., president, Artichoke Joe's Casino, San Bruno, CA	48
Skibine, George T.	35
Additional material submitted for the record:	
Brown, Harold C., president, Marin County, CA, Board of Supervisors, letter	59
Gambling on Tribal Lands, Legislative Constitutional Admendment, Text of Proposition 1A	60
Lyons, Maurice, chairman, Tribal Council, Morongo Band of Mission Indians, letter	70
Uilkema, Gayle B., chair, Board of Supervisors, Contra Costa County, CA, letter with resolution	72

LYTTON RANCHERIA OF CALIFORNIA

TUESDAY, APRIL 5, 2005

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,

Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m. in room 562, Senate Dirksen Building, Hon. John McCain (chairman of the committee) presiding.

Present: Senators McCain, Dorgan, Inouye, and Thomas.

STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. Good morning. This morning, we will hear testimony supporting and opposing S. 113, a bill introduced by Senator Feinstein to remove language from the Omnibus Indian Advancement Act that benefited the Lytton Rancheria of California.

[Text of S. 113 follows:]

II

109TH CONGRESS
1ST SESSION

S. 113

To modify the date as of which certain tribal land of the Lytton Rancheria of California is deemed to be held in trust.

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2005

Mrs. FEINSTEIN introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

A BILL

To modify the date as of which certain tribal land of the Lytton Rancheria of California is deemed to be held in trust.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LYTTON RANCHERIA OF CALIFORNIA.

Section 819 of the Omnibus Indian Advancement Act (114 Stat. 2919) is amended by striking the last sentence.

○

The CHAIRMAN. This language had the effect of making certain property in the San Francisco Bay Area immediately eligible for gaming pursuant to the Indian Gaming Regulatory Act without going through the normal processes required under that act.

I have said before that I have concerns with the manner in which the Lytton's off-reservation casino was authorized. The question before us now, however, is what to do about it. The Lytton Band of Pomo declared just last month that it is no longer seeking legislative ratification of the gaming compact and so the prospect of a class III casino with thousands of slot machines is not imminent.

Nevertheless, the issue, as we will hear today, is still controversial. I look forward to hearing from all of our witnesses. It has been my practice for many years that when a member of the Senate requests a hearing on an issue that I have tried to accommodate those wishes. Even after the Lytton Rancheria changed their plans, I asked Senator Feinstein if she wanted to still proceed with the hearing. She said she did so, so therefore we are going to have this hearing today.

This will not be the last hearing in this committee of the issue of taking land into trust for purposes of gaming. I note the presence of my friend, Senator Inouye, with whom I worked on the Indian Gaming Regulatory Act. I think he would agree that never in our wildest dreams at the time of the formulation of that legislation did we envision that Indian gaming would become the $19 billion a year enterprise that it is today. It is long overdue time to review the impact and implications of the Indian Gaming Regulatory Act from a broad variety of aspects, not just that of taking land into trust for gambling purposes, but whether there is sufficient oversight of Indian gaming and whether there needs to be better enforcement of existing law.

I thank Senator Feinstein and my old friend from the House of Representatives, Congressman George Miller, if he would come forward. I will recognize Senator Dorgan and then Senator Thomas and then Senator Inouye.

Senator Dorgan.

STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator DORGAN. Mr. Chairman, thank you very much. Let me again say I appreciate your holding this hearing. This is a hearing that is being held at the request of Senator Feinstein on her bill, S. 113, the Lytton Gaming Compliance Act, a bill that would require the Lytton Band to utilize the land into trust process established by the Department of the Interior before gaming could be conducted on the land.

I think it is important to point out that this hearing is only about the Lytton Band legislation. It is not intended to be a general discussion about the policy of off-reservation gaming. I say that because while I think a discussion of that issue is important and we likely will have that type of discussion in other hearings, it will require much more input and much broader representation than we have called for at this hearing.

Again, I welcome our colleagues, Senator Feinstein, and my colleague from my days in the House, Congressman Miller.

The CHAIRMAN. Senator Thomas.

Senator THOMAS. Thank you, Mr. Chairman. I have no questions.

The CHAIRMAN. I hope you get better soon. [Laughter.]

The CHAIRMAN. Senator Inouye.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

Senator INOUYE. Thank you very much, Mr. Chairman, and welcome to the committee, Senator Feinstein and Congressman Miller. I believe it is important that we understand the historical background of the bill that we address today.

For nearly 30 years from 1962–91, the Lytton Rancheria was terminated from its federally recognized status. As part of its effort to regain that status, litigation was initiated by the tribe. The county of Sonoma intervened in that lawsuit and as a condition of the county's consent to a forthcoming settlement of the legal action, certain conditions were imposed which precluded the tribe from initiating economic development activities on the tribe's traditional lands.

Thus, from the outset of the restoration of the tribe's federally recognized status, the tribe was forced to look to other areas for the development of the tribe's economy. In 2000, Representative George Miller proposed an amendment to the Omnibus Indian Advancement Act of that year, which identified lands to be taken into trust for the Lytton Band and deemed those lands to have been taken into trust prior to October 17, 1988, the date of the enactment of the Indian Gaming Regulatory Act.

The bill, as amended by the House on October 26, 2000, came back to the Senate, where it was pending on the Senate calendar until December 11, 2000, when the bill was taken up and passed by the Senate. In those 45 days in which the amended bill was pending in the Senate, the customary protocol was followed to assure that the amendment was agreed to not only by the offices of the California Senators, but that the amendment was acceptable to other Senators prior to action on the bill in the Senate.

Legislative history is clearly documented in the records of the Senate for all to examine.

Accordingly, I would hope that when this measure is addressed that we take into consideration these critical aspects of the legislative history that led to enactment of the amendment to the Omnibus Indian Advancement Act of 2000, including a subsequent amendment to the Act which provides that the Lytton Band must comply with all aspects of the Indian Gaming Regulatory Act in the conduct of any gaming activities on the tribe's lands.

I thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, sir.

Welcome, Senator Feinstein.

STATEMENT OF DIANNE FEINSTEIN, U.S. SENATOR FROM CALIFORNIA

Senator FEINSTEIN. Thank you very much, Senator McCain, Senator Dorgan, Senator Inouye, Senator Thomas. I very much appre-

ciate this hearing. I introduced this bill, as you know, in the last Congress and in this Congress as well. I would be hopeful that you can give it consideration and that we can get it passed.

This bill is the Lytton Gaming Compliance Act, S. 113. It has one simple purpose, to ensure that the Lytton Tribe follows the regular process set out under the Indian Gaming Regulatory Act for gaming on newly acquired lands. This legislation strikes a provision inserted into the Omnibus Indian Advancement Act of 2000. That provision mandated the Secretary of the Interior to take a card club and adjacent parking lot in the San Francisco Bay Area into trust for the Lytton Tribe as their reservation and backdate that acquisition to October 17, 1988, or pre-IGRA.

This backdating was done expressly with the purpose of allowing the Lytton Tribe to circumvent IGRA's two-part determination process, an important step that requires both secretarial and gubernatorial approval, along with consultation with nearby tribes and the local community. The legislation that I have introduced would simply return the Lytton Tribe to the same status as all other tribes seeking to game on newly acquired lands.

I also want to emphasize what the bill will not do. It would not remove the tribe's recognition status. It would not alter the trust status of the new reservation nor would it take away the tribe's ability to conduct gaming through the normal IGRA process. Section 20 of the Indian Gaming Regulatory Act has clear guidelines for addressing the issue of gaming on so-called newly acquired lands, or lands that have been taken into trust since IGRA's enactment in 1988.

Most importantly, in my opinion, IGRA includes a process called the two-part determination, which provides for both Federal and State approval, while protecting the rights of nearby tribes and local communities. Circumventing this process creates a variety of serious and critical multi-jurisdictional issues, issues which can negatively affect the lives of ordinary citizens and deprive local and tribal governments of their ability to effectively represent their communities.

Nevertheless, I think we need to be honest about the real reason we have seen a proliferation of cases like the Lytton with an increasing number of tribes attempting to open casinos outside of traditional Indian lands. Attempts at off-reservation gaming and the practice of reservation shopping have increased dramatically in California over the past 5 years.

It is now estimated that there may be over 20 proposals to game outside of tribal lands in California. I have watched as out-of-State gaming developers have sought out tribes offering to assist them in developing casinos near lucrative sites in urban areas, and along central transit routes far from any nexus to their historic land. Today in the San Francisco Bay Area alone, there are at least five such proposals.

Let's go back to proposition 1A. Off-reservation gaming was clearly not what the people of California voted for when they overwhelmingly passed proposition 1A in March 2000 to allow tribes in my State to engage in Nevada-style gaming on tribal lands. Not only did the proposition language clearly state that gaming would

take place on Indian or tribal lands, but this claim permeated the entire campaign in support of Indian gaming.

Let me give you a few examples. Let me read from the argument in favor of proposition 1A.

We are asking you to vote yes on 1A so we can keep the gaming we have on our reservations. We thank you for your past support and need your help now to protect Indian self-reliance once and for all.

It goes on.

So 1A has been put on the March ballot to resolve this technicality and establish clearly that Indian gaming on tribal lands is legal in California.

Then it goes on to describe 1A as a simple constitutional measure that allows Indian gaming in California.

It protects Indian self-reliance by finally providing clear legal authority for Indian tribes to conduct specific gaming activities on tribal lands.

It goes on this way. I would like to submit for the record proposition 1A, the arguments both pro and con that appeared on the ballot, if I might.

The CHAIRMAN. Without objection.

[Referenced documents appears in appendix.]

Senator FEINSTEIN. Mr. Chairman, in conclusion, without this bill, the Lytton will be able to take a former card club and adjacent parking lot as their reservation and turn it into a large gambling complex outside of the regulations set up by the Indian Gaming Regulatory Act.

Let me make very clear, I oppose off-reservation gaming in California. This is not what the people voted for in the year 2000. It is a perversion of that legislation and it should not happen without another initiative that specifically approves it.

Even though the tribe recently announced that it was temporarily dropping its pursuit of a casino, it could reverse these plans at any time and proceed with both class II and class III gaming without first going through the regular process. Allowing this to happen would set a dangerous precedent, not only for California, but every State where tribal gaming is permitted. I do not think it is asking too much to require that the Lytton be subject to the regulatory and approval processes applicable to all other tribes by the Indian Gaming Regulatory Act.

I thank the committee for allowing me this opportunity, and would hopefully ask for your support so that this bill could go to the floor.

Thank you very much, Mr. Chairman.

[Prepared statement of Senator Feinstein appears in appendix.]

The CHAIRMAN. Thank you very much, Senator Feinstein.

We are pleased to welcome our old friend George Miller.

Senator FEINSTEIN. May I be excused? We have the Patriot Act in Judiciary.

The CHAIRMAN. Yes, ma'am.

Senator FEINSTEIN. I appreciate it. Thank you very much.

The CHAIRMAN. I think you answered the only question that I had, and that was that since the Lytton Band has changed their proposal that that does not change your commitment to this legislation.

Senator FEINSTEIN. No; the Governor visited with me not too long ago. He felt he had the votes for the compact. I understand there are not the votes for the compact. Nonetheless, should the situation change, it could move ahead and again, it would be obfuscating the process and I believe the process ought to be carried out for each and every tribe on a regular basis.

The CHAIRMAN. Thank you very much.

Welcome, George.

STATEMENT OF HON. GEORGE MILLER, U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. MILLER. Thank you, Mr. Chairman and members of the committee. Thank you for your time this morning. I appreciate the opportunity to testify.

Senator Feinstein, it was a pleasure to be with you. We do not agree on this issue, but we have worked on a number of other issues with respect to our State.

I would like to submit my written statement for the record.

The CHAIRMAN. Without objection.

Mr. MILLER. I would also like to recognize several constituents and local representatives who will testify here. Assemblywoman Loni Hancock represents part of this area with me in her district. She is a strong advocate for our community. Mayor Sharon Brown and City Manager Brock Arner of the city of San Pablo are here. They are working very hard to stimulate economic development in the city. I appreciate their efforts on behalf of the residents of San Pablo.

Today's hearing concerns the Lytton Band of Pomo Indians in the city of San Pablo in my district and their effort to work together to meet mutual goals of desperately needed economic development. I support these efforts.

My involvement with this matter dates back to 1999 and 2000 when I was approached by the city to discuss the interests in working with the Lytton Band to help them acquire an existing card room in San Pablo for the purposes of renovating it and building a modest-sized casino. The tribe made a good-faith effort to work through the Department of the Interior to win the right to acquire this land for the purposes of gaming under the Indian Gaming Regulatory Act, but due to special circumstances affecting the tribe, it is my understanding the tribe was told by the department that they would be turned down.

After much discussion and detailed review of the circumstances, I agreed to help the city and the tribe. I supported their project for several reasons. The local community, including the police department, supported the project. The city stood to make significant economic development gains from the project. The tribe had a clear need and a legitimate right to pursue lands for the purposes of economic development and made a good-faith effort to work through the Department of Interior to do so. I have a longstanding history of supporting the sovereign rights of Indian tribes.

The issue of whether or not American Indians should be involved in gaming is not an issue here. There are opponents of gaming for many reasons, some personal, some moral, some simply competitive. Of course, there are many proponents of gaming. There are

card rooms throughout the Bay Area and extensive lottery programs, race tracks and the California constitution allows Indian gaming. Personally, I am neither a proponent or opponent of gaming per se. I am, however, a strong defender of the economic development of Indian sovereignty.

As you will hear in greater detail today from the Lytton's Chairperson Margie Mejia, the Lytton Band was wrongfully terminated in the 1960's. A Federal court restored the tribal status in 1991. The Lyttons are poor people, many of whom are homeless. The tribe is concerned about preserving its tribal heritage and providing economic means for its members. The city of San Pablo and the Lyttons share much in common. San Pablo is one of the poorest cities in the Bay Area. It is a small city with little economic activity. It has a poverty rate of 18 percent, twice that of the entire Bay Area and more than twice of that of the county in which it resides. Its unemployment rate is higher than that of the Bay Area and the county and more than 90 percent of the city's residents work outside the city because there are not enough jobs created within the city.

The key question before this committee is whether it was appropriate for Congress to have passed section 819 of the Omnibus Indian Advancement Act in 2000 on behalf of the Lytton Band. It believe that it was appropriate and that the provision should stand as written.

As you know, the U.S. Constitution gives Congress plenary authority over Indian tribes that pass laws for their benefit. Congress is fully within its rights to pass the legislation directing the Secretary to place lands into trust for particular tribes and does so on a regular basis. In just the last 108th Congress, at least 10 bills became law, placed lands into trust for various reasons for various benefits to Indian tribes.

This may happen for any number of reasons Congress determines is prudent. It may be part of a settlement agreement of land claims. For instance, in the Pechanga Indian Tribe that is scheduled to testify later today, the desire was to protect certain important lands from possible desecration. In the last Congress, we even took lands out of a national park and placed it into trust for one tribe. In the Gila River water settlement law, we were required to act in Congress to concur to bring lands into trust for the tribe.

In most cases, including the ones I mentioned here, the tribe attempts to go through the BIA process, becomes frustrated for one reason or another, and comes to Congress to plead its case. In fact, the highly touted bill with the Lytton provision also included 14 other provisions to take lands into trust for Indian tribes, including one provision that held the land to be considered in trust as of 1909.

The Lyttons have a special circumstance that I believe distinguishes them from most other tribes in California that necessitated congressional action. In 1991, the Federal court settlement that restored the Lyttons tribal status and that of numerous other California tribes included one unusual provision pertaining only to Lyttons. The court order restoring Lytton's tribal status contained the unique limitation that precluded the Secretary of the Interior from taking lands in Sonoma County, the Lyttons ancestral lands,

into trust for the benefit of the Lytton Band for any use inconsistent with the Sonoma County general plan. In effect, the limitation denied the Lyttons any rights to use their ancestral land for gaming.

The order, however, did not put any restrictions on the ability of Lyttons to pursue other lands to be taken into trust for them for gaming or other activities. The limitation created a special circumstance when the Lyttons appealed to the Department of the Interior for the exception of the Indian Gaming Regulatory Act. I think it is fairly clear that under any ordinary circumstances they would have qualified for exception number four, lands that are taken into trust for part of a restoration of lands for Indian tribes that is restored to Federal recognition, but that was not so because of the prohibition on the Sonoma County general plan.

The lands that the tribe sought were not their ancestral lands, nor contiguous to their ancestral lands. It is my understanding that the BIA denied the tribe the exception under IGRA because of the lands issue, and yet as I explained, the court settlement forbade the tribes from using their ancestral lands.

The Lyttons are the only tribe in California, perhaps the only tribe in the United States, that as a condition of restoration of tribal status, was expressly deprived the opportunity to exercise rights under the Indian Gaming Regulatory Act on its ancestral lands. I do not believe that the existing law anticipated the unusual circumstances, and therefore Congress, which has the authority to intervene on these matters, appropriately remedied this situation.

This is what the issue boils down to. Through no fault of their own, the Lytton Tribe was illegally stripped of their status as a federally recognized Indian tribe and denied their rights for decade until it was restored to its proper status by our judicial system. Had the tribe never been illegally terminated, there would have been no question of the Lyttons ability to operate gaming within their ancestral area.

I thought that the BIA would except the land under the IGRA exceptions for restored tribes, but when I was told it would not, I believe that was a mistake, and even then Assistant Secretary for Indian Affairs Kevin Gover was quoted at the time about the denial of the Lyttons request, saying it was a "close call and a good case could be made that we were wrong," Grover said.

Every tribe's situation is different and must be evaluated individually. That was what was done in this legislation. But I believed then and continue to believe now that it was the fair and right thing to do in this particular case to make the Lytton Band whole again. Not only do I believe that it was appropriate for Congress to have acted with the tribe's behalf, I want to be clear that the manner in which Congress approved this legislation was entirely appropriate.

My provision regarding the Lytton Band was added, along with numerous other tribal issues, as an amendment to H.R. 5528, the Omnibus Indian Advancement Act in the full House. All of the provisions added were done so with the support of the leadership of both the House Resources Committee and this committee as a way to move legislation that for one reason or another had not passed.

To make it clear this was a compilation of bills, the omnibus title was given to the bill. This is the most appropriate way to move legislation near the end of Congress that had been bottled up. The bill passed the full House on October 26, 2000. H.R. 5528 was referred to the Senate Committee on Indian Affairs and passed by the Senate by unanimous consent on December 11, 45 days after its referral to the Senate and being sent to both respective cloak rooms for reviewing and Senate notification.

Section 819 was identified by the heading Lands taken into trust, and at all times contained the names of the tribes and the location of the land. Any Senator who questioned or objected to any provision had the opportunity to review the provision, to withhold consent. Under the unanimous consent procedure, no Senator did. Under the provision, Lytton is subject to all of the provisions of IGRA including the requirement of California law that any compact negotiated between the State of California and the Lytton Band is ratified by the California legislature. A compact was signed in August of 2004 by the Governor and the tribal chair, but has not yet been ratified by the legislature.

I am on record as opposing the size of this first proposed compact between the State and the tribe and the revised proposed contract. I hope that any final resolution of this compact will adhere to the proposal originally presented to me by the tribe and the city. That proposal called for a modest casino within the parameters of what already exists at the card room, not a mega-casino that is now under consideration. I think this is important for this committee to understand. This was not a controversial action when it was considered for a modest casino, with strong support in the community for this economic development.

