

Thunder over the Valley

ENVIRONMENTAL POLITICS AND AND INDIAN GAMING IN CALIFORNIA

Tanis C. Thorne

The remoteness of many reservations and rancherias is becoming a thing of the past. . . . Many lie in the path of approaching development and will be able to participate with and, at times, compete with cities and counties in attracting desirable economic activities.

—California Planning Roundtable, “Tribal Gaming and Community Planning in California”

The Thunder Valley Casino owned by the United Auburn Indian Community (UAIC) opened its doors on June 9, 2003, to an enthusiastic crowd that backed up traffic more than seven miles. Located thirty miles east of Sacramento in the Interstate 80 corridor, the casino is positioned to intercept much of the gambling traffic going from the San Francisco Bay Area to Reno. Thunder Valley is a convenient distance from I-80 along Highway 65 and neighbors the city of Lincoln, the fastest growing city in California in the first decade of the twenty-first century. Since about 1990, the rural landscape in this area has undergone a radical transformation: the old Highway 65 is now a four-lane freeway, flanked by box stores, shopping malls, and suburbs. In a major transportation corridor as well as on the cusp of massive suburban expansion, the casino's success was to be expected, but it proved to be phenomenal. Four short years after its opening, Thunder Valley was proclaimed “one of three most profitable casinos on earth.” The largest revenue-producing Indian gaming activity in the nation by 2010, the casino was making \$500 million a year, more than doubling the take of the most prosperous Indian gaming tribes of southern California. Three and a half million people visit Thunder Valley Casino each year, and ten thousand play its twenty-seven hundred slot machines, stay in its luxury hotel, dine in its restaurants, and attend events in its entertainment venue.¹

As the adage goes, California is like the rest of the nation only more. The California Indian experience in the gaming era is no exception. California has the largest number of federally recognized tribes of any state of the union and the second-largest number of tribes in the nation engaged in gaming: fifty-seven Cal-

