U.S. Senator Dianne Feinstein

Testimony Before Senate Committee on Indian Affairs
Lytton Gaming Compliance Act
April 5, 2005
Dirksen 562
9:30 a.m.

Good morning -

First, I want to thank Chairman McCain, Senator Dorgan, and the other members of this Committee for giving me the opportunity to testify today on the Lytton legislation.

I especially want to acknowledge two individuals who are here to speak in support of this legislation: California Assemblymember Loni Hancock and Chairman Mark Macarro of the Pechanga Band.

The Lytton Legislation

I would like to begin by briefly summarizing the legislation and explain why I believe it is so necessary that it is enacted.

The Lytton Gaming Compliance Act, or S. 113, has one simple purpose:

- **To ensure that the Lytton tribe follows the regular process set out under the Indian Gaming Regulatory Act (IGRA) for gaming on newly-acquired lands.**

To that end, I introduced legislation on January 24, 2005, that strikes a provision inserted into the Omnibus Indian Advancement Act of 2000. That provision mandated that the Secretary of Interior 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 the acquisition date 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.

By striking this backdating clause, 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.

This should be the case whether the Lytton pursue Class II gaming in a card club or proceed with plans to construct a larger casino with thousands of slot machines.

I also want to emphasize what the bill would not do. It would not:

- Remove the tribe's recognition status;
- Alter the trust status of the new reservation; or
- Take away the tribe's ability to conduct gaming through the normal IGRA process.

This is important to note because there are those who have suggested that this legislation would take everything away from the tribe and leave them with no recourse for economic sustainability. This is simply false.

This bill is not about restricting Indian gaming or preventing the Lytton from opening a casino. The legislation was solely crafted to restore IGRA's rightful oversight over the gaming process – just as Congress intended.

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.

Off-Reservation Gaming

Nevertheless, 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 traditional Indian lands.

Attempts at off-reservation gaming and the practice of "reservation shopping" have increased dramatically in my State over the past five years and it is now estimated that there may be up to 20 proposals to game outside of tribal lands in California.

There is also reason to be concerned about off-reservation gaming and its effects on the surrounding communities. 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 lands. Today, in the San Francisco-Bay Area alone, there are at least 5 such proposals.

Proposition 1A

Off-reservation gaming was clearly not what the people of California voted for when they overwhelming

passed Proposition 1A in March 2000 to allow tribes in my State to engage in Nevada-style gaming on “tribal lands.”

If I may take a moment, I would like to briefly quote from the Proposition language and the arguments put forward in support of this initiative that were included in the official voter guide.

> “The Governor is authorized to negotiate and conclude compacts, subject to ratification of the Legislature, for the operation of slot machines (and other Class III games) . . . by federally-recognized tribes on ***Indian lands*** in California in accordance with federal law. Accordingly, slot machines (and other Class III games) . . . are hereby permitted to be conducted and operated on ***tribal lands*** subject to those compacts.” (Text of Prop 1A)

I also want to quote from one section of the Argument in Favor of Proposition 1A that was posted on the ballot:

> “It (Prop 1A) protects Indian self-reliance by finally providing clear authority for Indian Tribes to conduct specified gaming activities on ***tribal lands***.” (Argument in Favor of Prop 1A)

There are numerous other examples in the official ballot materials for Proposition 1A that consistently repeat the phrase “tribal land” or “Indian land” in relation to supporting Nevada-style gaming in California, and frankly situations like the Lytton case are an egregious violation of the trust that was established between the people of California and the tribes in my State when this initiative was passed.

(With the Chairman’s permission, I would ask to submit into the Record the full text of Proposition 1A and other related materials that were contained in the official voter guide.)

Finally, it is my belief that some of those most affected and hurt by situations like the Lytton are the majority of tribes who have chosen to follow the regular process.

In addition to the testimony you will hear today from the Chairman of the Pechanga Band, Mark Macarro, a growing number of tribes have voiced concerns about the Lytton gaming proposal and its detrimental effects on Indian Country throughout California.

I will not read it in its entirety here, but let me quote a few lines from a letter I recently received from Maurice Lyons, the Tribal Chairman of the Morongo Band of Mission Indians, writing in support of S. 113.

> "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 Tribe, 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*." (Italics added for emphasis)

Mr. Chairman, I would ask that the full text of this letter be submitted for the Record, but the fact remains that tribes throughout my state are growing increasingly concerned about situations like the Lytton where federal law is being circumvented and a small minority of tribes are seeking gaming outside the appropriate oversight and regulatory process.

It is not insignificant that the California Nations Indian Gaming Association (CNIGA), which represents approximately half of the tribes in my state, has also expressed concern about the Lytton casino proposal. And the Tribal Alliance of Sovereign Indian Nations (TASIN), which represents 13 gaming tribes in Southern California, recently sent a letter to the California State Legislature opposing the compact with the Lytton on grounds that the tribe had circumvented the IGRA process and that their gaming plans violated the intent of both Proposition 5 and Proposition 1A – which provided for the expansion of gaming in California.

Gaming Oversight

In addition to the proliferation of off-reservation gaming in my State, I am increasingly of the view that the level of oversight and regulation of Indian gaming in California has not kept pace with the prolific growth of the industry.

Since 1999, the number of tribal casinos in California has jumped from 39 to 57, and at least 11 other California tribes are currently proceeding with casino plans. Indian gaming revenues have grown from the hundreds of millions to an estimated $5-6 billion annually today. In fact, the latest statistics from the National Indian Gaming Commission indicate that California alone accounted for 50% of tribal gaming revenues nationwide in 2003.

Under the Indian Gaming Regulatory Act (IGRA), the monitoring and regulation of the Indian gaming industry is

primarily in the hands of the tribal authorities themselves. Unfortunately, this has resulted in weak oversight at the federal and state levels**.**

In California, for example, in addition to the tribal gaming commissions, the responsibility of regulating Indian gaming falls on several different state and federal entities.

At the federal level, the National Indian Gaming Commission (NIGC) has only 80 staffers and an $11 million budget to regulate Indian gaming throughout the nation. And just 8 NIGC staffers monitor compliance with IGRA throughout the whole region of California and Northern Nevada.

At the state level, the responsibility for enforcing tribal-state compacts is given to two agencies: the Gambling Control Commission based in the Governor's

Office and the Division of Gambling Control in the Attorney General's Office.

The Gambling Control Commission has about 40 staffers and a $5 million budget, while the Division of Gambling Control has approximately 130 staffers and a $14 million budget. However, these state agencies have only limited regulatory power over tribal gaming operations in general.

On the other hand, the only other states with larger gaming industries than California -- Nevada and New Jersey -- provide a much greater degree of oversight over their gaming operations.

Nevada spends more than $30 million annually and has more than 400 staffers to monitor its hundreds of casinos, while New Jersey has a staff of 700 and a budget of $60 million to oversee gambling in Atlantic City.

In comparison, California clearly is both understaffed and underfunded when it comes to regulating Indian gaming. Considering the tremendous growth of the industry since IGRA's enactment in 1988, I believe it is time for a thorough reevaluation of how we monitor Indian gaming both in California and throughout the country.

Allowing the unchecked proliferation of Indian gaming, and in particular cases like the Lytton -- where federal oversight has been completely circumvented -- to go forward is not in the best interest of my State or this nation.

Conclusion

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

While the tribe announced that it was temporarily dropping its pursuit of a casino, it could reverse these plans at anytime 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.

It is simply not 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 the opportunity to testify before you today and would ask for your support to pass this bill out of Committee and send it to the Floor.

Thank you.