When it got into the compacting arrangements with California's deficit problem, this compact became the object of those who wanted to solve the deficit problem on the backs of the compacts. So what was proposed as a modest 1,000-slot machine casino now became a 5,000-slot machine casino, larger than the MGM Grand in Las Vegas.

I have rejected that. The legislature cut it down to 2,500. I still believe that that is too extensive. I do, however, believe the Lyttons are still entitled to have a casino on what is now their reservation land. I think it is important. Loni Hancock, our representative in the State legislature, can address the question of where this is in the legislature at this time.

It should be noted, however, that the Lytton Band from the very beginning went to unprecedented lengths to consult with the local community and the State of California to forge an agreement with regard to mitigating potential impacts of the new casino and sharing the benefits of the casino with the community, but the issue of the compact details is a separate matter.

The issue today is whether or not the tribe has the right to these lands and whether Congress acted appropriately in conveying the lands to the tribe. In both instances, I think the answer is clearly yes. I do not believe that Congress is justified in taking away the Lyttons rights that Congress gave. Doing so would be a significant breach of trust between Congress and the Indians, a trust that has been broken so often in our Nation's history. It would also greatly

undermine the economic development opportunity for an impoverished tribe and an impoverished California city. I believe that S. 113 is unwarranted and harmful. More importantly, I believe that it would be a dangerous precedent.

Governor Schwarzenegger expressed a similar view when he wrote to Senator Feinstein on September 20, 2004 about her legislation, that, quote, "this bill would set a dangerous precedent that could damage the trust and faith with the Lytton Rancheria Indian Community." He added, quote, "passage of this bill will destroy the trust which has been built up with the Lyttons and other tribal governments not just in California, but throughout the Nation."

Indian gaming in California is clearly a complicated matter and there are many aspects of the issue to resolve, but using the power of Congress to take punitive action against the Lytton Band is neither justified nor appropriate.

Thank you, Mr. Chairman, for your time and the consideration of the members of your committee, and my opportunity to testify here today on this matter.

I would be happy to answer any questions that you may have.

[Prepared statement of Representative Miller appears in appendix.]

The CHAIRMAN. A 1,000-slot machine casino is a modest gaming operation?

Mr. MILLER. In the context of where California was, where Indian gaming was at that time, yes, that was about what was taking place in other sites in the State. It is a big State.

The CHAIRMAN. A 1,000-slot machines is a lot of slot machines.

Senator Dorgan.

Senator DORGAN. Mr. Chairman, I have no specific questions of Congressman Miller. I have read the statements on both sides and I think I would like to hear from the other witnesses. I appreciate your statement, Congressman Miller.

Mr. MILLER. Thank you.

Senator DORGAN. You have in great detail laid out your position and why legislative action previously was taken and also that you believe any further legislative action at this point would be punitive. So let us hear from the other witnesses today.

The CHAIRMAN. Thank you very much, Congressman Miller. We appreciate your coming over today.

Mr. MILLER. Thank you.

The CHAIRMAN. Thank you very much.

Mr. George Skibine, who is the acting deputy assistant secretary for policy and economic development for Indian affairs at the Department of the Interior. As always, your complete statement will be made part of the record.

STATEMENT OF GEORGE T. SKIBINE, ACTING DEPUTY ASSISTANT SECRETARY FOR POLICY AND ECONOMIC DEVELOPMENT FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. SKIBINE. Thank you, Mr. Chairman, Mr. Vice Chairman. I am very pleased to be here to represent the Department of the Interior's views on S. 113.

My statement will be made part of the record. It is a fairly short statement and my comments now will be probably even shorter.

Essentially, the department has no objections to Senator Feinstein's bill. The bottomline is that we do not object to it because we do not believe that it is proper to waive the requirements of section 20 of the Indian Gaming Regulatory Act for any particular tribe. We believe that section 20 strikes a delicate balance between the rights of Indian tribes and the rights of local communities and the rights of the State. It has been implemented very carefully by the department over the last 17 years. We believe in that sense that it has worked.

I think that it is true, as Congressman Miller said, that the application to take land in trust and compliance with section 20 is a slow process and that the department takes its time in weighing the considerations. We want to make sure that the local community, especially for off-reservation acquisitions, is in support and that their concerns have been taken care of. In this particular case, as Senator Feinstein said, this would bypass the requirements of section 20 of IGRA.

To go back briefly to this particular case, as stated before, the tribe was terminated and it was subsequently restored through stipulation of entry of judgment in 1991 in the Scotts Valley litigation. In 1999, the tribe submitted an application to take land into trust to the BIA, submitted documentation to the regional office, submitted an environmental assessment, but that process was overtaken by the enactment of the act that is under consideration today.

I want to clarify a statement that Congressman Miller stated. I do not think the tribe was turned down on an application to take land into trust. We were in discussion with the tribe. I think one of the issues that we were facing is whether the tribe would qualify under the restored land for restored tribes exception.

I think we agreed the tribe is a restored tribe, but for restored land, I think that is a closer question, certainly. Right now, for restored land, I think we look for the tribe to have a geographical, traditional and historical nexus to the land. So in this particular case, I think that probably would be problematic. As a result, this provision was passed that short-circuited the process.

The decision to take the land into trust was made by the BIA on January 18, 2001. There were subsequent lawsuits in *Artichoke Joe's* v. *Norton* over our decision, but the injunction was denied in this case. On August 6, 2003, the court ruled in that case.

The land was subsequently taken into trust. On October 9, 2003 a proclamation of reservation was published in the Federal Register and issued on July 13, 2004. That is where we are today. We understand, as stated before, that the tribe has submitted, is working on a class III gaming compact. We have not received that compact because of the issues that were raised in the previous testimony. The tribe nevertheless is entitled to do class II gaming on the site at this point. If the bill is enacted, I think it will probably require the tribe to close down its gaming activities for class II gaming because essentially they may not satisfy the requirements of section 20 of IGRA. So the land would not be Indian lands over

which a tribe has jurisdiction and satisfies the requirements of section 20.

This concludes my testimony at this point. I will be happy to answer any questions you may have.

[Prepared statement of Mr. Skibine appears in appendix.]

The CHAIRMAN. Thank you very much. Are you aware of any other cases in which Congress has retroactively deemed land to have been taken into trust prior to 1988 in order to relieve a tribe of having to comply with IGRA?

Mr. SKIBINE. I am not aware of it. That might not mean that there is not anything out there, but I am not aware of it.

The CHAIRMAN. You indicated that the applicable section of the Omnibus Indian Advancement Act mandated the secretary to take the land into trust without consideration of the factors in the land acquisition regulations. Can you list some of those factors that did not have to be considered?

Mr. SKIBINE. Sure. Essentially because it was a mandatory acquisition, that means that the decision of the secretary is essentially ministerial. That means that the BIA does not have to comply with the requirements of the National Environmental Policy Act, NEPA, which the tribe was in the process of complying with at the time the act was passed. Under our regulations, we require consultation with the local community that has jurisdiction over the site. This was therefore bypassed also.

In the decisionmaking process, the acquisition of land is discretionary, but the Secretary follows the criteria in section 151 which are objective criteria. One of the things we look at is if there is what is the impact of taking the land off the tax rolls.

Another issue we look at is the need of the tribe for the land, what the purpose will be for the acquisition. We also look at whether there will be any conflicts in land use and whether there will be jurisdictional issues raised by taking the land into trust. We also look at whether the bureau is able to discharge its responsibility with acquiring new land into trust.

The CHAIRMAN. What is the status of the land parcels at issue here? Are they currently held in trust for the Lytton Rancheria?

Mr. SKIBINE. Yes; they are. As Senator Feinstein pointed out, the bill does not change that. The land will continue to be held in trust. The tribe will have to comply with the requirements of section 20 of IGRA because it will be after-acquired lands.

The CHAIRMAN. Do you consider a 1,000-slot machine casino a small casino?

Mr. SKIBINE. No; I do not think that, in my experience, a 1,000-slot machine casino can be considered a small casino. It is true that in California there are casinos with 1,000 or more slot machines, but I do not think we would consider those small operations.

Senator Dorgan.

Senator DORGAN. Mr. Chairman and Mr. Skibine, the Lytton Band's testimony indicates that they believe this would be deemed an unconstitutional Fifth Amendment taking. Has the Department analyzed the legislation and determined whether it would result in a taking and whether that may subject the Federal Government to some future liability?

Mr. SKIBINE. Yes; we have look at this issue and the department has determined that there would not be taking implications with this legislation.

Senator DORGAN. I have no further questions.

The CHAIRMAN. Do you agree with Senator Feinstein's comment that even though the Lytton Rancheria has decided to only engage in class II gaming, that at any time they could change that to a status class III gaming operation?

Mr. SKIBINE. That can change if the tribe successfully enters into a compact with the State of California and that compact is approved by the Secretary of the Interior and notice of its approval is published in the Federal Register. Right now, apparently there are problems with that, but it could happen.

The CHAIRMAN. Thank you very much. Thank you for coming this morning. It is nice to see you again.

Mr. SKIBINE. Thank you very much, Mr. Chairman.

The CHAIRMAN. Our next panelist is Sharon Brown, who is a councilmember of the city of San Pablo, CA. She is accompanied by Brock Arner, the city manager of the city of San Pablo; Margie Mejia, who is the chairperson of the Lytton Rancheria.

Assemblywoman Hancock, are you still here? Would you like to join the panel and make a comment? You are certainly welcome to do so.

Senator DORGAN. Mr. Chairman, I am supposed to be speaking on the floor of the Senate at 10:15 a.m., so I am going to depart. I will try to come back before this panel is completed if I am able to do that. I have reviewed the testimony, however, and appreciate very much the witnesses being here. I apologize to you, Mr. Chairman, for having to do that, but the schedule on the floor, as you know, is pretty uncertain and I am called to go over there at this point.

The CHAIRMAN. Thank you very much, Senator Dorgan.

Ms. Brown, welcome.

STATEMENT OF SHARON J. BROWN, COUNCIL MEMBER, CITY OF SAN PABLO, SAN PABLO, CA, ACCOMPANIED BY BROCK ARNER, CITY MANAGER

Ms. BROWN. Good morning. I believe like the rest of the world, I have a cold. Hopefully my voice will hold out long enough.

Good morning, my name is Sharon Brown. I have been a San Pablo city council member for 21 years and have served as Mayor for 4 of those 21 years. I was formerly the chairperson of the Metropolitan Transportation Commission and the Association of Metropolitan Planning Organizations in Washington, DC.

In the early 1990's, the city of San Pablo faced bankruptcy. Things were so desperate that the city was forced to borrow $4 million to meet payroll during that year. Our former city manager approached the city council with the idea of attracting a card room to San Pablo. After a lot of thought, we put the item to a vote for the constituents and it passed 67 to 33 in a landslide.

During the campaign, as with other gambling situations, there was also opposition to us, talking about prostitution, drugs, et cetera. I will tell you that none of that has happened. The proposed site was a section 8 mobile home park and a bowling alley. In 10

years, the crime rate has actually dropped dramatically. The money generated from the card room has allowed the city to fund police and recreation programs. We have basically repaved the entire city and we have a major decrease in crime.

The card room has also provided new entry-level jobs to residents who needed them the most. Many of these people were on welfare their entire lives. Revenue from the card room to the city decreased dramatically in 1990's due to the Asian economy and no smoking rules in California.

Plus, there is additional development of nearby Indian casinos. These Indian casinos are as close as a 90-mile or 90-minute drive from San Pablo, and at least one is within 25 miles of the State capital. We are referring to the River Rock Casino in Santa Rosa, the Cache Creek Casino in Yolo County and the Thunder Valley Casino in Lincoln.

We also wish to point out that the Indian casino in Highland, CA is situated in an urban-suburban area much like Casino San Pablo. And please remember, this was a card room at the time that the Casino San Pablo came into operation.

You have heard about the Federal Government wrongfully terminating the Lytton Band of Pomo Indians in the 1950's, resulting in the transformation of their ancestral land into vineyards. In 1988, the Federal courts ordered that the Government reverse its decision to terminate the tribe and restore the Lytton Band of Pomo Indians to full tribal status.

Unfortunately, the court also precluded the Lyttons from returning to their ancestral lands. I am sure that there is a lot of nice wine produced there.

The tribe has previously been rejected by a number of cities closer to their ancestral lands and returned to San Pablo only because of the existing card room. In 1999, the city council unanimously approved a municipal services agreement with the Lytton Band of Pomo Indians acknowledging that type-III gaming would be coming to the city of San Pablo. Following the agreement, both the city and tribe approached Congressman George Miller and requested he introduce legislation to allow the full Federal Government to take Casino San Pablo into trust on behalf of the Lytton Band of Pomo Indians. This was extremely cooperative and a full partnership between the city and the Indian tribe.

In the fall of 2000, Congressman Miller introduced the enabling legislation which was unanimously supported by the city of San Pablo city council because it would bring much-needed jobs and economic growth to the region which were both vitally needed. Congressman Miller's legislation was part of an Indians appropriation bill and was published in the Federal Register, as is all legislation.

This bill sat in the committee for 3 months prior to being approved by the House of Representatives, the Senate, and being signed into law by the President of the United States. This bill received considerable media attention while undergoing the legislative process. Given this process, it is difficult to understand how anyone can describe this as stealth legislation.

Additionally, after the President signed the bill into law, Nevada Senator Harry Reid attempted to repeal the San Pablo legislation, which was unsuccessful in that attempt. Senator Inouye was a par-

ticularly strong advocate in opposing Senator Reid's proposed amendment.

The committee might ask why San Pablo has embraced Indian gaming. The reasons are many, but relatively straightforward. San Pablo had the lowest per capita income of any community in the San Francisco Bay Area. The per capita income of San Pablo is far less than the national average, yet housing prices in the Bay Area and San Pablo are some of the most expensive in the United States.

Eighteen percent of our residents live below the poverty line as defined by the Federal Government. The unemployment rate in San Pablo and West County is 175 percent of the county average. The city of San Pablo serves more free meals to seniors than any other location in Contra Costa County; 44 percent of our residents are Latino, with the remaining 56 percent being Lao, Vietnamese, African Americans, Cambodians and Anglos; 92 percent of our residents commute outside the city for their employment.

As daunting as these statistics are, many of the neighborhoods just outside our city limits in the unincorporated county and the city of Richmond are in even worse financial situations. Job growth and economic development needs are apparent and the Lytton Compact is the best opportunity to achieve both.

There is one uncommissioned study on the casino thus far, and it should be viewed as an objective analysis. The University of California Graduate School of Planning concluded that the proposed compact negotiated by the tribe and the Governor of the State of California would provide the residents of San Pablo and West County with entry-level jobs, that it would increase these employees' earnings by 350 percent. These earnings are augmented by health insurance and retirement benefits.

The Lytton Tribe also commissioned an economic analysis of the proposed compact. This study forecast the creation of more than 3,000 new and permanent jobs at Casino San Pablo if the compact is ratified by the legislature. The compact before the legislature would allow up to 2,500 slot machines and 200 gaming tables. The same study estimates that local agencies in the State of California would gain $155 million annually to mitigate impacts and provide much-needed revenue to the State.

The same study also forecast more than $600 million in economic benefits throughout the region. It is the highest amount of revenue-sharing ever offered by a tribe to the State and local governments, and for the first time ever includes revenues from table games.

The CHAIRMAN. Ms. Brown, you will have to summarize your statement. We usually like to have 5 minutes. Please go ahead.

Ms. BROWN. Okay. I was looking for a button or something up there.

We in the city of San Pablo believe the Lytton Band of Pomo Indians have been the best neighbor and partner imaginable. The Lytton Band, despite being abused by the Federal Government in the past, has negotiated agreements with the city of San Pablo and the State of California that ensures that their facility will have a positive impact on a community most in need.

It is a sad commentary that the State legislature has not approved the proposed compact and a sadder commentary that the

Senate would consider legislation that would rob the tribes sanctioned rights. I urge you to reject S. 113.

Thank you.

[Prepared statement of Ms. Brown appears in appendix.]

The CHAIRMAN. Thank you very much.

Chairperson Mejia, welcome.

STATEMENT OF MARGIE MEJIA, CHAIRPERSON, LYTTON RANCHERIA, SANTA ROSA, CA

Ms. MEJIA. Thank you. Thank you for inviting me here today and thank you in particular, Senator McCain, for the understanding and support you have shown to Native Americans.

My name is Margie Mejia and I am the chairwoman of the Lytton Band of Pomo Indians. To understand why we are here today, it is important to understand something about the history of our tribe. Like most California tribes, we are a small group with about 275 members. Like many other California tribes, most of our members live in poverty. Many have no or inadequate health care. Alcoholism and substance abuse is a continuing problem. We have many families living together in tiny apartments. Only one of our members is buying a home.

But until the 1950's, we did have land. That land was in Sonoma County and today this is the site of some of the most prestigious wineries anywhere in the world. But the reason that today there are vineyards on that land instead of our homes is a result of actions taken by the Federal Government. But we never lost our sense of existence as a community. Many of us continue to live together and to take care of tribal members in need and we do this even to this day.

Eventually, we sued the United States and the outcome of that suit was that the Federal Government admitted it had broken promises it had made in the termination agreement. In 1991, our tribal status was restored. However, that settlement effectively barred us from returning to our tribal lands in the Alexander Valley by prohibiting us from operating a gaming facility in that area. We had no choice but to agree to this condition because otherwise, with little or no resources of our own, we would have been forced to fight a protracted legal battle against a group of wealthy wineries and the county.

After restoration, we reestablished our tribal government, passed a constitution and elected a tribal council. We also began to look for a means out of the relentless poverty many of our members face and to rebuild our tribal community. We turned to gaming because the government offered that to us as a means of economic development and because it generates enough money to allow us to get a loan and finance the rebuilding of our tribe and our tribal community.

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

The city and the tribe then negotiated a municipal services agreement. At that time, such an agreement was unprecedented in California and was the most attractive agreement between local interests and an Indian tribe in California.

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

Finally, Congress acted to take that land into trust for us as it has in the case of many other tribes in California and other States. This was the final option after we had tried everything else. Thanks to the efforts of Congressman George Miller, that proposal was introduced in legislative form in October 2000. On December 27 of that year, the President signed that bill into law. There were newspaper articles about this at the time and subsequently there were two attempts to repeal this proposal. Neither of those met with success.

Senator Feinstein's legislation represents the third time there has been a proposal to take this land from us. We believe it would be legally wrong to do that. Section 819 conferred a highly valuable property right on our tribe by specifically entitling us to acquire land into Federal trust for Indian gaming. The Feinstein bill would deprive us of this right to conduct gaming on the land and would be a taking under the Fifth Amendment of the U.S. Constitution.

That act of taking land into trust for us in San Pablo was not the beginning of this story. It was the end of a very long story, a story of poor treatment of our tribe at the hands of the Federal Government. That was an act of redress, making good the wrong that had been done to us more than 50 years before. To have simply said we are sorry and offered up a paper apology for the treatment of our tribe would have been wrong. Taking that land into trust represented a meaningful act of redress. Taking that land out of trust would make that gesture so many empty words.

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

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

We stepped up to the plate to do just that, reaching an agreement to pay an unprecedented 25 percent of net gaming revenues

to the State and local government to pay our fair share of public services and environmental mitigation. But that commitment also required more slot machines than originally envisioned.