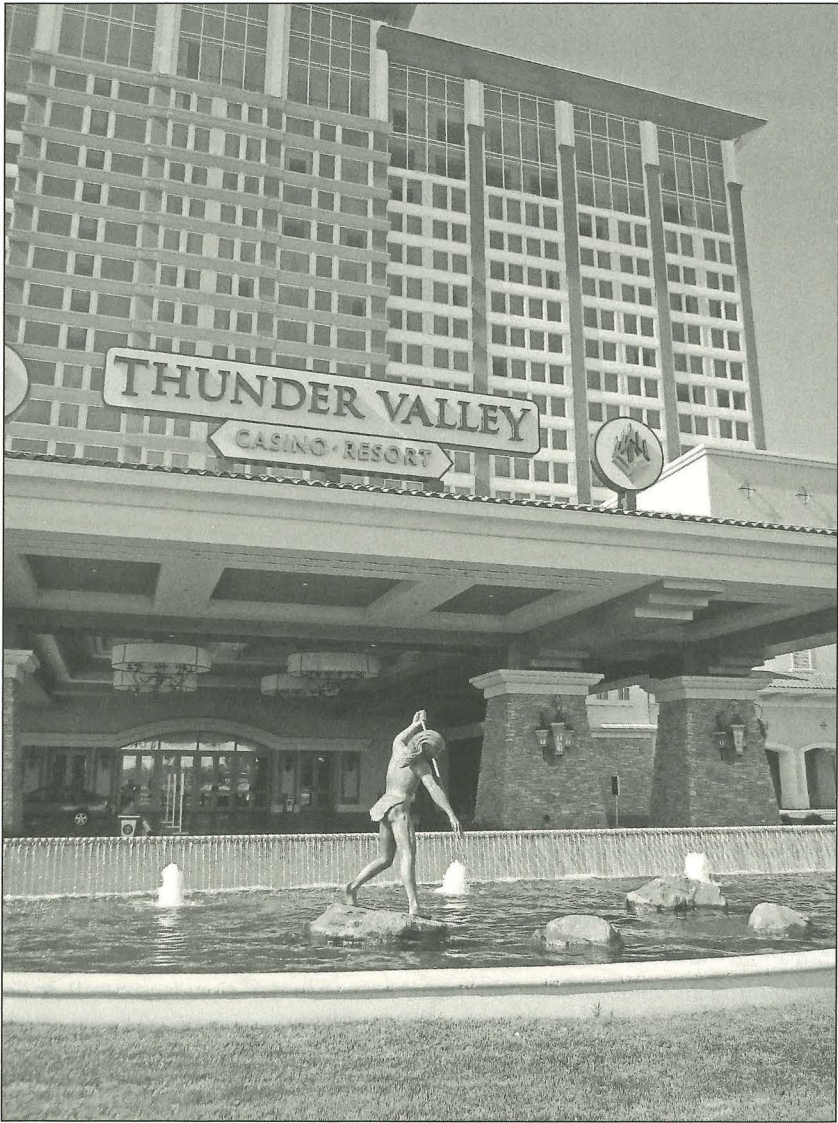


FIGURE 13.1. Thunder Valley Casino (exterior). Photograph by Tanis C. Thorne.

ifornia Indian nations operate casinos and sixty-seven have compacts.² Arguably, California Indians experienced more genocide and injustice historically than Indians of other states. Landless and lacking basic rights as citizens, they experienced a demographic collapse in the second half of the nineteenth century, only to make an equally sudden and dramatic comeback from 1980 to 2010. “The success of tribal gaming caught many by surprise,” a task force on gaming and community planning explains.³ Living in one of the more densely populated and affluent states in the union, California tribes have the biggest market and command a staggering one-

third of the national market share, garnering \$8 billion in gaming profits in 2008.⁴ In 2007, they hosted one million patrons a day. Many California Indian gaming nations, mired in poverty a generation ago, now have enormous prosperity. Growing up on the Auburn Rancheria, Jessica Tavares, chair of the UAIC, recalled living with her parents and six siblings in a shack where they “read by kerosene lamps and drank from ditch water until 1966.”⁵ Among the wealthiest Indian people of California are the San Manuel Band of Mission Indians and Santa Ynez Chumash, whose relatively small memberships mean very large per capita checks of between \$30,000 and \$53,000 per month.⁶

California’s Indian gaming tribes skillfully converted wealth into political power. As legal scholar David Wilkins observes, “Indian gaming has wrought a revolutionary shift in the involvement of some tribes in state and federal politics on an unprecedented scale.”⁷ Morongo and Agua Caliente, southern California gaming nations, number among the top ten political contributors in the nation. Richard Milanovich, who died in 2012, was the longtime chair of the Agua Caliente and was once described as the “most powerful man in one of the most powerful Indian nations in North America.”⁸ Prosperous gaming nations are generous donors, giving millions each year to higher education, cancer research, victims of disasters, and a plethora of organizations in their local communities. San Manuel, Yocha Dehe (formerly Rumsey), Viejas, and the UAIC, among others, have well-deserved reputations for their generosity.

UAIC Exceptionalism

The UAIC experience with gaming is noteworthy because the group’s 2004 compact represents a policy shift toward intergovernmental cooperation. The rapid expansion of the number and size of Indian casinos in California raised many questions about land use. A backlash to Indian gaming developed in the first years of the twenty-first century as conflicts with state, county, and municipal governments multiplied. According to some analysts, the tribal-state compacts of 2004 signify a major corrective or “rebalancing” after a tumultuous roller coaster of change in the environmental and economic landscapes of California. While many Indian sovereignty advocates vigorously disagree, Cheryl Schmit, director of Stand Up for California, a gaming watchdog organization, views the UAIC’s compact as a model for decision making over land use that concerns multiple jurisdictions. The UAIC, argues Schmit, accommodated the needs of the local community, sharing increased costs for public services and infrastructure development.⁹

This chapter examines in some detail the UAIC’s heavily contested journey through the process of acquiring trust land and establishing its lucrative Thunder Valley Casino. A pastiche of examples of other California gaming tribes’ experiences across the state are also referenced to provide a succinct overview of the legal foundations, conflicts, and compromises over sovereign powers, cross-currents, and turning points like landmark California propositions, compact negotiations, and

court challenges. This backdrop provides a context for understanding the UAIC's place in the arc of change from the early 1980s to 2011 regarding land use policy.

