

**U.S. Senate Committee on Indian Affairs**  
**Oversight Hearing on the Regulation of Indian Gaming**  
**June 28, 2005**

**Introduction**

Good morning, my name is James W. Ransom, Chief with the St. Regis Mohawk Tribe. I extend my appreciation to Chairman McCain and the Committee for providing me with the opportunity to speak today. SRMT, like the others testifying today, has a strong regulatory system in place and I am happy to answer any questions on this. Today, my remarks will focus on how the existing regulatory process under IGRA for placing land into trust on 'after acquired lands' for gaming purposes is working in New York.

We have been diligently observing the discussion that has occurred surrounding the issue of off-reservation gaming as we have a vested interest in its outcome. Clearly, there is a national debate going on in regards to off-reservation gaming and out-of-state tribes. Chairman Pombo of the House Resources Committee has a draft bill to amend the Indian Gaming Regulatory Act (IGRA) to address his off-reservation gaming concerns. In addition, Chairman McCain is holding this series of hearings that is including a discussion of off-reservation gaming.

Over the past four months, the National Congress of American Indians (NCAI) and the National Indian Gaming Association (NIGA) have sponsored a series of tribal forums across the country on this important topic. I would like to share my observations of how this discussion is going.

**Understanding the Problem**

Most, if not all examples cited by tribes and others concerned with off-reservation gaming and out-of-state tribes center around five major issues:

- 1) Lack of State and/or Governor's support for the proposed project.
- 2) Lack of local support for the proposed project.
- 3) Failure to complete a full environmental review of the proposed project.
- 4) Failure to consult with other tribes who could be potentially impacted by the proposed project.
- 5) Tribes attempting to site a casino in states outside their reservation, the "out-of-state" tribes.

We are concerned proposed national legislation to address these issues will be extremely detrimental to our efforts and any tribe's effort to site an off-reservation Catskill casino in the State of New York. We believe this proposed legislation is not necessary and that other actions can and are being taken to reinforce IGRA and its processes.

For example, earlier this year, the Bureau of Indian Affairs came up with a revised checklist to give clearer guidance for following its rules and regulations under IGRA<sup>1</sup>. The checklist helps address three of the four issues above. First, it recommends an environmental impact statement be prepared. Second, it expands consultation with local officials. Finally, it recommends agreements between tribes and local governments regarding tax impacts to the local community, jurisdictional issues such as law enforcement and emergency services, and land use issues.

In listening to the discussion that has taken place in Indian Country on the off-reservation gaming and out-of-state tribe issues, two common themes have emerged.

### **IGRA Works**

This is a common theme that has emerged in every meeting and forum we have attended since March on the issue of off-reservation gaming. Whether its been George Skibine with the Department of the Interior, Chairman Ernie Stevens with the National Indian Gaming Association, USET Executive Director James T. Martin, or Oneida Nation of New York's Keller George, they all share this opinion of IGRA, it is accomplishing its purpose.

George Skibine testified earlier this year that "Section 20 of IGRA imposes reasonable restrictions on the right of Indian tribes to engage in gaming activities on off-reservation lands." It has been our personal experience that IGRA works as well. As we have spent the past four years navigating its rules and regulations to site our Catskill casino, we can report it is a daunting and difficult process to follow.

The Exception Clauses within IGRA work. Over the past seventeen years, it has been repeatedly demonstrated for off-reservation land acquisitions for gaming that these clauses are difficult to use. In responding to the issue of out-of-state tribes using IGRA, James Martin, USET Executive Director acknowledged the difficulties of IGRA at a March 17 hearing "No out-of-state tribe has obtained the necessary approvals to establish the casinos they are seeking."

### **IGRA Should Not Be Reopened**

This is another common theme that has emerged in all of the meetings we have attended. The discussion of "off-reservation gaming" and "out-of-state tribes" has becoming a

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<sup>1</sup>See Attachment A for Checklist for Gaming Acquisitions, Gaming-Related Acquisitions and IGRA Section 20 Determinations

polarizing issue in Indian country. However, in NIGA and NCAI sponsored meetings from across the country, no matter what a tribe's position on off-reservation gaming has been, we have heard the vast majority of Tribes warn of the dangers of reopening IGRA.

Too much effort went into getting Congress to pass IGRA to have it potentially undone when IGRA is not the problem. We agree and do not believe reopening IGRA is the best solution to off-reservation gaming concerns.

### **The Catskill Casinos**

What has been absent from the discussion of off-reservation gaming is a discussion of what to do when it is to a tribe's and state's joint benefit to pursue off-reservation gaming. What if the off-reservation gaming can help local governments in an economically depressed part of the state to return to prosperity? And what if the off-reservation gaming is pursued in a transparent and open manner, with opportunities for comments by all concerned parties to the project?

What's happening in New York and the Catskills in particular, has the potential to serve as a model for the rest of the country for conducting off-reservation gaming. If we revisit the five major issues facing off-reservation gaming and out-of-state tribes, one can see how this can happen.

#### **1) Lack of State and/or Governor's support for off-reservation gaming.**

The legislation passed by New York in 2001 to authorize up to three Indian casinos in the Catskill and recent legislation introduced by New York Governor George Pataki (Governor's Program Bill 70) can serve as a template for when off-reservation gaming should occur<sup>2</sup>. Combined with the recent actions taken by the Bureau of Indian Affairs in expanding its checklist, it has the potential to be a how-to manual for off-reservation gaming that can guide tribes and states for years to come.

In addition, the IGRA requirement that the Governor must concur on the two-part determination and on the Gaming Compact for the Catskill Casinos will serve as additional evidence of State support.