We have agreed to two exhaustive environmental impact reviews prior to anything being built. These provisions are modeled on the California Environmental Quality Act, such as the inclusion of project alternatives mitigation and citizen participation in the process. But the compact took one further step by requiring the tribe to complete agreements on mitigation measures with its neighbors in the city of San Pablo, the local county and the State Transportation Department.

Over and above our compact obligations, the tribe has spent the past months engaged with the community to hear their hopes and concerns about our project. As a result, we reduced the size and scope of our project to make it a better fit for the community, while still offering the creation of more than 6,000 new jobs. We negotiated and signed that compact with the Governor of California. We had the strong support of the city of San Pablo where the casino would be located. We believe that the proposed compact represented a good deal for all parties.

Notwithstanding all that, as you know, the California State legislature has chosen not to act on the compact. As a result, we will now focus on exercising our rights under Federal law. We will renovate the interior of the existing building to make it more attractive and to offer a wider variety of class II gaming activities, including class II electronic bingo games. These are not the video lottery terminals. They will fall well within the definition of what constitutes class II gaming. We do not intend to push the envelope.

Senator McCain, we did not ask to be in this situation. We did not ask the Federal Government to take our name and our land, but that happened. Now, decades later, when this Government has finally acted to right those wrongs, we believe it would be wrong to take away our right to pursue economic self-sufficiency, which is effectively what Senator Feinstein's bill would do.

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

Thank you.

[Prepared statement of Ms. Mejia appears in appendix.]

The CHAIRMAN. Thank you very much.

Assemblywoman Hancock, welcome.

STATEMENT OF LONI HANCOCK, ASSEMBLY MEMBER, 14th ASSEMBLY DISTRICT, SACRAMENTO, CA

Ms. HANCOCK. Thank you, Senator McCain.

My name is Loni Hancock. I serve as an assembly member in the California State legislature. My district is in the East San Francisco Bay Area and includes the cities of Oakland, Berkeley, Richmond, and San Pablo.

First, let me thank you, Senator McCain, for having this hearing today. Senator Feinstein's legislation would require advocates of

Casino San Pablo to follow the two-step process laid out under the Indian Gaming Regulatory Act. I want to express my support for Senator Feinstein's legislation.

Second, I would like to speak about the role of the State legislature and the legislative history regarding Casino San Pablo. As you know, in order for a tribe to open a casino, they must negotiate a gambling compact with the Governor. That compact is then subject to ratification by the State legislature. The Casino San Pablo proposal came to my attention in August of last year when it was submitted to the legislature by the Governor as a package of five compacts in the last week of the State legislative session when the legislature was voting on over 100 bills.

The compact negotiated between the tribe and the Governor authorized 5,000 slot machines in a six-story, 600,000 square foot building. To put these figures into perspective, the compact would have made Casino San Pablo the third largest slot machine operator in the country. Only the two casinos in Connecticut would be larger operations.

In terms of square footage, this casino would have been the size of six Wal-Marts combined. It would be built in the middle of the already heavily congested San Francisco Bay Area.

Other provisions in this compact allowed the Governor's chief financial officer in his or her sole discretion to completely obviate any or all of the local government mitigations provided in the compact. After sustained legislative opposition, the compact was amended to reduce the number of slot machines to 2,500.

This amended compact created a casino with as many slot machines as any major casino on the Las Vegas strip. But also included in the revised compact is a provision allowing renegotiation of the number of slot machines in 2008. In essence, this provision would make it possible for the casino to go right back to a request for 5,000 slot machines.

Given the nature of this revised compact, my colleagues in the State legislature made it clear they would not ratify the compact.

The Casino San Pablo proposal touches on many of the complex issues surrounding the expansion of Indian gambling in California and the expansion of off-reservation casinos. In 2000, the voters of California passed initiative Proposition 1A, amending the State constitution to provide economic development opportunity by authorizing gambling casinos in rural areas and on traditional tribal lands. That was the intent of proposition 1A.

What we have seen since proposition 1A's passage is some tribes with ambiguous ancestral titles to a land parcel making claims to that land for the sole purpose of operating a casino.

In the San Francisco Bay Area alone, we face the proposed development of up to five casinos within a 15-miles radius by tribes who have scant, if any, ancestral connection to those lands. California is experiencing a proliferation of proposals for Indian gambling casinos that have little to do with self-sufficiency on tribal lands. These off-reservation casinos in reality are being supported by aggressive out-of-State casino developers who clearly hope to build casinos in every urban area of the State.

Keep in mind that in California, Nevada-style gambling is illegal. Through proposition 1A, it was intended to be legal only for Indian tribes on their traditional tribal lands.

Finally, I would like to talk briefly about the community opposition to Casino San Pablo. Polls conducted by KPIX, our local TV station, showed that 57 percent of the respondents opposed the casino. I personally sent a survey to every household with a registered voter in my Assembly district.

The returned survey showed overwhelming opposition. Survey results indicated district-wide, 91 percent opposition to the casino, and my staff broke down the results by city, and even within the city of San Pablo, where the casino would be located and where people had been promised jobs and revenues for the city budget, over 64 percent of the returned surveys opposed the casino.

Cities like Albany and Berkeley in the surrounding community who will experience the negative impacts of increased traffic, crime and gambling addiction have taken positions against the proposed casino. Other cities are considering similar resolutions, and today the local county board of supervisors will be considering a resolution against urban gambling and against urban casinos.

Mr. Chairman, I have thousands of letters, e-mails, surveys that say that Casino San Pablo is a bad economic development strategy for our community and our State. You have heard that the Lytton Band of Pomo Indians no longer intends to build a Las Vegas-style casino. The proponents have said that they will operate only class II electronic bingo machines, but the 2,500 slot machine compact is still on the table.

Recently, a letter sent by the tribe to members of the State legislature states that the tribe remains confident that this or a future legislature will eventually recognize the benefits of the compact negotiated with the Governor. This is a 2,500-slot machine casino with the ability to negotiate for even more slot machines when the environment is more politically favorable for them to do so.

So in the final analysis, I believe that the legislation authored by Senator Feinstein to remove the backdating, and without that legislation the Lytton Tribe will continue to seek a massive gambling casino at Casino San Pablo. This entrance of tribal casinos on non-ancestral land in densely built urban areas would set a precedent for authorizing off-reservation gambling casinos in California and in every State where tribal gambling is permitted.

Thank you again, Mr. Chairman, for holding this hearing. I respectfully ask the committee to act in support of Senator Feinstein's legislation.

[Prepared statement of Ms. Hancock appears in appendix.]

The CHAIRMAN. Thank you very much.

Chairman Mark Macarro, Chairman of the Pechanga Band of Luiseno Indians. Welcome.

STATEMENT OF MARK MACARRO, CHAIRMAN, PECHANGA BAND OF LUISENO INDIANS

Mr. MACARRO. Good morning, Mr. Chairman. Thank you for the opportunity to testify regarding S. 113, a bill to modify the date as of which certain tribal lands of the Lytton Rancheria of California is deemed to be held in trust.

My name is Mark Macarro. I am the duly elected chairman of the Pechanga Band of Luiseno Mission Indians. I have been asked to discuss the Pechanga Tribe's position with regard to S. 113.

The CHAIRMAN. What is your geographic position as compared with Councilwoman Mejia's tribe?

Mr. MACARRO. The Lytton Band is in Northern California in the Bay Area. We are in Southern California, about 60 miles north of San Diego, 20 miles inland of Camp Pendleton.

The CHAIRMAN. And does your tribe engage in gaming?

Mr. MACARRO. We do.

The CHAIRMAN. How big a casino do you have?

Mr. MACARRO. We have a 522-room hotel and 2,000 slot machines.

The CHAIRMAN. Please proceed. Thank you.

Mr. MACARRO. Thank you.

The Pechanga believe that each and every federally recognized tribe is a sovereign and in its own right enjoys all the rights and privileges that flow from sovereignty, including the right to pursue economic development opportunities which improve the quality of life for all tribal members. However, it is our sincere belief that all Indian tribes also have a responsibility to the larger community and that the specific instance of the backdating of the fee-to-trust acquisition of the Lytton Rancheria is contrary to the best interests of all of Indian country.

The Pechanga Tribe supports S. 113 for two reasons. First, we believe that the Lytton fee-to-trust acquisition should follow the same procedure that all other tribes must follow to authorize gaming on what are termed after-acquired trust lands. While the process is not perfect, it allows tribes, States and local communities to have input and a chance to participate in the process, including the ability to resolve differences before decisions are made. The manner in which this acquisition was placed into trust deprived those communities who are most affected by the acquisition a chance to address important issues before the land was placed into trust.

The other reason we support this legislation is that it will reverse an action which violates a promise that all California Indian tribes made to the citizens of California when propositions 5 and 1A were considered and approved. During the time those propositions were considered, tribes in California pledged that the passage of those propositions would not result in the proliferation of urban gaming, but would be confined to a tribe's existing reservation lands, the vast majority of which are not located in urban areas.

The legislation which directed the Lytton land acquisition to be placed into trust status violated that public policy promise to the citizens of California and denied the citizens affected by the acquisition to play a part in the process which determines whether land should be placed into trust status.

We believe S. 113, by providing that the trust acquisition of the Lytton Rancheria, while remaining in trust status, is considered to be placed in trust as of its actual date of acquisition. It levels the playing field. It requires the Lytton Rancheria to deal with the local community and the Governor before it may operate gaming on the parcel, or it must apply to the BIA before the land can be de-

clared meeting one of the exceptions to the prohibition on gaming on lands acquired after October 17, 1988.

Both processes provide for more detailed, thoughtful consideration on the merits of the application before gaming can be conducted on those lands.

This concludes my testimony. Again, I would like to thank you for the opportunity to provide our views on S. 113. I would be happy to answer any questions you may have.

[Prepared statement of Mr. Macarro appears in appendix.]

The CHAIRMAN. Thank you very much.

Ms. Mejia, how do you respond to Chairman Macarro's comment that a commitment was made at the time of the passage of the propositions 5 and 1A that there would not be an expansion of Indian gaming in urban areas?

Ms. MEJIA. As I stated in my testimony, back in 1999, the compacts that were signed with the State of California and 62 tribes were signed September 9 of 1999. We had already negotiated, were in negotiations with the city of San Pablo on our municipal services agreement. We were in every paper and, you know, we were going into an existing facility in a community that had already passed a referendum for gaming. We were not hiding anything.

The CHAIRMAN. Why was it that your tribe was not included in this ballot proposition which gave numerous tribes the opportunity to engage in a compact with the State?

Ms. MEJIA. Governor Davis said that we could not enter into that agreement because we did not have the land in trust. When I attended the compact negotiations with the other tribes of California and asked them to put language in there that would apply to us, they said no, that they needed to move forward. They had to act in their tribe's best interests and that is what they did.

The CHAIRMAN. Ms. Brown, your view of the public support for this enterprise seems to vary rather dramatically from Assemblywoman Hancock's view of the support for this enterprise.

Ms. BROWN. We had 2,000 petitions of support in the last few months.

The CHAIRMAN. You have to move the microphone closer.

Ms. BROWN. I am sorry.

We had 2,000 petitions of support in the last few months, which have been submitted.

The CHAIRMAN. Is the tribe currently operating a casino at the San Pablo site?

Ms. MEJIA. The tribe is currently operating a class II facility.

The CHAIRMAN. And how many members of our tribe are employed there?

Ms. MEJIA. Actually, right now, none, because we have not been able to. We have been working toward doing this and the card club is not generating revenue for teaching job skills and addressing those issues so that they can participate in employment there. Right now, it is just operating as it was before. Hopefully with the move to adding the class II machines, we will generate revenue. We will bring in tribal members to work there.

The CHAIRMAN. Assemblywoman Hancock, do you have objection that class II gaming be conducted?

Ms. HANCOCK. I think that it would be a good idea if it were part of the two-step negotiations that I understand are required under IGRA. Certainly, class II gaming, although my understanding, again, is that the electronic bingo machines look and feel very much like slot machines and that there would be obviously an impact on the community from that.

I think it would be good to have those impacts discussed, which is one of the reasons that I support Senator Feinstein's bill. But in addition, the fact is that right now the 2,500-slot machine compact is still before the California legislature. It can be brought forward at any time that the proponents believe they can get the votes. I think it illustrates the enormous pressures and problems that we are facing in California around off-reservation gambling.

So it seems to me that simply as a fairness measure, there ought to be the community discussion around the traffic impacts and the social impacts of class II gambling in a very densely built-up region. The city of San Pablo is actually a city of 30,000 people, totally surrounded by the city of Richmond, also a very poor city, that will benefit in no way from this compact.

The CHAIRMAN. Go ahead, sir.

Mr. ARNER. Senator, you have asked a question about size of casinos and the number of slots previously. I would like to respond to that. I am Brock Arner, the city manager.

Thunder Valley Casino within 48 miles of the capital of the State of California has 2,700 slot machines. Cache Creek has 2,500.

The CHAIRMAN. Not much different from the original proposal of 2,500.

Mr. ARNER. No, sir; it is not. What I was trying to show was the relative request of the Lytton Band of the Pomo Indians in this regard.

I would also like to point out that no local city other than Albany has opposed. None of our neighbors have opposed this proposal by the Lyttons. The 3,000 jobs that would be generated by this proposal will greatly benefit the residents of the city of Richmond who are even poorer than the residents of the citizens of San Pablo. Finally, $150 million would be made available to State and local governments to offset and mitigate issues like traffic raised by this proposal. That is in the compact negotiated by the Governor with Tribal Chair Mejia.

I am almost finished. I am sorry for taking your time.

The CHAIRMAN. Go ahead.

Mr. ARNER. We have also received support from the Richmond Chamber of Commerce, the Rodeo Chamber of Commerce, the San Pablo Chamber of Commerce, and a variety of other clubs, including the Rotary Club in San Pablo, supporting the job creation and the economic development in the poorest area of the Bay Area as a result of Casino San Pablo and the proposed type III gaming.

The CHAIRMAN. Your survey shows that 3,000 jobs, and how much money would be created by this?

Mr. ARNER. The University of California Graduate School indicates that the jobs are attainable by the folks that we serve. Those 3,000 jobs are identified an economic analysis paid for by the tribe.

The CHAIRMAN. 3,000 jobs and how much money?

Mr. ARNER. They estimate $150 million annually to be divided between the State of California, the county of Contra Costa, the city of San Pablo, and CALTRANS.

The CHAIRMAN. Chairman Macarro, how many slot machines are in your operation?

Mr. MACARRO. We have 2,000.

The CHAIRMAN. Have you created anywhere near 3,000 jobs associated with that?

Mr. MACARRO. Actually, yes. We have about 5,000 employees. We are the second-largest private employer in Riverside County.

The CHAIRMAN. It is interesting to me that many times where gaming operations take place, there is very little impact on the surrounding community. Has that been your experience, Assemblywoman Hancock?

Ms. HANCOCK. Well, this is really my first experience with urban gambling. I have learned more about gambling than I ever thought I would, since last August, Senator McCain.

The CHAIRMAN. During March Madness, it is appropriate.

Ms. HANCOCK. Really. [Laughter.]

Ms. HANCOCK. One of the things I have learned is that there are a number of studies indicating other things. A study that was commissioned by a coalition of card rooms, from Professor William Thompson at the University of Nevada, estimated that the Bay Area economy would lose $138 million a year as a result of the casino. It is based very much on an analysis that he calls the difference between destination gambling and grocery store gambling.

Destination gambling, meaning when people fly to a place like Las Vegas, they are on vacation. They know what they can afford to lose and spend. They leave their money in Las Vegas and they go home. If you do not have a destination, what you have is grocery store gambling where he estimates 80 to 90 percent of the customers would come from the adjacent area, a very poor area.

This is where somebody is driving by, they decide to stop. They just got their paycheck and pull the handle or press the button a few times, and they leave without the lunch money for the kids. They leave without the money for clothes or rent. And this is money that would go back into the local economy, but instead it goes out, 30 percent or so, to the investors who are typically out of State gambling casino operators and the rest in various places.

So that the economic impact on the communities may be to move money around, but it actually can be a very negative economic impact.

The CHAIRMAN. Chairwoman Mejia, would you like to make any additional comments?

Ms. MEJIA. No; I would just urge the committee, Senator McCain, yourself, to really look at the impact this is going to have on my people.

The CHAIRMAN. Thank you.

Ms. Brown.

Ms. BROWN. Basically, the same as Margie Mejia, is that the concerns we have in San Pablo is the impacts for San Pablo.

The CHAIRMAN. Thank you very much. This hearing is adjourned.

[Whereupon, at 10:48 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. GEORGE MILLER, U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. Chairman and members of the committee, thank you for the opportunity to testify today.

And Senator Feinstein, it is good to be with you. While you and I do not agree on this particular matter today it is always good to work with you on issues that affect the State of California. I appreciate what you do for us.

Mr. Chairman, with your permission I would like to submit my written statement for the record.

I would also like to recognize several constituents and local representatives who will testify later today.

Assemblywoman Loni Hancock is a strong advocate for her district and. I appreciate her being here.

And Mayor Sharon Brown and City Manager Brock Amer of the city of San Pablo are here. They are working very hard to stimulate economic development in their city and I appreciate their efforts on behalf of the resident of San Pablo.

Today's hearing concerns the Lytton Band of Pomo Indians and the city of San Pablo in my district and their effort to work together to meet mutual goals of desperately needed economic development. I support their efforts.

My involvement with this matter dates back to 1999 and 2000 when I was approached by the city to discuss its interest in working with the Lytton Band to help them acquire an existing card room in San Pablo for the purposes of renovating it and building a modest sized casino.

The tribe made a good faith effort to work through the Department of the Interior to win the right to acquire this land for the purposes of gaming under the Indian Gaming Regulatory Act [IGRA] but due to special circumstances affecting the tribe, it is my understanding that the tribe was told by the Department that they would be turned down.

After much discussion and a detailed review of the circumstances, I agreed to help the city and the tribe. I supported their project for several reasons:

- the local community, including the police department,. supported the project;
- the city stood to make significant economic development gains from the project;
- the tribe had a clear need and a legitimate right to pursue lands for the purposes of economic development and made a good faith effort to work through the Department of the Interior to do so;
- I have a long standing history of supporting the sovereign rights of Indian tribes.

The issue of whether or not American Indians should be involved in gaming is not at issue here. There are opponents of gambling for many reasons, some personal, some moral, some simply competitive. And of course there are many proponents of gaming. There are card rooms throughout the Bay Area, an extensive lottery program, and the California constitution allows for Indian gaming. Personally,

I am neither a proponent nor opponent of gaming per se. I am, however, a strong defender of economic development and of Indian sovereignty.

As you will hear in greater detail later today from the Lytton's tribal chairwoman, Marge Mejia, the Lytton Band was wrongfully terminated in the 1960's. A Federal court restored its tribal status in 1991. The Lyttons are a poor people, many of whom are homeless. The tribe is concerned about preserving its tribal heritage and providing economic means for its members.

The city of San Pablo and the Lyttons have much in common.

San Pablo is one of the poorest cities in the Bay Area. A small city with little economic activity, it has a poverty rate of 18 percent—twice that of the entire Bay Area and more than twice that of Contra Costa County. Its "unemployment rate is higher than that of the Bay Area and the county. More than 90 percent of the city's residents work outside of the city, because there are just not enough jobs created within the city.

The key question before the committee is whether it was appropriate for the Congress to have passed section 819 of the Omnibus Indian Advancement Act in 2000 on behalf of the Lytton Band. I believe that it was appropriate and that the provision should stand as written.