A necessary clarification at the outset is that Indian gaming profits are very unevenly distributed across California's native communities, as they are across the nation. Thirteen percent of the Indian casinos nationwide enjoy two-thirds of the gaming revenue. Only a tiny minority enjoys per capita payments in the thousands of dollars per month. A study of California Indian gaming completed in January 1997 reported that 47.3 percent of Indian people lived in poverty compared to 11.5 percent of non-Indians nationally. Poverty and high rates of unemployment remain the rule for the Indian majority in California and elsewhere in the nation. An estimated 9 percent of the Indians enrolled in California's federally recognized tribes are experiencing tangible economic change via gaming according to a report issued by the California Legislative Analyst's Office.¹⁰

A second important clarification: in addition to the fiscal disparities, there are wide variations in the environmental and historical experience of each of California's 110 federally recognized tribes. Hence, as most knowledgeable analysts emphasize, one must approach the subject of Indian gaming on a case-by-case basis.¹¹ Reflecting California's varied environment, prior to European contact, native California was culturally and linguistically diverse; there was a mosaic of hundreds if not thousands of politically autonomous territorial units, each occupying its own ecological niche and speaking different dialects.¹² Adding to the complexity, the eighteen federal treaties that set aside reservations in 1851–52 in California were not ratified by the US Senate. Historically, survivors of formerly autonomous political units merged as populations shrank due to disease, starvation, and warfare because there were no treaty-reserved lands. Land holdings were whittled down, until the small remnant of persons remaining were cornered and desperate; they were metaphorically and literally "pushed into the rocks." Belatedly, in the latter half of the nineteenth and early part of the twentieth century, the federal government reserved land by congressional action and executive order for some—but not all—of the hybrid communities of survivors.¹³ California's reservations and rancherias are erratically scattered across the state, having come under federal trust protection at different times and under varying circumstances.¹⁴ Up until the suburban expansion after 1950, most were remote, marginal lands in rural parts of the state.

Each Indian community's experience with non-Indian neighbors is unique and depends on a constellation of factors such as the economic potential of resources, terrain, demographics, and timing of federal trust protection. For example, the Wanakik lineages (dialect speakers of the larger linguistic unit of Cahuilla people), whose aboriginal territory was the San Gorgonio Pass in today's Riverside County, faced catastrophic smallpox epidemics just prior to an infusion of settlers who increased rapidly once the Southern Pacific Railroad bisected the territory. When the US government intervened in the 1880s and withdrew several sections of land

for what would become the Morongo reservation, there remained on the Wana-kik's original land base in the Potrero canyon only one village, with one hundred desperate intermarried Cahuillas and Serrano. In the foothills of the Sierra Nevada in Nevada County, gold miners displaced the Nisenan-speaking people. The shrinking remnant of several formerly independent Nisenan villages clustered at the Wokodot Rancheria outside Nevada City after headman Charles Cully filed for a homestead in the 1880s. This privately owned acreage came under federal trust protection in 1917, a trust terminated in the 1960s subsequent to the California Rancheria Act of 1958; the eclectic band of Miwok and Nisenan tracing ancestry to the Nevada City Rancheria now seeks restoration of its status as a tribe and the re-acquisition of trust land.¹⁵

