Testimony of the Honorable George Miller (D-CA)

Senate Indian Affairs Committee

Regarding S. 113

April 5, 2005

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

And 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 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 1960s. 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 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 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 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 Bureau of Indian Affairs 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 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 – forty-five 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.