As you know, the U.S. Constitution gives Congress plenary authority over Indian tribes to pass laws for their benefit. Congress is fully within its rights to pass legislation directing the Secretary of the Interior to place lands into trust for a particular tribe and does so on a regular basis.

In the 108th Congress, at least 10 bills became law that placed lands into trust for various reasons to benefit various Indian tribes. This may happen for any number of reasons that Congress determines is prudent. It may be as part of a settlement agreement of a land claim, or in the instance of the Pechanga Indian Tribe, who are scheduled be testify later, the desire to protect certain important lands from possible desecration.

Last Congress, we even took lands right out of a national park and had it placed in trust for one tribe. In the Gila River water settlement law we required an act of Congress occur to bring some lands into trust for that tribe.

In most cases, including the ones I mention here, the tribe attempts to go through the BIA process, becomes frustrated for one reason or another, and comes to Congress to plead its case. In fact, the highly touted bill that the Lytton provision was—in also included 14 other provisions to take lands into trust for Indian tribes, including one provision that held the land be considered in trust as of 1909.

The Lyttons had a special circumstance that I believe distinguished them from most other tribes in California and that necessitated congressional action.

The 1991 Federal court settlement that restored Lyttons' tribal status and that of numerous other California tribes included one unusual provision that pertained only to the Lyttons.

The court order restoring the Lyttons' tribal status contained a unique limitation that precluded the Secretary of the Interior from taking land in Sonoma County the Lytton's ancestral lands—into trust for the benefit of the Lytton Band for any use that was inconsistent with the Sonoma County General Plan. In effect, the limitation denied Lytton any right to use its ancestral land for gaming.

The order however did not put any restrictions on the ability of Lytton to pursue other lands for gaming or other activities.

This limitation created a special circumstance when the Lyttons appealed to the Department of the Interior for an exception under the Indian Gaming Regulatory Act for permission to have lands put into trust and to be allowed to conduct gaming.

The lands that the tribe sought were not their ancestral lands, nor contiguous with its ancestral lands. It is my understanding that the Bureau of Indian Affairs [BIA] denied the tribe this exception under IGRA because of this land issue. And yet, as I explained, the court settlement forbade the tribe from using their ancestral lands.

The Lyttons are the only tribe in California—and perhaps the only tribe in the United States—that, as a condition of the restoration of its tribal status, was expressly deprived of the opportunity to exercise rights under the Indian Gaming Regulatory Act on its ancestral land.

I do not believe that existing law anticipated this unusual circumstance and therefore Congress, which has the authority to intervene in these matters, appropriately remedied this situation.

This is what the issue boils down to. Through no fault of its own, the Lytton Tribe was illegally stripped of its status as a federally recognized Indian tribe and denied its rights for decades until it was restored to its proper status by our judicial system. Had the tribe's status never been illegally terminated, there would have been

no question as to the Lytton's ability to operate gaming on lands within its ancestral area.

I thought that the BIA would accept the land under the IGRA exceptions for restored tribes, but was told it would not. I believed that was a mistake, and even then Assistant Secretary for Indian Affairs Kevin Gover was quoted at the time about the denial of Lytton's request that "it was a close call. A good case could be made that we were wrong Gover said.

Every tribe's situation is different and must be evaluated individually. But I believed then, and continue to believe now, that it was the fair and right thing to do in this particular case to make the Lytton Band whole again.

Not only do I believe that it was appropriate for Congress to have acted on the tribe's behalf, but I want to be clear that the manner in which Congress approved this legislation was entirely appropriate.

My Provision regarding the Lytton Band was added, along with numerous other tribal issues, as an amendment to H.R. 5528, the Omnibus Indian Advancement Act," in the full House.

All the provisions added were done so with the support of the leadership of both the House Resources Committee and this committee as a way to move some legislation that for whatever reason had not passed. To make it clear this was a compilation of bills, the "omnibus" title was given to the bill. This is a most appropriate way to move legislation near the end of a Congress that has been bottled up. The bill passed the full House on October 26, 2000.

H.R. 5528 was referred to the Senate Committee on Indian Affairs and passed in the Senate by unanimous consent on December 11, 2000—45 days after its referral to the Senate and its being sent to both respective cloakrooms for viewing and Senate notification.

Section 819 was identified by the heading "Land to be Taken Into Trust" and, at all times, contained the name of the tribe and location of the land. Any Senator who questioned or objected to any provision had the opportunity to review the provision and to withhold consent under the unanimous consent procedure. No Senator did so.

Under the provision, Lytton is subject to all of the provisions of IGRA, including the requirement under California law that any compact negotiated between the State of California and the Lytton Band be ratified by the California legislature.

A compact was signed in August 2004, by the Governor and the Tribal Chair, but it has not yet been ratified by the legislature.

I am on record as opposing both the size of the first proposed compact between the State and the tribe and the revised proposed compact. I hope that any final resolution on the compact will adhere to the proposal originally presented to me by the tribe and the City. That proposal called for a modest casino within the parameters of what already exists at the card room, not a mega casino as is now under consideration.

It should be noted, however, that the Lytton Band from the very beginning went to unprecedented lengths to consult with the local community and the State of California to forge an agreement with regard to mitigating potential impacts of a new casino and sharing the benefits of the casino with the community.

But the issue of the compact details is a separate matter.

The issue today is whether the tribe has the right to these lands and whether Congress acted appropriately in conveying the lands to the tribe. In both instances, the answer clearly is yes.

I do not believe Congress is justified in taking away from the Lytton's the rights that Congress gave to it. Doing so would be a significant breach of trust between Congress and the Indians, a trust that has been broken so often in our Nation's history. And it would also greatly undermine the economic development opportunity of an impoverished tribe and an impoverished California city.

I believe that S. 113 is unwarranted and harmful but more importantly I believe that it would be a dangerous precedent.

Governor Schwarzenegger expressed a similar view when he wrote to Sen. Feinstein on September 20, 2004 about her legislation that, "This bill would set a dangerous precedent that could damage trust and faith with the Lytton Rancheria Indian community." He added, "Passage of [this bill] will destroy the trust which has been built with the Lytton and other tribal governments, not just in California but throughout the Nation."

Indian gaming in California is clearly a complicated matter, and there are many aspects of the issue to resolve. But using the power of Congress to take punitive action against the Lytton Band is neither justified nor appropriate.

Thank you again Mr. Chairman and members of the Committee for the opportunity to testify today.

PREPARED STATEMENT OF LONI HANCOCK, ASSEMBLYMEMBER, 14TH ASSEMBLY DISTRICT CALIFORNIA

Good morning Chairman McCain, Senator Dorgan, members of the committee. My name is Loni Hancock and I serve as an assemblymember in the California State Legislature. My district includes most of the East San Francisco Bay Area including the cities of Oakland, Berkeley, Richmond, and San Pablo.

Let me first say thank you for having this hearing today on S. 113 authored by Senator Feinstein. This legislation requires the proponents of Casino San Pablo to follow the process set out under the Indian Gaming Regulatory Act. So let me first clearly express my support for Senator Feinstein's legislation.

Second, I would like to speak about the role of the State Legislature and the legislative history regarding Casino San Pablo. As you know, in order for a tribe to open a casino they must negotiate a gambling Compact with the Governor of that State. That Compact, negotiated between the tribe and the Governor, is subject to legislative ratification by the State Legislature.

The Casino San Pablo proposal came to my attention in August of last year. The Compact was submitted to the Legislature by the Governor as part of a package of 5 compacts in the last week of the legislative session when the Legislature was voting on roughly 800 bills.

The Compact—negotiated between the tribe and the Governor—authorized 5,000 slot machines and a 6-story, 600,000-square-foot facility. To put these figures into perspective, the Compact would have made Casino San Pablo the third largest slot machine operator in the country. Only the two casinos in Connecticut have larger operations.

In terms of square footage this casino would have been the size of six Wall Marts combined. Keep in mind this casino would be built in the middle of the already heavily congested San Francisco Bay Area. Other provisions in this Compact allowed the Governor's chief financial officer in his or her sole discretion to completely obviate any or all of the local government mitigation provided for in the Compact.

After sustained legislative opposition, the Compact was amended to reduce the number of slot machines to 2,500. This amended Compact created a casino with as many slot machines as any casino on the Las Vegas strip. Also included in the revised Compact was a provision allowing renegotiation of the number of slot machines in 2008. In essence, this provision made it possible for the casino to go right back to 5,000 slot machines.

Given the nature of this revised Compact, my colleagues in the California Legislature made it clear they would not ratify the Compact or authorize an expansion of Las Vegas style gambling into one of the State's most densely populated urban areas.

The Casino San Pablo proposal touches on many of the complex issues surrounding the expansion of Indian gambling in California and the expansion of off-reservation casinos. In 2000, the voters of California passed a Statewide initiative—proposition 1A. Proposition 1A amended the State Constitution to provide for economic development by authorizing casinos in rural areas and on traditional ancestral tribal lands. This was the intent of proposition 1A.

What we have seen since proposition 1A's passage is some tribes, with ambiguous ancestral ties to a land parcel, making claims to that land for the sole purpose of opening a casino. In the San Francisco Bay Area alone we face the proposed development of up 5 casinos within a 15-mile radius by tribes who have scant, if any, ancestral connection to those lands. In the case of the Lytton Tribe at Casino San Pablo, the casino's location is 50 miles from Sonoma County—the traditional ancestral territory of their tribe. In another case, the Koi Nation Tribe is proposing to build a casino adjacent to the Oakland International Airport. This casino proposal located in Oakland is nearly 150 miles from the tribe's traditional lands in Lake County.

California is experiencing a proliferation of proposals for Indian gambling casinos that have little to do with self sufficiency on tribal lands. These "off reservation" casinos are, in reality, being supported by aggressive out-of-state casino developers and their lobbyists who clearly hope to build casinos in every urban area of the State. Keep in mind that in California, Las Vegas style gambling is illegal. Las Vegas style gambling was only intended to be legal only for Indian tribes on their traditional ancestral land.

Finally, I would like to talk briefly about the community opposition to Casino San Pablo. Polls conducted by KPIX our local TV station showed that 57 percent of the respondents oppose the casino. I personally sent out a survey to every household with a registered voter in my Assembly District, which contains 156,000 voters and the returned surveys showed overwhelming opposition. The survey results indicated

that 91 percent of my district is against the casino proposal. My staff has broken down the results of the survey by city. Even within the city of San Pablo—where the casino would be located—and where the city has been promised jobs and revenues for the cities budget, 64 percent of the returned surveys opposed the casino. Cities such as Albany and Berkeley who are in the surrounding community and will experience the negative impacts of increased traffic, crime, blight and gambling addiction have taken positions against the proposed casino. In addition, other cities are considering similar resolutions against the Casino and against expanding urban gambling in general. In fact, tonight, the local county Board of Supervisors, in which Casino San Pablo resides, will be approving a resolution against urban gambling and urban casinos. Mr. Chairman and members, I have thousands of letters, e-mails and surveys that say that Casino San Pablo is a bad economic development strategy for our community and for our State.

You will hear from the proponents of the Casino that they no longer intend to build a "Las Vegas" style casino, that they no longer intend to build entertainment venues, or that the casino now will not feature slot machines. The proponents will say that they will operate only class II gaming machines that is, electronic bingo machines.

But the one thing we have learned from this experience is that once land is placed into trust everything can change.

In a letter to the BIA in 1999, Mrs. Mejia the chairwoman of the tribe told the BIA that "No other changes to the physical configuration or internal operation of the existing facility are proposed." The letter goes on to say "Based upon the Band's review of the physical constraints of the Facility, the Band believes the capacity of 1,200 to 1,500 gaming positions [this means slot machines and poker tables]—will not increase.

After these statements were made to the BIA, the tribe negotiated with the Governor a 5,000-slot machine casino and 600,000 square foot facility—and they said, no other changes to the physical facility would be made!

Recently a letter sent by the tribe to members of the State Legislature states that ". . . the tribe remains confident that this or a future legislature will eventually recognize the benefits . . . that the Compact we negotiated in good faith offers." In other words, the supporters of the casino intend to continue to put forward this Compact for a 2,500-slot machine casino and massive gambling complex with the ability to negotiate for even more slot machines when the environment is more politically favorable for them to do so.

In the final analysis, it is my belief that without the legislation authored by Senator Feinstein, the Lytton Tribe will be able to open a massive casino at Casino San Pablo. This would be the first urban Las Vegas style casino that was never intended by the voters of the State of California, and is a direct violation of the Federal regulations outlined in the Indian Gaming Regulatory Act. The entrance of tribal casinos on non-ancestral land—such as Casino San Pablo—in densely built urban areas would set a precedent for authorizing off reservation gambling casinos in California and every state where tribal gambling is permitted.

Thank you again, Mr. Chairman, for holding this hearing. I respectfully urge the committee to act in support on Senator Feinstein's legislation a soon as possible.

PREPARED STATEMENT OF MARK MACARRO, CHAIRMAN, PECHANGA BAND OF LUISENO MISSION INDIANS

Good morning, Mr. Chairman, Mr. Vice Chairman and members of the committee. Thank you for the opportunity to testify regarding S. 113, a bill "to modify the date as of which certain tribal land of the Lytton Rancheria of California is deemed to be held in trust".

My name is Mark Macarro, and I am the chairman of the Pechanga Band of Luiseno Mission Indians. I've been asked to discuss the Pechanga Tribe's position with regard to S. 113.

The Pechanga believe that each and every federally recognized tribe is a sovereign in its own right and enjoys all the rights and privileges that flow from sovereignty, including the right to pursue economic development opportunities which improve the quality of life for all tribal members. However it is our sincere belief that all Indian tribes also have a responsibility to the larger community, and that the specific instance of the backdating of the fee to trust acquisition of the Lytton Rancheria is contrary to the best interests of all Indian country.

The Pechanga Tribe supports S. 113 for two reasons.

First, we believe that the Lytton fee to trust acquisition should follow the same procedure that all other tribes must follow to authorize gaming on what are termed

"after-acquired" trust lands. While the process is not perfect, it allows tribes, States, and local communities to have input and a chance to participate in the process, including the ability to resolve differences, before a decision is made. The manner in which this acquisition was placed into trust deprived those communities who are most affected by the acquisition a chance to address important issues before the land was placed in trust.

The other reason we support this legislation is that it will reverse an action which violates a promise that all California Indian tribes made to the citizens of California when propositions 5 and 1A were considered and approved. During the time those propositions were considered, tribes in California pledged that the passage of those propositions would not result in the proliferation of urban gaming, but would be confined to a tribe's existing reservation lands, the vast majority of which are not located in urban areas.

The legislation which directed the Lytton land acquisition to be placed into trust status violated that promise to the citizens of California and denied the citizens affected by the acquisition to play a part in the process which determines whether land should be placed into trust status.

We believe S. 113, by providing that the trust acquisition of the Lytton Rancheria, while remaining in trust status, is considered to be placed in trust as of its actual date of acquisition, levels the playing field. It requires the Lytton Rancheria to deal with the local community and the Governor before it may operate gaming on the parcel, or it must apply to the BIA before the land can be declared meeting one of the exceptions to the prohibition on gaining on lands acquired after October 17, 1988. Both processes provide for more detailed, thoughtful consideration on the merits of the application before gaming can be conducted on those lands.

This concludes my testimony. Again, I would like to thank you for the opportunity to provide our views on S. 113. 1 would be happy to answer any questions you may have.

PREPARED STATEMENT OF MARGIE MEJIA, TRIBAL CHAIRWOMAN, LYTTON BAND OF POMO INDIANS

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

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

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

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

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

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

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

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

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

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

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

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

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

Finally, Congress acted to take that land into trust for us as it has in the case of many other tribes in California and other States. This was the final option, after we had tried everything else. Thanks to the efforts of Congressman George Miller, who represents the district which includes our land, that proposal was introduced in legislative form, as an amendment to a large piece of Indian legislation. That was October 2000. On December 27 of that year, the President signed the bill into law.

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

That act, of taking land into trust for us in San Pablo, was not the beginning of this story. It was the end of a very long story—a story of poor treatment of our tribe at the hands of the Federal Government. That was an act of redress, making good the wrong that had been done to us more than 50 years before. To have simply said, "We're sorry," and offered up a paper apology for the treatment of our tribe would have been wrong. Taking that land into trust represented a meaningful act of redress; taking that land out of trust would make that gesture so many empty words—and Senators, whatever you may think of this issue, I am sure you know our people have heard many empty words from this Government over the years.

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

Our initial proposal in 1999 was for a modest gaming operation with something on the order of 1,000 slot machines. In the proposed compact that we signed with the Governor last year, that number was originally 5,000, which was then revised

down to 2,500 machines. Since there has been some controversy about the change, let me address that for 1 moment.

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

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

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

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

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

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

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

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

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

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

For decades we worked to regain our name and our land. We obeyed the law, even when it was used against us. We followed the law. When the law allowed us to pursue gaming on our restored land in San Pablo, we did so. But already twice since then, there have been attempts to undo what you rightfully did. This legislation represents the third attempt to undo that act of justice toward our tribe. I ask you to say enough.

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

Senator McCain, we did not ask to be in this situation. We did not ask the Federal Government to take away our name and our land. But that happened. Now, decades later, when this Government has finally acted to right those wrongs—we

believe it would be wrong to take away our right to pursue economic self-sufficiency—which is effectively what Senator Feinstein's bill would do. As I explained earlier, without the right to operate gaming on our land, which is a right given to us by both the Federal Government and the State of California, we cannot use that land to help ourselves.

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

PREPARED STATEMENT OF GEORGE SKIBINE, ACTING DEPUTY ASSISTANT SECRETARY, POLICY AND ECONOMIC DEVELOPMENT FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Good morning, Mr. Chairman, Mr. Vice Chairman, and members of the committee. My name is George Skibine, and I am the Acting Deputy Assistant Secretary for Policy and Economic Development in the Office of the Assistant Secretary—Indian Affairs at the Department of the Interior [Department]. I am pleased to be here this morning to offer the Department's views on S. 113, a bill to modify the date as of which certain tribal land of the Lytton Rancheria of California is deemed to be held in trust by the United States for the benefit of the Lytton Band of Pomo Indians [Lytton Band]. For the following reasons, the Department does not have any objections to this bill.

The Bureau of Indian Affairs [BIA] authorized the transfer of several parcels of land in the city of San Pablo, in Contra Costa County, CA, on January 18, 2001, pursuant to section 819 of the Omnibus Indian Advancement Act of 2000, Public Law 106–568, which mandated the acquisition of the parcels, also known as the San Pablo Casino site, in trust for the Lytton Band. The Lytton Band's application was originally made under the authority of section 5 of the Indian Reorganization Act, 25 U.S.C. 465, and was under consideration by the BIA under the authority, procedures, and policies governing the discretionary acquisition of land into trust by the Secretary contained in regulations at 25 CFR part 151. However, enactment of section 819 of Pubic Law 106–568 mandated the Secretary to take the San Pablo site into trust without consideration of the factors in the land acquisition regulations. The fact that the Lytton Band wanted to acquire the San Pablo Casino site for gaming purposes was immaterial to what had become the ministerial decision of the Secretary to accept the land into trust.