Location, Location, Location

These two sketchy examples of California tribal recognition highlight in very broad strokes some important regional differences that are critical to understanding the contours of California Indian gaming's development. Sovereignty emerges from the land and can find its tangible expression only in its regional setting, as the scholar Jessica Cattelino has observed.¹⁶ Regional economics, history, demographic patterns, and infrastructural development—access to water, sewage, and transportation systems—are all components in evaluating gaming's fiscal success and its local impacts. About a third of California's federally recognized tribes and a third of those engaged in gaming today are located in two southern California counties—Riverside and San Diego—on desert or mountainous land with little water and minimal agricultural potential. These are the state's gaming powerhouses, with 45 percent of the licensed slot machines. San Diego County reservations alone enjoyed \$1.7 billion (40 percent) of gaming profits of \$7.7 billion statewide in 2007.¹⁷

Collectively described as "Mission Indians" because approximately three dozen reservations constitute a federal administrative unit called the Mission Indian Agency, the southern California Indians are highly politicized and have been for decades. Their past has been one of ongoing and vigorous defense of their resources and rights through political action. They were among the first to experiment with high-stakes gaming in the 1980s, testing the legal limits of what they could do, and they continue to test these limits. Morongo, Agua Caliente, and Cabazon border Interstate 10, which connects the affluent coastal urban and suburban population centers of southern California to Las Vegas. Other southern California gaming giants, like Pechanga, Viejas, Barona, and Sycuan, are being gradually engulfed by southern California's burgeoning suburban expansion into the Inland Empire. "Location, location, location" is the rule not only for prospective homeowners; it is also the hard and fast guide for California Indian tribes. Because of their markets, these Mission Agency tribes enjoy enrichment and empowerment. Access to markets alone does not explain the trajectory of gaming era politics. Because of their history of numerous battles to defend vital resources and

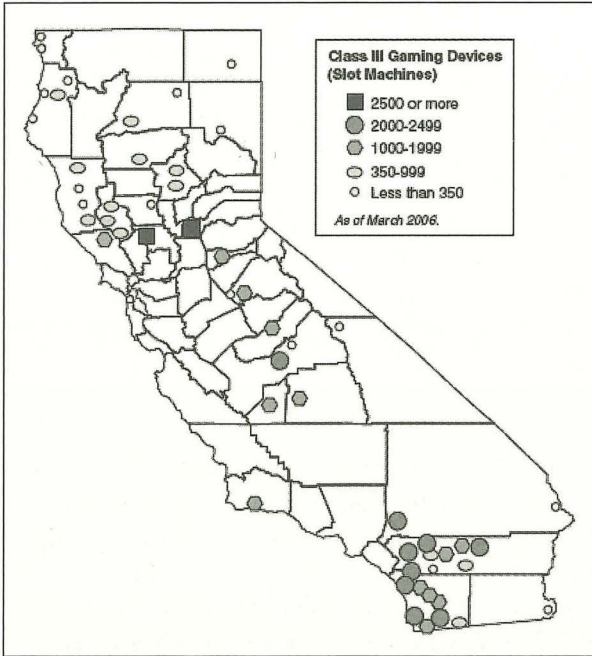


FIGURE 13.2. Map showing distribution of gaming devices (slot machines), across California, March 2006. From California Legislative Analyst's Office, "Questions and Answers: California Tribal Casinos," by Elizabeth G. Hill, legislative analyst, Feb. 2007, p. 7, http://www.lao.ca.gov/2007/tribal_casinos/tribal_casinos_020207.pdf.

land bases, often in adversarial relationships with local and federal authorities, these southern California nations are aggressive and sophisticated players in state politics. They take their sovereign status very seriously, and most are very wary of any compromise over principles.¹⁸ "The most important understanding for California citizens is that California tribes are governments first and foremost," said Anthony Pico, who was Viejas chairperson in 2011. "There is nothing that is as important to California tribes. We are sovereign."¹⁹