#### **2) Lack of local support for off-reservation gaming.**

Local impact agreements are now one of the criteria that the Bureau of Indian Affairs looks for in reviewing off-reservation casino projects. In addition, the Governor's Program Bill 70 requires that before a Gaming Compact is ratified by the New York State Legislature, that there exists a local service and impact agreement between the tribal government and the county within which the gaming facility is located.

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<sup>2</sup>See Attachment B for 2001 New York Legislation and Governor's Program Bill 70

In fact, the St. Regis Mohawk Tribe was the first tribe to enter into impact agreements with local governments as we pursued our off-reservation casino in the Catskills<sup>3</sup>.

**3) Failure to complete a full environmental review of the project.**

The BIA's checklist calls for a full environmental review of off-reservation gaming projects. This comprehensive environmental review will help ensure that potential environmental impacts during the construction and operation of the casino are properly mitigated for.

In addition, the Governor's Program Bill 70 will require each Gaming Compact to provide, prior to construction, a full environmental impact statement using either the State Environmental Quality Review Act or the National Environmental Policy Act<sup>4</sup>.

**4) Failure to consult with other tribes who could potentially be impacted by the proposed project.**

The solution to this issue really falls upon tribes to be respectful to each other and engage in positive discussions around the issue of off-reservation gaming. Tribes have a history of working together and they need to be reminded of the strength that arises from this unity.

One idea we would like to float out there in New York is to see the creation of a trust fund for language and cultural preservation. All tribes conducting off-reservation gaming in the state could be asked to contribute to this fund on an annual basis. However, the fund would be overseen by an independent board. Any tribe in the state would be eligible to access this fund for language and cultural preservation.

**5) Tribes attempting to site a casino in states outside their reservation, the "out-of-state" tribes issue.**

We believe that current regulations and the atmosphere in Congress will make this option for out-of-state tribes almost impossible to use. The difficulty of pursuing off-reservation gaming within existing regulations was acknowledged earlier this year in the testimony of United South and Eastern Tribes Executive Director James T. Martin as he stated "No out-of-state tribe has obtained the necessary approvals to establish the casinos they are seeking."

What happened in New York last week serves to demonstrate the difficult path out-of-state tribes have in pursuing casinos in New York. In this case, the Oneidas of Wisconsin and Stockbridge Munsee of Wisconsin chose to interfere in our efforts to have our land claim settlement ratified by the New York State Senate. They are attempting to piggy-

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<sup>3</sup>See Attachment C for SRMT's Local Agreements

<sup>4</sup>See Attachment D for SRMT's Environmental Effort

back their pursuit of an off-reservation casino on our efforts, as an in-state tribe, to settle our land claim.

In response to their efforts, last Thursday, the Governor's office issued the following e-mail to them, "Please be advised that if your clients or their representatives succeed in their current efforts to prevent passage of the Mohawk settlement legislation, the State will engage in no further settlement negotiations with out-of-state tribes."

While these two tribes were successful in delaying the passage of our land claim settlement bill, it has come at a tremendous cost to them. We commend the Governor for recognizing this desperate attempt by the out-of-state tribes and for his strong response to their actions. We believe our land claim bill will be acted upon later this summer by the New York State Senate.

Finally, given the increased scrutiny Congress is placing on off-reservation gaming and out-of-state tribes, it is going to become more difficult, not less, for tribes to pursue this option.

### **Conclusion**

The steps that have been taken in New York, combined with actions taken by the Bureau of Indian Affairs, create a process for tribes to undertake off-reservation gaming. The act of the New York State Legislature in authorizing the three off-reservation casinos demonstrates clear support from the State for off-reservation gaming. The requirement of the Governor to sign the Gaming Compact and to concur on the land-in-trust application provides further evidence of clear support from the state for off-reservation gaming.

BIAs expanded checklist calls for greater consultation with local governments. Governor Pataki's Program Bill takes it a step further in requiring the existence of the local service and impact agreements. Both actions will ensure a greater role for local governments as it concerns off-reservation gaming.

Requiring a full environmental review will ensure that potential environmental impacts are properly identified and mitigated prior to construction of an off-reservation casino. Again, this will afford all interested parties the opportunity to have their concerns addressed.

On the issue of the limited role of tribes in the state who may be impacted by the proposed off-reservation gaming. Tribes need to be considerate and respectful to each other. This issue could also be addressed by requiring the establishment of a tribal fund that could be accessible by all tribes in the state where the off-reservation gaming would take place. The fund could be used to support language and cultural programs for tribes and could be replenished on a yearly basis. The funding could be controlled by an independent board that would review proposals submitted to it.

We firmly believe that existing regulations and the atmosphere in Congress are addressing the issue of out-of-state tribes. As I stated, we see this avenue for tribes becoming more difficult, not less.

The circumstances of the St. Regis Mohawk Tribe's quest for an off-reservation casino are unique in that the State and local governments, as well as the locally impacted community, are all proponents for our project. It is true that Chairman Pombo's bill, as currently drafted, would cause great harm to this collaborative effort. But, it is equally true that other Tribes in other states working in a positive manner with their respective state and local governments would suffer too. The rigors of the current system serve to protect the interests of all parties and it is only when that system is circumvented, that it fails.

Congress needs to work with states, local governments, and tribes to develop a process for off-reservation gaming that will mutually benefit everyone involved, close the loopholes within IGRA and prevent circumvention of what is a good and fair regulatory system.

I and the members of our Tribe thank the Committee for its time and consideration.