The last sentence of section 819 provides that the San Pablo Casino site "shall be deemed" to have been held in trust as part of the reservation of the Rancheria prior to October 17, 1988." This provision permitted the Lytton Band to immediately operate a class II gaming establishment on the site without having to meet any of the requirements of section 20 of the Indian Gaming Regulatory Act of 1988 [IGRA] which contains a prohibition on gaming on lands acquired in trust after October 17, 1988, unless one of several statutory exceptions contained in section 20 of IGRA is satisfied. The Lytton Band cannot operate a class III gaming establishment under IGRA unless it negotiates a compact with the State of California, and notice of the Secretary of the Interior's approval of the compact is published in the Federal Register. The Lytton Band and the State have not yet submitted such a compact to the Secretary for approval.

S. 113, if enacted, would strike the last sentence of section 819. The practical effect of removing the so-called "retroactive" clause of section 819 will be to require the Lytton Band to seek an exception to the gaming prohibition contained in section 20 of IGRA if the Band wants to engage in either class II or class III gaming activities. We believe that the only exception under which the tribe could qualify is the exception contained in section 20(b)(1)(A) which requires the Secretary to make a determination that a gaming establishment on the trust land would be in the best interest of the tribe and its members, and not detrimental to the surrounding community, and is subject to the Governor of the State of California's concurrence. Unless and until the Secretary makes such a determination and the Governor concurs, class II or class III gaming activities would not be permitted on the San Pablo Casino site, effectively requiring the Lytton Band to shut down its current class II gaming operation on the property.

The Department does not object to this bill because we believe that it is inappropriate to waive the requirements of section 20 of IGRA for any particular tribe. Section 20 imposes reasonable restrictions on the right of Indian tribes to engage in gaming activities on off-reservation lands acquired in trust after the enactment of

IGRA. The exception in section 20(b)(1)(A) in particular requires consultation with the local community, consideration of detrimental impacts, and gives the state ultimate veto power over gaming on the off-reservation land. We believe that the standard in section 20(b)(1)(A) has required Indian tribes to negotiate with the State and affected local governments before a casino is placed on off-reservation land. The Department supports the process of consultation and cooperation between Indian tribes and affected local communities and sees no reason to exempt any tribe from this process.

Thank you for the opportunity to testify on S. 113. I will be happy to answer any questions you may have.

CITY OF SAN PABLO

One Alvarado Square
13831 San Pablo Avenue
San Pablo, CA 94806
www.ci.san-pablo.ca.us
Phone 510.215.3000 Fax 510.620.0204

Office of the City Council

March 25, 2005

United States Senate
Committee on Indian Affairs
Washington, DC 20510-6450

Dear Ladies & Gentlemen:

Good morning, my name is Sharon Brown. I have been a councilmember for the City of San Pablo for the past 21 years, and I have served as mayor of the City for four separate occasions. I was formerly the Chair of the Metropolitan Transportation District in the year 2001-2002, which is a nine county Regional Agency dealing with traffic issues in the San Francisco Bay Area. I am also the past Chair of the American Metropolitan Planning Organization. This organization is a nationwide consortium dealing with traffic in urban areas.

In the early 1990s, the City of San Pablo faced bankruptcy. Things were so desperate that the City was forced to borrow $4 million to meet its payroll. Our former city manager approached the City Council with the idea of attracting a card room to San Pablo. He thought that a card room would positively impact the community by creating jobs and by providing revenue to the City. The City Council submitted this idea to the voters of our city as a ballot measure. The voters endorsed this concept by a 67% to 33% landslide. During that campaign, like what has occurred in California recently, those business interests who felt threatened by the competition from our card room ran a campaign alleging that crime would increase, that drug usage would increase, and that prostitution would abound. The existing race tracks and card rooms funded this negative campaign. I am here to tell you that absolutely none of those dire predictions came true. The neighborhood surrounding the casino has seen a substantial decrease in criminal activity. In fact, San Pablo's crime rate has dropped in each of the past 10 years. The money generated by that card room has allowed the City to fund police and recreation programs which has resulted in a decrease in the crime rate. The card room also provided new entry-level jobs to those residents in West Contra County who needed them the most.

Revenue from the card room to the City decreased dramatically in the mid 1990s, due to competition from other gambling activities such as the state lottery, existing card rooms, race tracks, internet and off-shore book making, and due to the development of nearby Indian casinos. These Indian casinos are as close as a 90-minute drive from San Pablo and at least one is within 25 miles of the State Capitol. We are referring to the River Rock Casino in Santa Rosa, the

Cache Creek Casino in Yolo County, and the Thunder Valley Casino in Lincoln. We also wish to point out that the Indian casino in Highland, California, is situated in an urban/suburban area much like Casino San Pablo.

As you know, the federal government wrongfully terminated the Lytton Band of Pomo Indians in the 1950s, resulting in the transformation of their ancestral land into vineyards. In 1988, the federal courts ordered that the government reverse its decision to terminate the tribe and restore the Lytton Band of Pomo Indians to full tribal status. Unfortunately, the court also precluded the Lyttons for returning to their ancestral lands. Consequently, in 1998, the Lytton Band approached the City of San Pablo to determine if the City was interested in having an Indian casino located on the existing card room site. The Tribe had previously been rejected by a number of cities closer to their ancestral lands and turned to San Pablo only because of the existing card room. In 1999, the City Council unanimously approved a Municipal Services Agreement with the Lytton Band of Pomo Indians, acknowledging the fact Type III gaming would be coming to the City of San Pablo. Following that agreement, both the City and the Tribe approached Congressman George Miller and requested that he introduce legislation to allow the federal government to take the Casino San Pablo property into trust on behalf of the Lytton Band of Pomo Indians, which would allow Type III gaming.

In the fall of 2000, Congressman Miller introduced the enabling legislation, which was unanimously supported by the San Pablo City Council, because it would bring much needed jobs and economic growth to a region where both are vitally needed. Congressman Miller's legislation was part of an Indian Appropriations Bill and was published in the federal register as is all legislation. This bill sat in the committee for three months prior to being approved by the House of Representatives, the Senate and being signed into law by the President of the United States. This bill received considerable media attention while undergoing this legislative process. Given this process, it is difficult to understand how anyone can describe this as "stealth legislation." Additionally, after the President signed this bill into law, Nevada Senator Harry Reid attempted to repeal the "San Pablo" legislation but was unsuccessful in that attempt. Senator Inouye was a particularly strong advocate in opposing Senator Reid's proposed amendment.

The Committee might ask why has San Pablo embraced Indian gaming? The reasons are many but relatively straightforward. San Pablo has the lowest per capita income of any community in the San Francisco Bay Area. The per capita income in San Pablo is far less than the national average. Yet, housing prices in the Bay Area and San Pablo are among the most expensive in all of the United States. Eighteen percent (18%) of our residents live below the poverty line as defined by the federal government. The unemployment rate in San Pablo and West Contra Costa County is 175% of the County average. The City of San Pablo serves more free meals to seniors than any other location in Contra Costa County. Forty-four percent (44%) of our residents are Latino with the remaining 56% being comprised of Lao, Vietnamese, African-Americans, Cambodians and Anglos. Ninety-two percent (92%) of our residents commute outside of the City for their employment. As daunting as these statistics are, many of the neighborhoods just outside our city limits in the unincorporated County and in the City of Richmond are in even worse financial straits. Job growth and economic development needs are apparent and the Lytton compact is the one best opportunity to achieve both.

There has been one uncommissioned study on the casino thus far, and it should be viewed as being an objective analysis. The University of California Graduate School of Planning

concluded that the proposed compact negotiated by the Tribe and the Governor of the State of California would provide the residents of San Pablo and West Contra Costa County with entry-level jobs that it would increase these employees' earnings by 350%. These earnings are augmented by family health insurance and retirement benefits. The Lytton Tribe also commissioned an economic analysis of the proposed compact. This study forecast the creation of more than 3,000 new and permanent jobs at Casino San Pablo, if the compact is ratified by the legislature. The compact before the legislature would allow up to 2,500 slot machines and 200 table games. That same study estimates that the local agencies and the State of California would gain $155 million annually to mitigate impacts and to provide much needed revenue to the State, to Contra Costa County and to the City of San Pablo. This same study also forecasts more than $600 million in economic benefits throughout the region. It is the highest amount of revenue sharing ever offered by a tribe to State and local governments and, for the first time ever, includes revenues from table games.

Some opponents have stated that they are concerned by the impact of the proposed casino on problem gamblers. Experts estimate that 5% of all gamblers are prone to addiction, but as I mentioned earlier, there are already numerous opportunities to gamble for those who suffer from this addiction. The Golden Gate Fields thoroughbred track is less than 10 miles from Casino San Pablo, and the State of California operates a lottery with outlets on almost every block. There are other existing card rooms within a short drive from San Pablo in places like Martinez, Emeryville and San Jose. None of these existing facilities provide any programs to assist those people who suffer from gambling addiction. The compact negotiated by the governor and the Lytton Rancheria provides money on an annual basis to programs to assist gambling addicts, and the Casino will bar problem gamblers in either of two ways. First, the problem gambler can register at the casino and will be barred from future entry; and secondly, the Casino will identify those who they believe are problem gamblers and bar them as well. This Tribe, while operating its casino, will not use alcohol as a means to encourage people to gamble beyond their means. The Tribe will limit alcoholic drinks to a single shot, and they and will require that every person ordering an alcoholic beverage come to the bar to buy their own drink. That is, no one will be allowed to purchase multiple drinks for others.

So the only legitimate issue that remains for the proposed Class III gaming at Casino San Pablo is traffic. The Casino is less than one-half mile from the Interstate 80 San Pablo Dam Road interchange. This interchange is scheduled for reconstruction as part of the State Transportation Improvement Program. Unfortunately, the State has transferred all transportation construction money into its operating funds in order to maintain existing services and will not get to this project before 2014, unless the Lytton Tribe is allowed to pay for the improvements. The Tribe has promised to provide $25 million to the California State Department of Transportation once the compact is approved to fix the I-80 San Pablo Dam Road Interchange. The Tribe has offered this money in advance of any revenue that would be gained from Type III gambling. The Tribe would also be providing to the State and the local jurisdictions an estimated $150 million per year that could be invested in transportation improvements. And the Tribe has gone on record stating that it will contract with the local public bus system to provide a shuttle service from the nearest Bay Area Rapid Transit train depot to the Casino. If the Compact is not approved by the legislature the interchange will continue to be clogged. In fact, Casino San Pablo could disappear and our freeways would remain jammed.

In conclusion, the compact negotiated by the governor and by the Tribal Chair of the Lytton Band is the most comprehensive and generous in this nation's history. Other tribes who

have located in more rural areas have not provided money necessary to upgrade transit and infrastructure systems to support the gaming activity at those casinos. In fact, the Pachanga Tribe has criticized the compact negotiated for Casino San Pablo as being too generous and for giving away some of the sovereign rights accorded to Indian nation. Tribal Chair Person Margie Mejia has agreed to two environmental processes, has agreed to comply with the Uniform Building Codes, and has agreed to share the revenue from this activity in an unprecedented act of generosity. Her agreement to allow workers to organize is further evidence of the Tribe's intention to have a positive impact in our region.

We in San Pablo believe the Lytton Band of Pomo Indians has been the best neighbor and partner imaginable. The Lytton Band, despite being abused by the federal government in the past, has negotiated agreements with the City of San Pablo, and the State of California, that ensures that their facility will have a positive impact in the community most in need. It is a sad commentary that the State Legislature has not approved the proposed compact and a sadder commentary that the Senate would consider legislation which would rob the Tribe's federally sanctioned rights. I urge you to reject Senate Bill 113.

Sincerely,

Sharon J. Brown
Councilmember

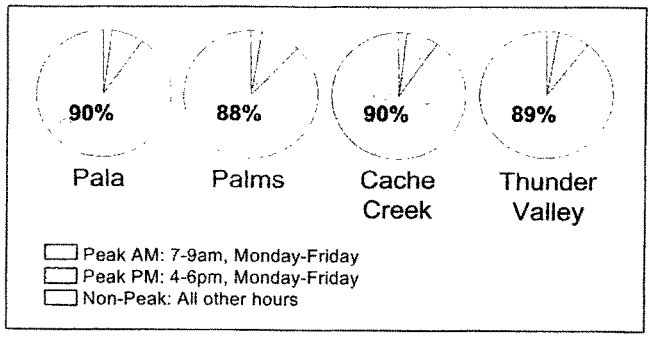
Enclosures

Working with Transportation Planners at the City, County and State Levels

The Lytton Tribe has agreed to negotiate agreements with the City of San Pablo, Contra Costa County and Caltrans to determine the mitigation required for environmental and traffic impacts and the compensation the Lytton Tribe will provide to the city and county to pay its fair share of transportation and other public service improvements.

Historic Data at Comparable Casinos Shows Approximately 90% of Casino Traffic Occurs at Non-Peak Commute Hours

More extensive study will be necessary and will be conducted before a casino is built, but early traffic studies are already underway. One such traffic study looked at the daily arrival and departure times of casino visitors and employees at four different existing comparable casinos in California and Las Vegas over a period of six months. Consistent with what we know about casino use in general, it showed that very little of the casino traffic coincides with commute hours.



We look forward to working with state, county and city officials to help fund and speed up overdue highway, street and road improvements in Contra Costa County.

CALIFORNIA INDIAN CASINOS

TRIBE	CASINO	LOCATION	COUNTY	NOTES
AGUA CALIENTE BAND OF CAHUILLA INDIANS	AGUA CALIENTE CASINO	32-250 BOB HOPE DRIVE RANCHO MIRAGE, CA 92270	RIVERSIDE	4 MI. FROM RANCHO MIRAGE
AGUA CALIENTE BAND OF CAHUILLA INDIANS	SPA RESORT CASINO	100 N. INDIAN CANYON PALM SPRINGS, CA 92262	RIVERSIDE	.57 MI FROM PALM SPRINGS
ALTURAS RANCHERIA	ALTURAS CASINO	901 COUNTY ROAD 56 ALTURAS, CA 96101	MODOC	50 MI. FROM CHOWCHILLA
AUGUSTINE BAND OF CAHUILLA MISSION INDIANS	AUGUSTINE CASINO	84-001 AVE 54 COACHELLA CA 92236	RIVERSIDE	6 MI. FROM INDIO
BARONA BAND OF MISSION INDIANS	BARONA CASINO	1095 BARONA ROAD LAKESIDE, CA 92040	SAN DIEGO	30 MI. FROM SAN DIEGO
*BEAR RIVER BAND OF ROHNERVILLE RANCHERIA	NON-OP	32 BEAR RIVER DR LOLETA, CA 95551	HUMBOLDT	
BIG SANDY BAND OF WESTER MONO INDIANS	MONO WIND CASINO	373 RANCHERIA LANE AUBERRY, CA 93602	FRESNO	40 MI. FROM FRESNO
BIG VALLEY RANCHERIA OF POMO INDIANS	KONOCTI VISTA CASINO	2755 RANCHERIA ROAD LAKEPORT, CA 95435	LAKE	35 MI. FROM CLOVERDALE
BISHOP PAIUTE TRIBE	PAIUTE PALACE CASINO	2742 N. SIERRA HWY BISHOP, CA 93514	INYO	35 MI. FROM MAMMOTH LAKES

TRIBE	CASINO	LOCATION	COUNTY	NOTES
BLUE LAKE RANCHERIA	BLUE LAKE CASINO	428 ½ CHARTIN RD BLUE LAKE CA 95525	HUMBOLDT	15 MI. FROM EUREKA
*BUENA VISTA RANCHERIA OF ME-WUK INDIANS	NON-OP	4650 COAL MINE RD IONE CA 95640	AMADOR	
CABAZON BAND OF MISSION INDIANS	FANTASY SPRINGS	84-245 INDIO SPRINGS PKWY INDIO CA 92203	RIVERSIDE	95 MI. FROM BLYTHE
CAHTO TRIBE OF THE LAYTONVILLE RANCHERIA	RED FOX CASINO	300 CAHTO DR LAYTONVILLE CA 95454	MENDOCINO	57 MI. FROM FORT BRAGG
CAHUILLA BAND OF MISSION INDIANS	CAHUILLA CREEK CASINO	52702 HWY 371 ANZA CA 92539	RIVERSIDE	52 MI. FROM OCEANSIDE
CAMPO BAND OF MISSION INDIANS	GOLDEN ACORN CASINO	1800 GOLDEN ACORN WAY CAMPO CA 91906	SAN DIEGO	87 MI. FROM ESCONDIDO
CHEMEHUEVI INDIAN TRIBE	HAVASO LANDING CASINO	1 MAIN ST HAVASU LAKE CA 92363	SAN BERNADINO	6.9 MI. FROM NEEDLES
CHICKEN RANCH RANCHERIA OF ME-WUK INDIANS	CHICKEN RANCH CASINO	1639 CHICKEN RANCH RD JAMESTOWN CA 95327	TUOLUMNE	46 MI. FROM MODESTO
COAST INDIAN COMMUNITY OF THE RESIGHINI RANCHERIA	GOLDEN BEARS CASINO	151 EAST KLAMATH BEACH RD KLAMATH CA 95548	DEL NORTE	20 MI. FROM CRESCENT CITY
COYOTE VALLEY BAND OF POMO INDIANS	COYOTE VALLEY SHODAKAI CASINO	7751 EAST KLAMATH BEACH RD. REDWOOD VALLEY CA 94570	MENDOCINO	9 MI. FROM UKIAH

TRIBE	CASINO	LOCATION	COUNTY	NOTES
COLUSA BAND OF WINTUN INDIANS	COLUSA INDIAN BINGO & CASINO	3730 HWY 45 COLUSA CA 95932	COLUSA	11 MI. FROM COLUSA
DRY CREEK RANCHERIA	RIVER ROCK CASINO	3250 HWY 128 EAST GESERVILLE CA 95441	SONOMA	26 MI. FROM SANTA ROSA
*ELEM INDIAN COLONY	NON-OP	CLEARLAKE OAKS CA 95423	LAKE	
ELK VALLEY RANCHERIA	ELK VALLEY CASINO	2500 HOWLAND HILL RD CRESCENT CITY CA 95531	DEL NORTE	2 MI. FROM CRESCENT CITY
EWIIAAPAAYP BAND OF KUMEYAAY INDIANS	VIEJAS BINGO & TURF CLUB	4045 WILLOWS RD ALPINE CA 91901	SAN DIEGO	30 MI. FROM SAN DIEGO
HOOPA VALLEY TRIBE	LUCKY BEAR CASINO	0 HWY 96 HOOPA CA 95546	HUMBOLDT	79 MI. FROM EUREKA
HOPLAND BAND OF POMO INDIANS	HOPLAND SHO-KA-WAH CASINO	13101 NOKOMIS RD HOPLAND CA 95449	MENDOCINO	21 MI. FROM UKIAH
JACKSON RANGERIA BAND OF MIWUK INDIANS	JACKSON RANCHERIA CASINO	1222 NEW YORK RANCH RD JACKSON CA 95642	AMADOR	49 MI. FROM SACTO
*JAMUL BAND OF MISSION INDIANS	NON-OP	JAMUL CA 91935	SAN DIEGO	
LAJOLLA BAND OF LUISENO INDIANS	LAJOLLA SLOT ARCADE	22002 HWY 76 PAUMA VALLEY CA 92061	SAN DIEGO	25 MI. E. OF ESCONDIDO
*MANCHESTER POINT ARENA RANCHERIA	NON-OP	POINT ARENA CA 95468	MENDOCINO	
*MANZANITA BAND OF MISSION INDIANS	NON-OP	BOULEVARD CA 91905	SAN DIEGO	