Northern California Tribal Status Contested

By contrast, many tribes of the northern part of the state, like the United Auburn Indian Community, have a far more ambiguous, precarious, and controversial legal status. Though there are important exceptions, like Yocha Dehe (formerly the Rumsey Rancheria) and the Jackson Rancheria, northern tribes enjoy less desirable locations, and, generally speaking, they entered gaming much later than southern California's tribes. Critically, the small rancheria communities of the north bore the brunt of the termination movement; the Auburn and Nevada City Rancherias were among the forty-one rancherias that lost federal protection for their lands and their legal status as Indians in the 1960s and 1970s. In 1983, members of seventeen northern California bands that were terminated were restored to federal status by the *Tilly Hardwick v. United States* decision. Spurred by the success of Indian gaming, most of the other terminated tribes subsequently succeeded in getting their

terminations reversed, most going through the courts, with three achieving their goals through congressional action. Many of the “restored” tribes (that is, those whose termination was reversed) lack trust land. Significantly, they need federal approval for converting private land to trust status (or they have trust land in areas too remote from population centers or transportation routes for a casino to provide economic uplift for their populations). The UAIC gained its forty-nine-acre site for its casino only after years of lobbying and litigation; others, like the Guidiville and Scotts Valley Pomo, were not as fortunate, though they spent years trying to surmount the legal obstacles to gaining trust land. Local political opposition is most effective in blocking trust land conversion when the location is an urban area and when the trust land requested is in another tribal group’s aboriginal territory. Gaming watchdog activists oppose trust land conversions, off-reservation gaming (aka “reservation shopping”), and the acknowledgment of new tribes; some even contest the claim that restored “rancheria” communities have true reservation status. Litigation continues.²⁰ Advocates for stronger local voice in siting and the imposition of increased environmental regulatory control were most effective among these more vulnerable northern California restored tribes.

Background

The quasi-sovereign nature of federally recognized tribes is critical to understanding the rise of Indian gaming. Self-government over tribally held lands and tribal memberships is a contractual right established by treaties, subsequently affirmed by the Supreme Court in *Worcester v. Georgia* (1832) and reaffirmed by the Indian Reorganization Act (1934). Despite increased federal spending on Indians since the mid-1960s, in an effort to promote the prevailing policy of economic uplift via self-determination, the sovereign powers of tribal peoples on reservation lands have remained largely nominal until quite recently, and economic underdevelopment persists on Indian lands.

The dramatic comeback for the California Indians began in the late 1970s, but it was a shaky beginning fraught with risks. Inspired by the Seminole success in Florida, a few tribes in California, hoping for a path out of rural poverty, sought investors. Establishing card rooms or bingo parlors was a legally dubious move, and so were the investors. Several tribes experienced multiple failures with their initial gaming enterprises. The Jackson Rancheria’s leader, Margaret Dalton, read about the Seminole in 1984 and found investors to open a bingo hall in 1985, but the hall failed three times before honest investors were found in 1991. All fledgling Indian gaming operations faced threats of closure by the state and counties. In 1980, the Cabazon tribe of Riverside County opened its first card room, and it was quickly shut down by police. The Barona group of San Diego County successfully mounted a legal action against the county undersheriff’s police powers on Indian trust land in 1982.²¹ In 1983, Morongo established the first high-stakes bingo par-

lor, quickly followed by Cabazon and San Manuel. In response to this burgeoning industry, California passed its pilot legislation to regulate Indian gaming in the state in 1984.

Indian gaming won a resounding victory with the Supreme Court's 1987 *California v. Cabazon* decision, which was quickly followed by national legislation, the Indian Gaming Regulatory Act (IGRA) of 1988. Congress endorsed economic opportunities for native Americans via gaming to "promote economic development, self-sufficiency, and strong tribal government." IGRA laid out the rules for high-stakes Indian gaming. Tribes were to be treated as sovereign governments within the states in which they reside and to enjoy limited immunity to state law. However, to give the state some regulatory control—which many tribal nations viewed as a compromise of their sovereignty—the tribal nation that wished to engage in high-stakes gaming (including operating slot machines—the casino cash cows) had to negotiate a compact with the state in which it resided. IGRA specified that each state-tribal compact be negotiated by the governor and ratified by the state legislature; the secretary of interior also had to approve it. Further, the National Indian Gaming Commission had to approve the gaming ordinance adopted by the tribe. Though Class II and III gaming was prohibited on lands put in trust after 1988, IGRA provided for exceptions and thus offered an avenue for unrecognized (aka "emerging") California tribes and landless, recognized restored tribes to enter the ranks of gaming nations.²²