TRIBE	CASINO	LOCATION	COUNTY	NOTES
MIDDLETOWN RANCHERIA	TWIN PINE CASINO	22223 HWY 29 RANCHERIA RD MIDDLETOWN CA 95461	LAKE	15 MI. FROM CALISTOGA
MOORETOWN RANCHERIA	FEATHER FALLS CASINO	1 ALVERDA DR OROVILLE CA 95965	BUTTE	28 MI. FROM CHICO
MORONGO BAND OF MISSION INDIANS	CASINO MORONGO	49750 SEMINOLE DR CABAZON CA 92230	RIVERSIDE	39 MI. FROM INDIO
PALA BAND OF MISSION INDIANS	PALA CASINO	11154 HWY 76 PALA CA 92059	SAN DIEGO	40 MI. N.E. OF SAN DIEGO
PASKENTA BAND OF NOMLAKI INDIANS	ROLLING HILLS CASINO	2655 BARHAM RD CORNING CA 95963	TEHAMA	22 MI. FROM RED BLUFF
PAUMA-YUIMA BAND OF MISSION INDIANS	CASINO PAUMA	777 PAUMA RESERVATION RD PAUMA VALLEY CA 92593	SAN DIEGO	65 MI. FROM SAN DIEGO
PECHANGA BAND OF MISSION INDIANS	PECHANGA INTERTAINMENT CENTER	45000 PALA RD TEMECULA CA 92593	RIVERSIDE	30 MI. FROM OCEANSIDE
*PICAYUNE RANCHERIA OF THE CHUKCHANSI INDIANS	NON-OP	COARSEGOLD CA 93614	MADERA	
PITT RIVER TRIBE	PITT RIVER CASINO	20265 TAMARACK AVE BURNEY CA 96013	SHASTA	53 MI. FROM REDDING
REDDING RANCHERIA	WIN-RIVER CASINO	2000 RANCHERIA RD REDDING CA 96001	SHASTA	5 MI. FROM REDDING

TRIBE	CASINO	LOCATION	COUNTY	NOTES
RINCON SAN LUISENO BAND OF MISSION INDIANS	HARRAH'S RINCON CASINO	33750 VALLEY CENTER RD VALLEY CENTER CA 92082	SAN DIEGO	15 MI. FROM ESCONDIDO
ROBINSON RANCHERIA OF POMO INDIANS	ROBINSON RANCHERIA BINGO & CASINO	1545 E. HWY 20 NICE CA 95464	LAKE	30 MI. FROM UKIAH
RUMSEY INDIAN RANCHERIA	CACHE CREEK INDIAN BINGO & CASINO	14455 STATE HWY 16 BROOKS CA 95606	YOLO	48 MI. FROM SACTO
SAN MANUEL BAND OF MISSION INDIANS	SAN MANUEL INDIAN CASINO	5797 N. VICTORIA CT HIGHLAND CA 92346	SAN BERNADINO	39 MI. FROM SAN BERNADINO
SAN PASQUAL BAND OF MISSION INDIANS	VALLEY VIEW CASINO	16300 NYEMIL PASS RD VALLEY CENTER CA 92082	SAN DIEGO	12 MI. FROM ESCONDIDO
SANTA ROSA BAND OF TACHI INDIANS OF THE SANTA ROSA RANCHERIA	PALANCE INDIAN GAMING CENTER	17225 JERSEY AVE LEMOORE CA 93245	KINGS	37 MI. FROM FRESNO
SANTA YNEZ BAND OF MISSION INDIANS	CHUMASH CASINO	3400 EAST HWY 246 SANTA YNEZ CA 93460	SANTA BARBARA	30 MI. FROM SANTA BARBARA
SHERWOOD VALLEY RANCHERIA	BLACK BART CASINO	100 KAWI PLACE WILLITS CA 95490	MENDOCINO	1 MI. FROM WILLITS
SHINGLE SPRINGS RANCHERIA	CRYSTAL MT. CASINO	5200 HONPIE RD SHINGLE SPRINGS,CA 95682	EL DORADO	34 MI. FROM SACTO
SMITH RIVER RANCHERIA	LUCKY 7 CASINO	350 N INDIAN RD SMITH RIVER CA 95567	DEL NORTE	17 MI. FROM CRESCENT CITY

TRIBE	CASINO	LOCATION	COUNTY	NOTES
SOBOBA BAND OF MISSION INDIANS	SOBOBA CASINO	23333 SOBOBA RD SAN JACINTO CA 92581	RIVERSIDE	41 MI. FROM RIVERSIDE
SUSANVILLE INDIAN RANCHERIA	DIAMOND MOUNTAIN CASINO	745 JOAQUIN ST SUSANVILLE CA 96130	LASSEN	1 MI. FROM SUSANVILLE
SYCUAN BAND OF MISSION INDIANS	SYCUAN CASINO	5483 DEHESA RD EL CAJON CA 92019	SAN DIEGO	20 MI. FROM SAN DIEGO
TABLE MOUNTAIN RANCHERIA	TABLE MOUNTAIN BINGO & CASINO	8484 TABLE MOUNTAIN RD FRIANT CA 93626	FRESNO	26 MI. FROM MADERA
TRINIDAD RANCHERIA	CHER-AE HEIGHTS BINGO & CASINO	1 CHER-AE LN TRINIDAD CA 95570	HUMBOLDT	29 MI. FROM EUREKA
TULE RIVER INDIAN RESERVATION	EAGLE MOUNTAIN CASINO	681 S TULE RD PORTERVILLE CA 93258	TULARE	0.9 MI. FROM PORTERVILLE
TUOLUMNE BAND OF ME-WUK INDIANS	BLACK OAK	19400 TUOLUMNE RD NORTH TUOLUMNE CA 95379	TUOLUMNE	9 MI. FROM SONORA
TWENTY NINE PALMS BAND OF MISSION INDIANS	TRUMP 29 CASINO	46-200 HARRISON PL COACHELLA CA 92236	RIVERSIDE	3 MI. FROM INDIO
TYME MAIDU TRIBE OF THE BERRY CREEK RANCHERIA	GOLD COUNTRY CASINO	4020 OLIVE HWY OROVILLE CA 95966	BUTTE	27 MI. FROM CHICO
UNITED AUBURN INDIAN COMMUNITY	THUNDER VALLEY CASINO	1200 ATHENS AVE LINCOLN CA 95648	PLACER	26 MI. FROM SACTO
VIEJAS BAND OF MISSION INDIANS	VIEJAS CASINO	5000 WILLOWS RD ALPINE	SAN DIEGO	35 MI. E. OF SAN DIEGO

*Tribes that have received State and Federal approval; Casino is not currently built and/or operational as of 10/03.

ARTICHOKE JOE'S
CASINO
659 Huntington Avenue
San Bruno, CA 94066
650-589-8812
650-872-0101 fax

April 18, 2005

The Honorable John S. McCain
Senate Committee on Indian Affairs
SH-836 Hart Senate Office Building
Washington, DC 20510-6450

Re: Hearing on S. 113
April 5, 2005
Testimony Submitted for the Record

Dear Chairman McCain, Senator Dorgan, and Members of the Committee:

Artichoke Joe's is a cardroom located in San Bruno, California, near San Francisco International Airport, and since 2001, has been involved in litigation with the Lytton Band of Indians concerning their rights to conduct gaming at the site of Casino San Pablo. During the course of that litigation, we have compiled much factual information concerning the history of the Lytton Rancheria and its residents and distributees.

At the recent hearing on S. 113, Senator Feinstein's bill to remove the exemption of the Lytton from certain provisions of IGRA, a number of incorrect statements were made concerning the history of the Lytton. We want to share with the Committee our knowledge of the true facts as developed in the litigation in order to correct the record.

I.

Claims: The Federal Government Illegally Terminated the Lytton Tribe

Sen. Inouye "For nearly 30 years from 1962 to 1991, the Lytton Rancheria was terminated from its federally recognized status."

Rep. Miller "...the Lytton Band was wrongfully terminated in the 1960s."

"Through no fault of their own, the Lytton tribe were illegally stripped of their status as a federally recognized Indian tribe...."

Council. Brown "You've heard about the federal government wrongly terminating the Lytton Band of Pomo Indians in the 1950s."

Chpsn. Mejia "...the federal government [took] away our name and our land."

Fact: Prior to 1991, There Was No Lytton Tribe

The history of the Lytton Rancheria reveals that prior to 1991, there was no tribe, only two families who never organized as a tribe.

The history of rancherias began in 1905. Congress commissioned a report on the condition of California Indians, and in 1906, an attorney named C.E. Kelsey visited all of the Indian settlements and submitted a report. He found the conditions on most Indian settlements to be poor and recommended that rancherias be established for individual Indians. He recommended that small parcels of 5 to 10 acres be assigned to individual families. Since most state lands were already settled, he noted that Congress would need to purchase settled lands. Kelsey specifically stated that he was not recommending the creation of reservations. Rather, rancherias would provide some land for subsistence farming, but the Indians would be employed in the local community. There was no intent to create sovereign tribal lands separate from state lands. They were settled lands under state jurisdiction.

Congress immediately followed Kelsey's recommendation, and began an annual set aside of funds for the creation of rancherias. In 1926, the BIA began negotiating for purchase of 50 acres near Lytton Station for use by the local Dry Creek and Geyserville Indians. The sale closed in 1927. Consistent with other rancheria purchases, the government did not place the lands in trust.

No one lived on the Lytton Rancheria for 10 years. Instead, the Salvation Army was allowed to grow corn there. In 1937, an Indian man whose parents were from Northern Californian tribes and who had previously been allocated land in Round Valley Reservation, asked to settle his family at Lytton, and was assigned 16 acres. The following year his wife's brother asked to settle there and was assigned 10 acres. These were the only two families ever assigned lands at Lytton.

The two families never organized as a tribe, and no government existed for a "government to government" relationship with the United States. The Senate Report accompanying the 1958 California Rancheria Act discusses each of the 41 rancherias being distributed, and confirms that the residents of Lytton had never organized as a tribe, either formally under the IRA or informally. The Report states: "The Indians living at Lytton Rancheria have no tribal organization." Senate Report No. 1874, 85th Congress, 2nd Session, p. 28. *The fact is that no tribe or band ever lived on the Lytton Rancheria, and claims that the government wrongfully terminated the tribe are not true.*

II.

Claim: the Lytton Rancheria Was Trust Land

Rep. Miller "Had the tribe never been legally terminated there would be no question of Lytton's ability to operate gaming within their ancestral area."

Chpsn. Mejia "But until the 1950s, we did have land...."

Fact: The Lytton Rancheria Was Never Considered Trust Land

The Lytton Rancheria was never considered trust land, and the residents of the Lytton Rancheria never had any beneficial ownership of the land. When the government accepts title from the tribe, or holds lands to which the tribe has rights to under treaty, trust obligations arise. Here, in contrast, Congress authorized purchase of settled lands with government funds, but not pursuant to any treaty with any tribe. Nor did Congress indicate that the government would transfer beneficial ownership to the land to the residents of the rancherias. Title to the Lytton Rancheria was not taken in trust for its residents. Furthermore, the Kelsey report made clear that it was not recommending creation of reservations or holding the lands for "tribes" per se. There are no indicia of a trust arising over the Lytton lands.

In this regard, when the government was considering distribution of the rancherias, the BIA testified in Congress that the lands were not trust lands. In response to questions whether the government had the right and obligation to hold the land in trust, the BIA testified:

> "[These lands] are distinguishable from the lands that are held in trust for an Indian tribe, such as the Klamath Tribe or the Menominee Tribe. Those are, strictly speaking, trust lands, but these lands that we are speaking of here are lands that are not held in trust for any particular group...[P]eople who are living there now also have no legal rights to the land. They can be ousted if the Secretary should ever dare do it, so that in terms of rights, no one, no Indians, have any rights to stay on that land, and it is the custom that when an Indian leaves the land, he has ceased to have any connection with that rancheria.
>
> "Judge Shuford, I bring this up. It is a controversial and technical point, but I do it for one purpose, and that is to indicate that the legal title to these rancherias is not the same, or in the same status, as the ordinary trust title for Indian lands." Hearings Before Subcommittee on Indian Affairs, 85th Congress, 1st Session, pp. 77-79.

The same concern was raised by title companies when asked to insure title. The title companies balked at insuring title, fearing that trust obligations pertained. In a letter dated March 15, 1960 to Western Title Insurance, the DOI Regional Solicitor wrote, "In some respects, it is true, the rancherias constitute Indian country, but they do not have all the indicia of Indian reservations." The issue remained unsettled, and in August 1960, the Solicitor of the Department of Interior issued a formal Opinion. The Opinion stated that rancheria properties were not trust lands and belonged to the United States in law and equity.

> "It has been suggested that the United States cannot dispose of this property in this fashion because it held the property in trust for specific bands, who had a vested interest therein...[¶] These references [in Senate Report No. 1874] do not connote a trust in which the United States holds merely a legal title, with equitable ownership elsewhere, as in the case of Indian lands generally; the intention was to indicate that the land, although acquired in fee, was purchased for a specific purpose. [¶] In conclusion, the rancheria properties belong to the United States, in law and equity." Opinions of the Solicitor, 2 DOINA 1882 (August 1, 1960).

Claims by the Lytton and their supporters that the former rancheria was trust land are based on revisionist history. The residents of the rancheria were individual Indians who had disassociated themselves from existing tribes, and never were their own tribe. Only when federal benefits and then gaming laws became so significant did descendants try to claim otherwise.

III.

Claim: The Rancheria Lands Were Wrongfully Taken from the Indians

Council. Brown	"You've heard about the federal government wrongly terminating the Lytton Band of Pomo Indians in the 1950s, resulting in the transformation of their ancestral land into vineyards."
Chpsn. Mejia:	"...it was the government's wrongful actions which resulted in the loss of our land..."

Fact: No Lands Were Taken from the Lytton Residents

In carrying out the California Rancheria Act, the government was very generous to the Indians. Although the two families occupying the Lytton Rancheria had held and improved only 26 of the 50 acres, the government gave members of the two families the entire 50 acres for free. At the time, there were three members of the two families living

on the land. Each family had a well with a water tower built at government expense. In consultation with the two families, the government agreed to divide the land into eight parcels and give separate parcels to children of the original occupants. These parcels were all sold within just a few years.

In August 1964, after the distributees had already sold all of the parcels, Congress amended the California Rancheria Act to require that sanitation be provided before distribution. It is not clear the effect of this amendment on distributions that had occurred, especially where the recipients had already sold the land.

In 1986, the wife of one of the recipients of Lytton land sought to restore property to trust status (even though it was now owned by a third party) and to restore recognition of the tribe. She claimed wrongful actions resulted in termination of the tribe. She relied on the fact that 23 rancherias had been "unterminated" pursuant to unrelated litigation and that regulations had been held invalid. The gist of the complaint was the failure to provide sufficiently for water and sewerage. The fact that the government had turned over the full 50 acres instead of just 26 acres and that the only two parcels which had existed had had water was ignored. This is not a case in which trust lands were taken away from Indians; rather, it is the unusual case where the government gave land to non-tribal Indians without reason.

IV.

Claim: The Court Order Restoring Tribal Status Restricted the Lytton from Gaming

Sen. Inouye — "The county of Sonoma intervened in that lawsuit, and as a condition of the county's consent to a forthcoming settlement of the legal action, certain conditions were imposed which precluded the tribe from initiating economic development activities on the tribe's traditional lands."

Rep. Miller — "The court order restoring Lytton's tribal status contained the unique limitation that precluded the secretary of Interior from taking lands in Sonoma County, the Lytton's ancestral lands, into trust for the benefit of the Lytton Band for any use inconsistent with the Sonoma County general plan....The limitation created a special circumstance when the Lyttons appealed to the Department of Interior for an exception of the Indian Gaming Regulatory Act...."

"The Lyttons are the only tribe in California and perhaps the only tribe in the United States that as a condition of restoration of tribal

	status was expressly deprived the opportunity to exercise rights under the Indian Gaming Regulatory Act on its ancestral lands."
Council. Brown	"the court also precluded the Lyttons from returning to their ancestral lands."
Chpsn. Mejia	"[The court] settlement effectively barred us from returning to our tribal lands in the Alexander Valley by prohibiting us from operating a gaming facility in the area. We had no choice but to agree to this condition because otherwise, and with no or little resources of our own, we would have been forced to fight a protracted legal battle against a group of wealthy wineries and the county."

Facts: The Lytton Voluntarily Gave Up Gaming Rights to Avoid Trial on Questionable Tribal Claims

Claims that the restrictions on the use of ancestral lands were imposed on the Lytton are incorrect. The restrictions were not imposed by a court ruling. Rather, the Lytton voluntary agreed to all these restrictions to obtain a settlement that was likely more generous than could have been obtained by trial.

The Lytton wanted to negotiate a settlement, and were willing to give up rights to gaming (which at the time were just Bingo games), to obtain federal Indian benefits. The Lytton had the right to go to trial if they felt that the terms of settlement were unfair.

Although the Lytton argue that a trial would have been costly, and that their opposition was wealthy wineries, that is not true. In 1988, the primary opposition forces did not include any wineries. Rather, there was a group of local residents who objected to actions by the Lytton descendants. Opposition also included two descendants of Lytton residents who had received property in 1962.

The Lytton also claim legal representation was unaffordable. However, they were represented by very competent and very dedicated lawyers at California Indian Legal Services. As the CLIS website states, "CLIS provides free or low-cost representation on those matters that fall within the priorities set by our Board of Trustees." Therefore, it appears going to trial would not have been costly.

Congressman Miller argues the court order creates a special circumstance. However, the Lyttons' voluntarily agreement not to engage in gaming does not constitute a special circumstance and does not justify special treatment. The Lytton should be expected to honor the good faith agreements into which they entered.

Furthermore, it now appears that since the Lytton residents never were a tribe, the recognition of the Lytton pursuant to the Stipulation was not even proper. In the recent case of *Cherokee Nation of Oklahoma v. Norton*, 389 F.3d 1074 (10th Cir. 2004), the court held that there are limited procedures for recognition of an Indian tribe. The court wrote, "The Federally Recognized Indian Tribe List Act of 1994 provides Indian tribes may be recognized by: (1) an 'Act of Congress;' (2) 'the administrative procedures set forth in part 83 of the Code of Federal Regulations[;]' or (3) 'a decision of a United States court.'" The Lytton were not listed pursuant to any of the three prescribed methods, but through a settlement.

V.

Claims: The Miller Amendment Was Not Stealth Legislation

Sen. Inouye	"The bill as amended by the House on October 26, 2000, came back to the Senate where it was pending on the Senate calendar until December 11, 2000, when the bill was taken up and passed by the Senate. In those 45 days in which the amended bill was pending in the Senate, the customary protocol was followed to ensure that the amendment was agreed to not only by the offices of the California senators but that the amendment was acceptable to other senators prior to action the bill in the Senate."
Rep. Miller	"My provision regarding the Lytton Band was added along with numerous other issues as an amendment to H.R. 5528, the Omnibus Indian Advancement Act, in the full House. All of the provisions added were done so ... as a way to move legislation that for one reason or another had not passed....This is the most appropriate way to move legislation near the end of a Congress that had been bottled up....H.R. 5528 was...passed by the Senate by unanimous consent on December 11, 45 days after its referral to the Senate...."
Council. Brown	"This bill sat is the committee for three months prior to being approved by the House of Representatives, the Senate, and being signed into law by the president of the United States. This bill received considerable media attention while undergoing the legislative process."