The State of California resisted compliance with IGRA's requirement that it negotiate gaming compacts in good faith. No compact was negotiated until 1997. In the interim, California gaming tribes pressed forward, eager to replicate the Pequot nation's success in Connecticut. The Pequots found foreign investors to build the palatial Foxwoods casino between Boston and New York and were grossing \$1.2 billion a year for its six hundred members in the 1990s. Several southern California "Mission Indian" tribes opened casinos after IGRA became law in 1988. When the Chumash put in their first slot machines in 1994, yielding approximately \$200 per machine per day, they began to make spectacular profits. The Agua Caliente had 210 slot machines in operation in 1995.²³ Yet, slot machines were technically illegal because there were no tribal-state compacts in place. Video games were confiscated by San Diego County law enforcement at the direction of the state attorney general, but a federal judge returned them. By 1998, forty-one California tribes were operating 13,000 illegal slot machines, up from 4,780 four years before.²⁴ More than half of these illegal machines were operating in San Diego County tribal casinos; used by fifteen thousand gamblers a day, they were bringing in revenues of \$5.5 million a year by the late 1990s.²⁵ However, under the uncertain legal conditions, investors were hesitant to provide gaming tribes with the millions needed to construct casinos on the scale of the destination resorts of Las Vegas and Foxwoods.²⁶

According to Cheryl Schmit, the "turning point" was when Sen. John McCain

ushered the 1994 “List Act” through Congress in an effort to break the deadlock in California. This legislation named the “federally recognized” tribes of California and eliminated much of the ambiguity over the questionable sovereign status of many of the small “rancheria” groups in the northern part of the state and hence confirmed their identity so they could engage in high-stakes gaming. Eliminating much of the difficulty of getting backing from investors, the legislation made possible the “push” that began to expand gaming in California in 1994.²⁷ Investors approached small Indian communities, encouraging them to consider gaming as an economic option and offering their financial backing. Meanwhile, Gov. Pete Wilson’s steadfast refusal to negotiate compacts for high-stakes gaming was unsuccessfully challenged in the courts in *Rumsey Indian Rancheria of Wintun v. Wilson* (1994). California passed additional legislation to regulate Indian gaming with the 1997 California Gaming Control Act.²⁸ Finally, in 1998, coming to terms with de facto gaming, the state legislature ratified the model compact the governor negotiated with the Pala tribe of southern California in 1998.

Though ten tribes reluctantly conceded, the California Indian Gaming Nations Association (CIGNA) characterized the response to the Pala compact as “explosive” because the agreement reduced tribal nations’ powers to that of “quasi-municipalities.” Politically mobilizing in 1998, gaming tribes organized to resist “political subjection.” In 1998, they put Proposition 5, the Tribal Government Gaming and Economic Sufficiency Act, on the California state ballot. One of the “most expensive initiative campaigns in US history,” Prop 5 authorized Indian casinos to operate slot machines and blackjack. The \$70 million spent by tribes (primarily those in southern California) to promote its passage and the \$28 million spent by the proposition’s opponents resulted in a vote of 63 percent in favor of Prop 5.²⁹ The initial opposition to the institutionalization of gaming for moral or regulatory concerns—the potential for organized crime and other social problems—was overcome by the public’s desire to compensate California Indians for historic injustices and to provide a path for economic self-sufficiency. Prop 5 was then struck down as unconstitutional by the California Supreme Court. Proposition 1A in 2000 again put the matter before California voters, and California voters favored it by a 2-to-1 margin. These two California ballot initiatives signaled an “inherent change in the landscape of the Indian gaming industry.” According to CIGNA’s historian, the passage of Prop 1A was “epic,” as it overturned “California’s 150 years of anti-Indian policy.”³⁰ “Because of our affluence,” said Viejas chairperson Pico, “we were able to access Sacramento . . . as never before. . . . Our emergence as a major political contributor allowed us to gain access and develop personal relationships with decision-makers. . . . For the first time in history, . . . tribes were framing the debate on Tribal issues—lawmakers weren’t talking about us, they were talking with us.”³¹