Facts: The Miller Amendment Was Stealth Legislation

The Miller Amendment was presented with the intent to avoid public scrutiny and opposition and that is what it did. H.R. 5528 was not introduced until October 24, 2000, and at its introduction, the bill had no provision regarding the Lytton. No bill regarding the

Lytton existed until Section 819 was introduced on the floor of the house on October 26, 2000 at 9:25 p.m. It was hidden in Title VIII called "Technical Corrections." There was no debate on the floor, and the substance had not been subject to any committee hearings. Of course, the public was totally unaware of the amendment. Notwithstanding the lack of hearings on this amendment, HR 5528 was passed by the House five minutes later, two days after the bill was introduced. The Miller Amendment had not been part of any prior legislation and was not "bottled up" legislation. Nevertheless, it was snuck into this Omnibus bill where it was effectively shielded from any opponents.

Congressman Miller testified that he first got involved in the Lytton situation in 1999. That gave him plenty of time to introduce his legislation using normal procedure and to have normal review, including committee hearings. Yet no legislation was introduced until October 26, 2000, at 9:25 at night, just 5 minutes before the vote.

As was made clear at the hearing, when Proposition 1A was under consideration, concerns were raised that Indians could take urban lands, and set up casino on those lands, and supporters of Proposition 1A promised that would not occur. Indians heavily advertised the fact that their lands were remote from main population centers and mostly in rural areas. The California electorate approved Proposition 1A to help Indians but with this understanding that Nevada-style gaming would be limited to Indian lands. The Miller Amendment contravened the voters' desires and expectations, and as a result, has generated much opposition and disquiet ever since.

VI.

Claim: The Lytton Had Claims to Casino San Pablo When Prop. 1A Was Enacted

Chpsn. Mejia "...back in 1999, [the Lytton] were in negotiations with the city of San Pablo on our municipal services agreement. We were in every paper."

Fact: In March 2000, Voters Did Not Consider Casino San Pablo to Be Indian Lands

In the campaign for Proposition 1A in March 2000, voters questioned whether Indians could set up casinos on new Indian lands. The tribes advertised heavily on television that Nevada-style casinos would be limited to Indian lands on remote reservations. As if to emphasize this, the ads were set in rural reservations with dirt roads and much open space.

At the time, the Lytton did not own the Casino San Pablo site nor had any option to buy it. Nor was there any public record of any rights they had to the property. Any rights they had had been kept secret from the public.

Furthermore, although the Lytton had submitted an application to the BIA to take the land into trust, it was known that the BIA did not consider this land to be restored land for a restored tribe, and that community objections to gaming would most likely result in a denial of rights to game on the land.

Thus, when the voters approved Proposition 1A, they had no expectation that the Lytton would be allowed to conduct gaming in San Pablo.

VII.

Claim: Congress Had the Power to Grant the Lytton Sovereignty over the San Pablo Site

Rep. Miller "[T]he U.S. Constitution gives Congress plenary authority over Indian tribes to pass laws for their benefit."

Fact: Congress Had No Power to Create a Tribe or Indian Sovereignty

Although courts have described Congress' power as "plenary," they have also made clear that it is not unlimited. *Delaware Tribal Business Comm. v. Weeks*, 430 U.S. 73, 83-84 (1977). In *United States v. Sandoval*, 231 U.S. 28 (1913), the court wrote that Congress may not arbitrarily call a group an Indian tribe. In *Baker v. Carr*, 369 U.S. 186, 216-217 (1962), the Supreme Court further noted, "Able to discern what is 'distinctly Indian,' the courts will strike down any heedless extension of that label. They will not stand impotent before an obvious instance of a manifestly unauthorized exercise of power."

More recently, the Supreme Court ruled that Indian sovereignty is inherent, and cannot be conferred by Congress. *U.S. v. Lara*, 541 U.S. 193 (2004). In this regard, if the state had sovereignty over land, Congress has no power to repossess it and confer sovereignty on a tribe. Rather the state can lose sovereignty only if it recedes sovereignty back to the federal government. See *Coso Energy Developers v. County of Inyo* (2004) 122 Cal.App.4th 1512, 1520.

Given these limitations on the power of Congress and on the existence of Indian sovereignty, Congress had no power to create Indian sovereignty where it did not previously exist. See *Nevada v. Hicks*, 533 U.S. 353 (2001). The Lytton had no historical claim to sovereignty that preceded the state's claim. No sovereignty was reserved on admission of the state, and the state has receded no sovereignty since. Nor

has the state sat on its rights so that the tribe can claim laches. See *City of Sherrill v. Oneida Indian Nation*, 544 U.S. ___ (2005).

Furthermore, courts have made clear that the basis of Indian sovereignty is the recognition of the Indians as "a separate people." See *Worcester v. Georgia*, 31 U.S. 557 (1832) ["The treaties and laws of the United States contemplate the Indian territory as completely separated from that of the states."]; *U.S. v. Kagama*, 118 U.S. 375, 381-382 (1886) [describing the Indians as having "a semi-independent position when they preserved their tribal relations; not as states, not as nations, not a possessed of the full attributes of sovereignty, but as a separate people, with the power of regulating their internal and social relations, and thus far not brought under the laws of the Union or of the state within whose limits they resided."].

Cases still routinely base sovereignty on the fact that there is a separate Indian community. See *U.S. v. Mazurie*, 419 U.S. 544, 557 (1975); *U.S. v. Antelope*, 430 U.S. 641, 646 (1977); *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980).

The Casino San Pablo site does not constitute a separate Indian community. It is just one parcel – a building and a parking lot – in the middle of a commercial district in the middle of a heavily urbanized area of the Bay Area. Furthermore, the Lytton have no plans for anyone to live on the land. There will be no Indian community. This turns the notion of a reservation as a separate Indian community on its head.

Conclusion

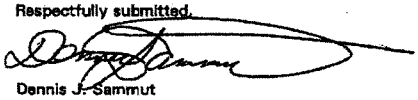
The Lytton and their supporters have tried to paint a picture of a tribe whose special circumstances qualify for this unique exemption. However, the actual facts do not support the claims made. The residents at Lytton were not a tribe, and did not have any trust rights to the land. Nor was the land taken from them. They received the whole parcel, and sold it. No special circumstances justify the Miller Amendment, and had that legislation been subjected to committee hearings in 2000, it never would have passed. The Lytton have no special circumstances, and they should be subjected to the same procedures and review as every other tribe.

S. 113 reestablishes important community safeguards and levels the playing field between tribes, without unduly burdening the Lyttons or keeping them from their ongoing cardroom operations.

Honorable John S. McCain
April 18, 2005
Page 11

I respectfully request that Senator Feinstein's legislation be reported favorably to the full Senate at the Committee's earliest opportunity.

Respectfully submitted,



Dennis J. Sammut
President

cc. Senator Byron L. Dorgan
Senator Dianne Feinstein

ADMINISTRATION BUILDING
3501 CIVIC CENTER DR., SUITE 329
SAN RAFAEL, CALIFORNIA 94903-4193
TELEPHONE (415) 499-7331
FAX (415) 499-3645
TTY (415) 499-6172
http://www.co.marin.ca.us/

THE BOARD OF SUPERVISORS OF MARIN COUNTY

April 19, 2005

Senator Dianne Feinstein
United States Senate
331 Hart Office Bldg., Room 331
Washington, DC 20510

Re: S. 113 - To modify the date as of which certain tribal land of the Lytton Rancheria of California is deemed to be held in trust - SUPPORT

Dear Senator Feinstein:

On behalf of the Marin County Board of Supervisors, I write to express our strong support of your bill to ensure that the Lytton Band of Pomo Indians go through the same regulatory oversight process as any other tribe acquiring land after October 17, 1988.

The Lytton Band of the Pomo Indians, a tribe of about 200 members from Sonoma County, was granted a reservation in the City of San Pablo in Contra Costa County by Congressional enactment on December 27, 2000. The Congressional Act also decreed that the land was deemed to be held in trust prior to October 17, 1988, the effective date of the Indian Gaming Regulatory Act (IGRA).

The tribe's initial agreement with Governor Arnold Schwarzenegger called for transforming its San Pablo card room into a massive casino with 5,000 slot machines. Amid opposition, the tribe scaled back its proposal to 2,500 slots. Because of the significant adverse off-reservation impacts of a casino in an urban area just across the Richmond-San Rafael Bridge from Marin County, the Lytton Band's proposal should be subject to the same level of study and review as would be required of any other tribe acquiring land after October 17, 1988 under IGRA.

Deletion of the last sentence would have the effect of requiring that the Lytton Band complete the two-part determination process (approval by both the Secretary of Interior and the Governor) prior to engaging in Class III gaming. It does not affect the Lytton Band's acquisition of land in San Pablo nor does it block a casino proposal, subject to the two-part determination process of IGRA.

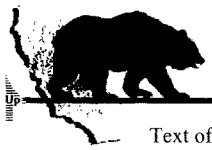
Please do not hesitate to contact us for assistance with these efforts.

Respectfully submitted,

Harold C. Brown, Jr.
President, Marin County Board of Supervisors

Cc: Senator Carole Migden
Assemblymember Joe Nation

VICE-PRESIDENT SUSAN L. ADAMS SAN RAFAEL 1ST DISTRICT | PRESIDENT HAROLD C. BROWN, JR. SAN ANSELMO 2ND DISTRICT | CHARLES MCGLASHAN MILL VALLEY 3RD DISTRICT | 2ND VICE-PRESIDENT STEVE KINSEY SAN GERONIMO 4TH DISTRICT | CYNTHIA L. MURRAY NOVATO 5TH DISTRICT | CLERK MARK J. RIESENFELD



Gambling on Tribal Lands.
Legislative Constitutional Amendment.

Text of Proposition 1A

This amendment proposed by Senate Constitutional Amendment 11 of the 1999-2000 Regular Session (Resolution Chapter 142, Statutes of 1999) expressly amends the California Constitution by amending a section thereof; therefore, existing provisions proposed to be deleted are printed in {- strikeout type -} and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO SECTION 19 OF ARTICLE IV

SEC. 19. (a) The Legislature has no power to authorize lotteries, and shall prohibit the sale of lottery tickets in the State.

(b) The Legislature may provide for the regulation of horse races and horse race meetings and wagering on the results.

(c) Notwithstanding subdivision (a) the Legislature by statute may authorize cities and counties to provide for bingo games, but only for charitable purposes.

(d) Notwithstanding subdivision (a), there is authorized the establishment of a California State Lottery.

(e) The Legislature has no power to authorize, and shall prohibit casinos of the type currently operating in Nevada and New Jersey.

(f) Notwithstanding subdivisions (a) and (e), and any other provision of state law, the Governor is authorized to negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of slot machines and for the conduct of lottery games and banking and percentage card games by federally recognized Indian tribes on Indian lands in California in accordance with federal law. Accordingly, slot machines, lottery games, and banking and percentage card games are hereby permitted to be conducted and operated on tribal lands subject to those compacts.

Gambling on Tribal Lands.
Legislative Constitutional Amendment.

Official Title and Summary prepared by the Attorney General

Full Text of Proposed Law

Gambling on Tribal Lands.
Legislative Constitutional Amendment.

- Modifies state Constitution's prohibition against casinos and lotteries, to authorize Governor to negotiate compacts, subject to legislative ratification, for the operation of slot machines, lottery games, and banking and percentage card games by federally recognized Indian tribes on Indian lands in California, in accordance with federal law.
- Authorizes slot machines, lottery games, and banking and percentage card games to be conducted and operated on tribal lands subject to the compacts.

Summary of Legislative Analyst's
Estimate of Net State and Local Government Fiscal Impact:

- Uncertain fiscal effect on state and local tax revenues ranging from minor impact to significant annual increases.
- State license fees of tens of millions of dollars each year available for gambling-related costs and other programs.

Final Votes Cast by the Legislature on SCA 11 (Proposition 1A)

Assembly:	Ayes 75	Senate:	Ayes 35
	Noes 4		Noes 0

- **Analysis by the Legislative Analyst**
- **Argument in Favor of Proposition 1A**
- **Rebuttal to Argument in Favor of Proposition 1A**
- **Argument Against Proposition 1A**
- **Rebuttal to Argument Against Proposition 1A**
- **Full Text of Proposition 1A**

Vote2000 - California Primary Election Vote 2000 Home | Status | Live Java Player

State Ballot Measures

100.0% (22670 of 22670) precincts reporting as of Jun 2, 2000 at 11:05 am

Statewide Returns

County Returns | Other Races

NOTE: Proposition 24 Removed by Order of the California Supreme Court

Propositions			Yes Votes	Pct.	No Votes	Pct.	
1A	Y	Tribal Gaming	4,758,638	64.5	2,628,451	35.5	Map
12	Y	Parks and Water	4,657,600	63.2	2,722,030	36.8	Map
13	Y	Drinking Water	4,745,872	64.8	2,585,298	35.2	Map
14	Y	Library Construction	4,298,471	59.0	2,994,289	41.0	Map
15	N	Crime Labs	3,265,416	46.3	3,772,513	53.7	Map
16	Y	Veteran's Homes	4,402,818	62.3	2,665,311	37.7	Map
17	Y	Lotteries and Raffles	4,112,490	58.7	2,897,099	41.3	Map
18	Y	Murder	5,112,109	72.6	1,935,113	27.4	Map
19	Y	Peace Officers	5,126,737	73.6	1,840,850	26.4	Map
20	Y	State Lottery	3,716,726	53.0	3,305,062	47.0	Map
21	Y	Juvenile Crime	4,491,166	62.1	2,742,148	37.9	Map
22	Y	Limit on Marriage	4,618,673	61.4	2,909,370	38.6	Map
23	N	None of the Above	2,355,850	36.0	4,175,784	64.0	Map
25	N	Campaign Finance	2,444,984	34.7	4,589,870	65.3	Map
26	N	Local Majority Vote	3,521,327	48.7	3,704,687	51.3	Map
27	N	Congressional Term Limits	2,737,274	40.4	4,032,355	59.6	Map
28	N	Repeal Tobacco Tax	2,017,425	27.8	5,230,734	72.2	Map
29	Y	Indian Gaming	3,654,688	53.1	3,234,492	46.9	Map
30	N	Insurance Lawsuits	2,232,420	31.5	4,852,228	68.5	Map
31	N	Insurance Amendments	1,979,780	28.3	4,994,361	71.7	Map

Y - Proposition is passing
N - Proposition is not passing

County Returns for
State Ballot Measures

Alameda	Imperial	Modoc	San Diego	Sonoma
Alpine	Inyo	Mono	San Francisco	Stanislaus
Amador	Kern	Monterey	San Joaquin	Sutter
Butte	Kings	Napa	San Luis Obispo	Tehama
Calaveras	Lake	Nevada	San Mateo	Trinity
Colusa	Lassen	Orange	Santa Barbara	Tulare
Contra Costa	Los Angeles	Placer	Santa Clara	Tuolumne
Del Norte	Madera	Plumas	Santa Cruz	Ventura
El Dorado	Marin	Riverside	Shasta	Yolo
Fresno	Mariposa	Sacramento	Sierra	Yuba
Glenn	Mendocino	San Benito	Siskiyou	
Humboldt	Merced	San Bernardino	Solano	

California 2000 Primary Election

Gambling on Tribal Lands.
Legislative Constitutional Amendment.

Argument in Favor of Proposition 1A

Arguments on this page are the opinions of the authors and have not been checked for accuracy by any official agency

VOTE YES ON PROP 1A AND ENSURE THAT INDIAN SELF-RELIANCE IS PROTECTED ONCE AND FOR ALL

As tribal leaders of California Indian Tribes, we have seen first-hand the transformation that Indian gaming has made in the lives of our people. Indian gaming on tribal lands has replaced welfare with work, despair with hope and dependency with self-reliance.

We are asking you to vote YES on Proposition 1A so we can keep the gaming we have on our reservations. We thank you for your past support and need your help now to protect Indian self-reliance once and for all.

We are joined by a vast majority of California's Indian Tribes that support Prop 1A, including the 59 Tribes who signed gaming compacts with Governor Davis.

For the past several years, a political dispute has threatened to shut down Indian casinos in California. To resolve this dispute, California's Indian Tribes asked voters last year to approve Proposition 5, the Indian Self-Reliance Initiative. With your help, Proposition 5 won overwhelmingly with 63 percent of the vote.

But big Nevada casinos that wanted to kill competition from California's Indian Tribes filed a lawsuit, and Prop 5 was overturned and ruled unconstitutional on a legal technicality.

So Prop 1A has been put on the March ballot to resolve this technicality and establish clearly that Indian gaming on tribal lands is legal in California.

For more than a decade, Indian casinos in California have provided education, housing and healthcare for Indian people, as well as jobs that have taken Indians off welfare. Today Indian gaming on tribal lands benefits all Californians by providing nearly 50,000 jobs for Indians and non-Indians and producing $120 million annually in state and local taxes. After generations of poverty, despair and dependency, there is hope. On reservations with casinos, unemployment has dropped nearly 50%; welfare has been cut by 68% and, in some cases, eliminated entirely.

Proposition 1A:

- Is a simple constitutional measure that allows Indian gaming in California. It protects Indian self-reliance by finally providing clear legal authority for Indian Tribes to conduct specified gaming activities on tribal lands.

- Shares Indian gaming revenues with non-gaming Tribes for use in education, housing, health care and other vitally needed services.
- Provides revenues for local communities near Indian casinos, for programs for gambling addiction and for state regulatory costs.
- Provides for tribal cooperation with local governments and for tribal environmental compliance.

If Proposition 1A fails, tribal gaming would face being shut down. This would be devastating for California Indian Tribes--and bad for California's taxpayers.

We are asking voters to protect Indian gaming on tribal land, so that we can preserve the only option most Tribes have to get our people off welfare. We are asking you to let us take care of ourselves and pay our own way. We urge you to vote YES on Proposition 1A.

ANTHONY PICO
Tribal Chairman, Viejas Band of Kumeyaay Indians

PAULA LORENZO
Tribal Chairperson, Rumsey Indian Rancheria

MARK MACARRO
Tribal Chairman, Pechanga Band of Luiseño Indians

Proposition 1A | Vote 2000 Home | Ballot Pamphlet Home | Next - **Prop 12** | Secretary of State Home |

Gambling on Tribal Lands.
Legislative Constitutional Amendment.

Argument Against Proposition 1A

Arguments on this page are the opinions of the authors and have not been checked for accuracy by any official agency

Proposition 1A and the Governor's compact with gambling tribes will trigger a massive explosion of gambling in California.

Supporters call it a "modest" increase. Let's see just how "modest."

- Allows 214 casinos, TWO for every tribe.
- Slot machines in California could jump to some 50,000-100,000.
- In 2003, tribes can negotiate another increase.
- Slot machines provide 80% of all casino revenues.
- 18-year-olds are not prohibited from casino gambling.
- Legalizes Nevada-style card games not allowed in California.
- Indian casinos will pay no state or federal corporation taxes.
- Felons can be hired to run tribal casinos.
- Local governments and citizens get no input on size or location.

Casinos won't be limited to remote locations. Indian tribes are already buying up prime property for casinos in our towns and cities. And they're bringing in Nevada gambling interests to build and run their casinos.

Now California card clubs and racetracks are demanding the right to expand their gambling to keep pace: telephone and computer betting from home, slot machines, blackjack and more. If 1A passes, they'll be next in line.

This is our last, best chance to avoid the Golden State becoming the casino state. Vote no on Proposition 1A.

BRUCE THOMPSON
Member, California State Assembly

A report funded by Congress reveals there are 5.5 million adult pathological or problem gamblers in this country, with another 15 million "at risk." About 700,000 pathological and problem gamblers live in California, with another 1.8 million "at risk." That doesn't include a large number of teenage gamblers.

Experts tell us "Pathological gamblers engage in destructive behaviors, commit crimes, run up large debts, damage relationships with family and friends, and they kill themselves."

Proposition 1A would dramatically increase--probably double--this seriously troubled

population by legalizing perhaps 50,000 to 100,000 slot machines, including interactive video games, the "crack cocaine" of gambling. These video slot machines very rapidly turn potential problem gamblers into pathological ones, warn treatment professionals.

California taxpayers will pay many millions in law enforcement costs and in health and welfare aid to troubled gamblers and their families.

Proposition 1A makes us another Nevada, virtually overnight. Do we really want that?

LEO McCARTHY
Former Lieutenant Governor of California

Addiction isn't something we like to talk about. It's a silent disease that devastates your family, ruins friendships and destroys you personally and financially. Like hundreds of thousands of women, I know from bitter experience the dark side of gambling.

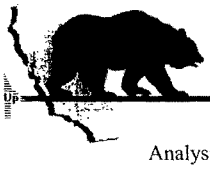
I know that the closer the opportunity to gamble is, the easier it is, the more likely you are to fall into its trap. This isn't about chances in a church drawing. It's about losing your house payment, rent money or child's college fund, and lying and cheating to get more so you can try to win it back. It's about bankruptcy, divorce, domestic violence and suicide.

Proposition 1A puts gambling casinos right in everyone's backyard, where they could profit from $1 billion to $3 billion per year, much of it from weak and vulnerable gambling addicts.

I know. I was one. Please, vote NO on 1A.

MELANIE MORGAN
Recovering Gambling Addict

Proposition 1A | Vote 2000 Home | Ballot Pamphlet Home | Next - **Prop 12** | Secretary of State Home |



Gambling on Tribal Lands.
Legislative Constitutional Amendment.

Analysis by the Legislative Analyst

Background

Gambling in California

The State Constitution and various other state laws limit the types of legal gambling that can occur in California. The State Constitution specifically:

- Authorizes the California State Lottery, but prohibits any other lottery.
- Allows horse racing and wagering on the result of races.
- Allows bingo for charitable purposes (regulated by cities and counties).
- Prohibits Nevada- and New Jersey-type casinos.

Other state laws specifically prohibit the operation of slot machines and other gambling devices (such as roulette). With regard to *card* games, state law prohibits: (1) several specific card games (such as twenty-one), (2) "banked" games (where the house has a stake in the outcome of the game), and (3) "percentage" games (where the house collects a given share of the amount wagered).

State law allows card rooms, which can operate any card game not otherwise prohibited. Typically, card room players pay a fee on a per hand or per hour basis to play the games.

Gambling on Indian Land

Gambling on Indian lands is regulated by the 1988 federal Indian Gaming Regulatory Act (IGRA). The IGRA defines gambling under three classes:

- **Class I** gambling includes social games and traditional/ceremonial games. An Indian tribe can offer Class I games without restriction.
- **Class II** gambling includes bingo and certain card games. Class II gambling, however, specifically *excludes* all banked card games. An Indian tribe can offer only the Class II games that are permitted elsewhere in the state.
- **Class III** gambling includes all other forms of gambling such as banked card games (including twenty-one and baccarat), virtually all video or electronic games, slot machines, parimutuel horse race wagering, most forms of lotteries, and craps.

An Indian tribe can operate Class III games only if the tribe and the state have agreed to a tribal-state compact that allows such games. The compact can also include items such as regulatory responsibilities, facility operation guidelines, and licensing requirements. After the state and tribe have reached agreement, the federal government must approve the compact before it is valid.

Gambling on Indian Lands in California

According to the federal Bureau of Indian Affairs, there are over 100 Indian rancherias/reservations in California. Currently, there are about 40 Indian gambling operations in California, which offer a variety of gambling activities.

In the past two years there have been several important developments with regard to Indian gambling in California:

- **April 1998.** The Governor concluded negotiations with the Pala Band of Mission Indians to permit a specific type of Class III gambling on tribal land. The compact resulting from these negotiations--the "Pala" Compact--was subsequently signed by 10 other tribes. These 11 compacts were approved in legislation in August 1998.
- **November 1998.** State voters approved the Tribal Government Gaming and Economic Self-Sufficiency Act--Proposition 5. The proposition, which amended state law but not the State Constitution, required the state to enter into a specific compact with Indian tribes to allow certain Class III gambling activities.
- **November 1998.** A referendum on the August 1998 legislation approving the 11 Pala compacts qualified for this ballot (Proposition 29). Once qualified, this legislation was put "on hold" pending the outcome of the vote on Proposition 29.
- **August 1999.** Proposition 5 was ruled unconstitutional by the State Supreme Court on the basis that the measure would permit the operation of Nevada- and New Jersey-type casinos.
- **September 1999.** The Governor negotiated and the Legislature approved compacts with 57 tribes--including the tribes that signed the Pala compacts--authorizing certain Class III games. These take the place of all previously approved compacts, including the Pala compacts. These new compacts, however, will become effective only if (1) this proposition is approved and (2) the federal government approves the compacts.

Proposal

This proposition amends the State Constitution to permit Indian tribes to conduct and operate slot machines, lottery games, and banked and percentage card games on Indian land. These gambling activities could only occur if (1) the Governor and an Indian tribe reach agreement on a compact, (2) the Legislature approves the compact, and (3) the federal government approves the compact. (Although this proposition authorizes lottery games, Indian tribes can currently operate lottery games--subject to a gambling compact. This is because the State Constitution permits the State Lottery, and Indian tribes can operate any games already permitted in the state.)

As discussed above, the Governor and the Legislature have approved virtually identical tribal-state compacts with 57 Indian tribes in California. If this proposition is approved, those compacts would go into effect if approved by the federal government. (See Figure 1 for a brief description of these compacts' major provisions.)

Fiscal Effect

State and Local Revenue Impact

This measure would likely result in an increase in economic activity in California. The

magnitude of the increase would depend primarily on (1) the extent to which tribal gambling operations expand and (2) the degree to which new gambling activity in California is from spending diverted from Nevada and other out-of-state sources (as compared to spending diverted from other California activities).

While the measure would likely result in additional economic activity in California, its impact on state and local revenues is less clear. This is because, as sovereign governments, tribal businesses and members are exempt from certain forms of taxation. For example, profits earned by gambling activities on tribal lands would not be subject to state corporate taxes. In addition, gambling on tribal lands is not subject to wagering taxes that are currently levied on other forms of gambling in California (horse race wagers, card rooms, and the Lottery). Finally, wages paid to tribal members employed by the gambling operation and living on Indian land would not be subject to personal income taxes.

Even with these exemptions, tribal operations still generate tax revenues. For example, wages paid to nontribal employees of the operations are subject to income taxation. In addition, certain nongambling transactions related to the operations are subject to state and local sales and use taxes. However, on average, each dollar spent in tribal operations generates less tax revenue than an equivalent dollar spent in other areas of the California economy.

Figure 1

September 1999 Compacts That Could Go Into Effect If Proposition 1A Passes

Major Provisions

Slot Machines

- The compacts allow each tribal casino to have 350 slot machines.
- Tribes may pay for licenses for additional machines but generally may not operate more than 2,000 machines.

Revenue Sharing Trust Fund

- Tribes will make quarterly payments into this fund based on the number of licensed slot machines they operate. The money will be used to provide annual payments to noncompact tribes and those tribes operating fewer than 350 machines. These payments could be up to $1.1 million per tribe per year.

Special Distribution Fund

- Tribes will make quarterly payments into this state fund beginning in 2002 based on the number of machines they were operating as of September 1, 1999.
- The Legislature could spend monies from the fund for the following statewide purposes: (1) grants for programs to address gambling addiction, (2) grants to the state and local governments affected by tribal gaming, (3) reimbursements of state regulatory costs, (4) payment of shortfalls in the Revenue Sharing Trust Fund, and (5) other purposes specified by the Legislature.

Banked and Percentage Card Games

- The compact places no limit on the types or quantity of card games tribes could offer.

Other Provisions

- The compacts authorize casino workers to unionize.
- They set the age for gambling in Indian casinos at 18.

Given these factors, the *net* impact of this measure on state and local government revenues is uncertain. For example, revenues could increase significantly if the measure were to result in a large expansion in gambling operations *and* a large portion of the new gambling was spending that would have otherwise occurred outside of California (such as in Nevada). On the other hand, if the expansion of gambling were relatively limited or if most of the new gambling represented spending diverted from other areas in the state's economy that are subject to taxation, the fiscal impact would not be significant.

Other Governmental Fiscal Impacts

The measure could result in a number of other state and local fiscal impacts, including: regulatory costs, an increase in law enforcement costs, potential savings in welfare assistance payments, and an increase in local infrastructure costs. We cannot estimate the magnitude of these impacts.

Passage of this proposition would result in the implementation of tribal-state compacts approved in September 1999--assuming these compacts are approved by the federal government. Under these compacts, the tribes would pay license fees to the state totaling tens of millions of dollars annually. The state could spend this money on Indian gambling regulatory costs, other gambling-related costs, and other purposes (as determined by the Legislature).

MORONGO
BAND OF
MISSION
INDIANS

A SOVEREIGN NATION

April 4, 2005

The Honorable Dianne Feinstein
United States Senate
Washington, D.C. 20510

RE: S. 113 – Lytton Rancheria Legislation

Dear Senator Feinstein:

We are writing to you in support of S. 113, legislation that you have introduced to modify the date on which tribal land of the Lytton Rancheria of California is deemed to have been taken into federal trust status.

The Morongo Band of Mission Indians, like all other tribal governments in our state, remains gratified by the support for tribal government gaming that the voters of California demonstrated with the overwhelming passage of two propositions affirming our right to conduct gaming on Indian lands. With the passage of Propositions 5 and 1A, we believe an implied agreement was reached with all Californians that tribal government gaming would be developed only on lands within or very near existing reservations. This understanding recognized the importance of encouraging commerce on our reservations – areas that historically have enjoyed little economic stimulus and development.

There is a process established under Federal law for taking land into trust, with additional procedures required for allowing gaming to be conducted on lands taken into trust after October 17, 1988. An important part of this process is the opportunity for a variety of interested parties to comment on the appropriateness of gaming on the proposed trust lands. This process was circumvented by Congress with respect to the Lytton Band, and we are concerned that this may set a precedent that will encourage others to act in ways that will have long-term adverse affects on the positive relationships that have been developed between California's tribes and its non-Indian citizens and communities.

We wish to affirm our support for any Tribal government to be able to offer gaming on their lands for the purposes set forth in the Indian Gaming Regulatory Act. Indeed, the existing IGRA process allows for even landless Tribes to secure trust lands for this and other purposes.

11581 POTRERO ROAD - BANNING, CA 92220 - 951-849-4697 - FAX: 951-849-4425

The two-step fee-to-trust process outlined under IGRA for gaming has worked well for other tribes, and the relationships among these tribes, their neighboring communities and other tribal interests in the area are all well-served. The method by which the Lytton Band's land in San Pablo was placed into trust avoided this healthy review and public discussion. While we do not believe that a municipal or county government has – or should be given – the authority to exercise veto power over any tribal project, we do believe that a process allowing input into fee-to-trust issues is clearly established in existing Federal statutes. This process was ignored in this instance.

The Morongo Band of Mission Indians hopes that the Congress will give serious consideration to your legislation, and urges support for S. 113.

Sincerely yours,

Maurice Lyons
Chairman
Tribal Council, Morongo Band of Mission Indians

The Board of Supervisors

County Administration Building
651 Pine Street, Room 106
Martinez, California 94553-1293

John Gioia, 1st District
Gayle B. Uilkema, 2nd District
Mary N. Piepho, 3rd District
Mark DeSaulnier, 4th District
Federal D. Glover, 5th District

Contra
Costa
County

John Sweeten
Clerk of the Board
and
County Administrator
(925) 335-1900

April 12, 2005

Honorable John McCain, Chair
Indian Affairs Committee
Hart Building, Room SH-386
Washington, DC 20510

RE: Support – S.113 (Feinstein)

Dear Senator McCain and Committee Members:

On behalf of our citizens, the Board of Supervisors of Contra Costa County, California would like to submit the attached Resolution 2005/182 and this letter as our testimony in support of S.113 (Feinstein). Senator Feinstein's bill modifies the effective date of the congressional action in 2000 (HR 5528) that took land into trust for the Lytton Band of the Pomo Indians within the City of San Pablo in the western region of Contra Costa County. S. 113 would thus require the Lytton Band to comply with the two-part determination process under section 20 of the Indian Gaming Regulatory Act prior to operating a casino.

The Board's interest in this matter is based upon the need to fulfill our governmental responsibilities for a wide array of services and programs that protect the health and welfare of *all* the citizens of the County within both the unincorporated areas and cities, including the residents of the City of San Pablo.

The Board is responsible for fire protection, flood control, waterways, air quality, environmental health, public safety and the criminal justice system (county jail, district attorney, sheriff's office, public defender, probation). We provide hospital and clinic services and handle all other health and welfare services, which includes employment training, public health, child welfare services, domestic violence services, mental health, alcohol and drug and emergency medical services (including ambulances). All of these services are provided by the County government to all one million residents of the County, whether they live within cities or in the unincorporated areas of the County. We also participate in countywide and regional transportation consortiums that are responsible for managing our transportation system and the distribution of the locally imposed (Measure J) ½ cent sales tax for transportation projects.

Unless properly mitigated to be in compliance with the region's adopted Growth Management Plan, the Lytton Band Casino in San Pablo could jeopardize receipt of

Measure J transportation sales tax funds for West County. Operations could also jeopardize our ability to comply with air quality standards, water discharge standards and waste diversion requirements with resulting loss of funding and/or assessment of penalties. Based on the experiences of other California counties, we know that the casino will also increase demands for services, stretching our already scarce resources.

The Board of Supervisors is composed of five members elected by district. West County is represented by two supervisors. Citizens of both cities and unincorporated areas of West County vote for district Board members, including those who live in the City of San Pablo. West County is a densely populated urbanized area, with as many as 18,100 people per square mile Interstate 80, which bisects West County, is one of the most congested freeways in California and the U. S.

Our County is also home to four major oil refineries that serve the entire West Coast, one of which is within 8 miles of the Lytton Casino, and all of which rely on the network of highways and roads in West County which will be affected by the proposed casino. These industries are vital to the economic prosperity of not only the San Francisco Bay Area but also of California and the nation.

The Lytton Band is moving forward to install 800-1,000 Class II bingo-based, pseudo-slot machines on their reservation. In a letter to the Governor, they also stated that they would no longer pursue mitigation discussions with the county and gave notice of their intent to pursue at least 2,500 slot machines at a later date. And, because the 2000 Omnibus bill gave pre-Indian Gaming Regulatory Act (IGRA) status to the tribe's reservation, the Lytton Band can do so without going through the two-part determination process required by IGRA for tribes who seek to use land acquired after 1988 for gaming purposes

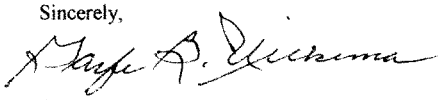
The 2000 Omnibus bill took land into trust for several tribes. All were identified by name in the Table of Contents and Section Titles, except the Lytton Band. None were granted pre-IGRA status, except the Lytton Band.

Contra Costa County was neither informed nor consulted about the action to take land into trust as a pre-IGRA reservation prior to its inclusion in the 2000 Omnibus bill. Although there were press reports about the controversial nature of the Lytton provisions of the Omnibus bill, which were inserted at the last minute and without public hearing, we learned of the extent of the tribe's casino plans only after the Lytton Band's application to the National Indian Gaming Commission in 2004.

We are not asking to reverse the action that took land into trust for Lytton Band, only to modify the effective date. The Lytton Band's casino plans should be subject to the same two-part determination process required of every other tribe that acquires new land after 1988. This process will permit the Secretary of the Interior and the Governor of California to decide on the appropriateness of a casino, considering the impact and interests of both the tribe and our communities.

It is only fair that all tribes operate by the same rules and that the public and affected communities be able to rely on those rules before new land is acquired by tribes, in this case for the sole purpose of operating a casino. We urge your support for Senator Feinstein's bill, S. 113. Please let us know if we can provide any further information to you or the committee.

Sincerely,



GAYLE B. UILKEMA
Chair

cc: Committee Members
Board Members
Congressional Delegation

B-1

THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA

PASSED by the following vote of the Board of Supervisors on this fifth day of April 2005

AYES: SUPERVISORS GIOIA, PIEPHO, DESAULNIER, AND UILKEMA

NOES:

ABSENT: SUPERVISOR GLOVER

ABSTAIN:

RESOLUTION NO. 2005/182

Subject: Support of Senate Bill 113 (Feinstein) which modifies the effective date of federal trust land for the Lytton Rancheria (Lytton Band of the Pomo Indians)

WHEREAS, the Indian Gaming Regulatory Act (IGRA) requires that tribes complete a "two-part determination" process prior to engaging in Class III gaming on newly acquired land;

WHEREAS, IGRA requires the approval of both the state Governor and the Secretary of the Interior for tribes to operate gaming casinos on lands acquired and put into trust after October 17, 1988;

WHEREAS, IGRA also requires that the Secretary of the Interior consult with local communities and nearby tribes as part of this two-part process;

WHEREAS, in 2000, these provisions of IGRA were abrogated by Congressional action that directed the Secretary of the Interior to accept land in the City of San Pablo into trust for the benefit of the Lytton Band of the Pomo Indians and specified that "such land shall be deemed to have been in trust and part of the reservation of the [Lytton] Rancheria prior to October 17, 1988";

WHEREAS, this Congressional action gave special preference to the Lytton Band of the Pomo Indians above that given to other tribes and other local communities and was inconsistent with the principles of equality under the law;

WHEREAS, this Congressional action was also contrary to the intent of Proposition 1A which allows casino style gambling on Indian lands and was passed by the voters of California with the assurance that Indian gaming operations would be limited to existing Indian reservations, none of which were then in urban areas;

WHEREAS, Senator Dianne Feinstein has introduced S 113, which would delete the designation of the Lytton Rancheria land as land deemed to be held in trust prior to October 17, 1988 and thus subject the Lytton Band to the same provisions of IGRA that apply to all other tribes who acquire land after 1988;

WHEREAS, S 113 does not affect the Lytton Band's acquisition of land in San Pablo, nor does it prohibit a casino proposal if approved pursuant to the two-part determination process of IGRA.

NOW THEREFORE BE IT RESOLVED, that the Contra Costa County Board of Supervisors supports S 113 as a measure that restores equity in the process of considering the interests and needs of all parties in the determination of whether to allow Indian gaming;

BE IT FURTHER RESOLVED, that the Contra Costa County Board of Supervisors respectfully requests its Congressional delegation and all members of the Senate and House of Representatives to support S 113.

RESOLUTION NO. 2005/182

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: 04/05/2005

JOHN SWEETEN, Clerk of the Board of Supervisors and County Administrator

By _____ Deputy