Pressured by Prop 1A’s clear public mandate and by the federal government’s call for compliance with IGRA, the newly elected California governor, Gray Davis, reentered compact negotiations in 1999. Subsequently, the California legislature

approved sixty tribal compacts for 1999–2000, the terms of which were another political victory for the sovereign gaming nations. Tribes were required to contribute to two funds: the Indian Gaming Special Distribution Fund (IGSDF) and the Gaming Revenue Sharing Trust Fund (GRSTF). The former would compensate communities near the casinos for increased costs for fire protection, roads, and law enforcement; the second redistributed some of the gaming wealth of prospering tribes to poorer, nongaming California Indians. Compacting Indian tribes were permitted to install up to two thousand slot machines.³² Although gaming tribes were advised to negotiate with local communities about off-reservation impacts such as higher costs to counties for road maintenance and policing, such mitigations were not compulsory, for there were no enforcement mechanisms. California gaming tribes rejoiced, as they had successfully vindicated their sovereign powers free of paternalistic regulatory control by local authorities. They had preserved their prerogatives by influencing the democratic process in legitimate ways: through campaign contributions, lobbying, petitions, supporting ballot initiatives, and advertising.³³ “We learned the value of Public Relations,” said Pico, “as another arrow in our quiver to educate state and local political institutions and the public about who we are, and ensuring that we have a place and a voice in the future of California and San Diego County.”³⁴

Turning the Tables and the Backlash

By the turn of the century, California gaming tribes had decisively turned the tables, reversing historic power relationships. Few anticipated the phenomenal transformation in the state political economy from 1998 to 2004. The number of slot machines tripled, from 14,407 in 1996 to 58,100; gross revenues rose proportionately, with a 75 percent increase from 1999 to 2003.³⁵ In the early years of the twenty-first century, California represented a “vast potential market for continued expansion of gaming.”³⁶ Wealthy investors prodded nongaming tribes to join the bonanza and eagerly put up vast sums for established gaming tribes to upgrade their bingo and card room operations to “destination resorts” on the scale of Las Vegas casinos, with golf courses, shopping outlets, and classy entertainment venues. In 2000, the Chumash were grossing \$70 million a year, keeping 69 percent of profits for enrolled members. When they opened a new \$157 million gaming complex in 2003 with 2,000 slots and a 106-room hotel, their revenues rose 40 percent within one year. By 2004, California Indians were being described as the “richest people on earth,” though in truth this applied to a tiny minority. From 2002 to 2004, the southern California Agua Caliente, Pechanga, Cabazon, San Manuel, and Morongo tribes completed multimillion-dollar Vegas-style hotel and casino complexes. The Morongo Indians’ twenty-seven-story, \$250 million resort hotel and casino rose like a phalanx, dominating the landscape of the San Gorgonio Pass. With such expansion came many construction and service jobs. For example, the UAIC employs eighteen hundred people in its casino, three large restaurants,

entertainment venue, and hotel. Morongo is the largest private-sector employer in Riverside County, Jackson Rancheria is the biggest employer in Amador County, and the Cachil Dehe Wintun are the largest employer in Colusa County.³⁷

Indian casinos created jobs, but signs of public discontent began to appear, at first inchoate and easily dismissed as reactionary, then building into an audible, more broadly based public backlash. Criticisms ranged from resentment over traffic congestion, envy for new Indian wealth, and displaced non-Indian elites' nostalgia for the past; these complaints were joined by taxpayer concerns about increased costs of sewage, road, and water systems, as well as fire protection and law enforcement. A 2002 study by the California State Association of Counties revealed that thirty-two of fifty-eight California counties had Indian gaming facilities. The eight counties that kept records of fiscal impacts of Indian gaming calculated a \$200 million fiscal impact; five of these counties received mitigation payments of \$21.4 million.³⁸ Taxation and the conversion of fee land to trust status troubled county officials. Gaming tribes now had the capital to buy private land and businesses, and many applied to have these new properties converted to trust status. If the Department of the Interior approved these applications, counties would lose property tax revenues, thus putting the increased tax burden on non-Indian property owners. Native-owned businesses like gas stations or smoke shops have exemption from state sales taxes, giving these Indian businesses an advantage over local non-Indian businesses. Indian-owned hotels did not pay the transient tax, whereas non-Indian owned hotels were required to do so. The perception was growing among some gaming critics that Indians were getting an "unfair advantage" over non-Indian businesses.³⁹

The friction between Indian and local non-Indian populations was exacerbated by a vigorous exercise of sovereign immunity in some locales. The Santa Ynez Chumash claimed exemption from compliance with county building codes when constructing a multistoried parking structure on their trust land. Wealthy Chumash who divorced non-Indian spouses claimed their tribal sovereignty rendered them immune from ex-spouses' demands for child support. Moreover, the Chumash were running afoul of their wealthy neighbors, many movie stars among them, who wanted the wine-growing country to remain rural. In partnership with the actor Fess Parker, the Chumash attempted to buy private land, convert it to trust status, and then subdivide and build homes in direct violation of county no-growth policies.⁴⁰

For critics, the heart of the matter was that local jurisdictions were left out of the political process of casino siting and regulation. The federal government endorsed Indian gaming as benign national policy for economic uplift and delegated power to the state governments for hammering out the contractual agreements with sovereign tribal nations. County and municipal governments had no role in deciding if, when, and where a casino would be placed or in the negotiations over compensation for fiscal impacts on local services, nor did the local governments

have any enforcement mechanisms to compel sovereign tribal governments to come to account.⁴¹

A Clash and a Compromise

Market-driven expansion of gaming collided with vigorous grass-roots activism in Placer County in the late 1990s, and the clash had ramifications for state gaming policy. In the UAIC compact, memorandums of understanding (MOUs) with local governments become mandatory. Watchdog activists championed the result of this hard-fought local contest as a model for not only California but also the nation. The UAIC's uphill struggle to establish a gaming operation is not unlike what other "restored" tribes experience. Today's UAIC had its origins as a rancheria with a heterogeneous membership of people of Nisenan, Miwok, Pomo, and Wailaki. The Auburn Indians were terminated following the Rancheria Act in 1958 and lost most of their forty acres of trust land outside the city of Auburn to privatization. In 1991, the band reorganized its tribal government, adopted a constitution as the UAIC, and petitioned to have federal recognition restored. The Bureau of Indian Affairs contested the UAIC's status as a tribe. With the political support of the Placer County supervisors, the City of Auburn, and Rep. George Miller, the tribe succeeded in getting Congress to pass the Auburn Indian Restoration Act in 1994. Section 4 provided for accepting newly acquired real property into trust elsewhere in Placer County in order to promote the UAIC's economic prospects. Economic prosperity for the tribe would defray the annual \$500,000 expenditure for 150 Indian persons entitled to receive tribal services from the federal government.⁴²

In the burgeoning expansion of Indian gaming at the turn of the twenty-first century, the Sacramento region was one of the most promising untapped markets. Having congressional authorization for choosing a location to site a casino was a significant advantage, but the UAIC still had to overcome organized resistance within Placer County. Shopping for a more auspicious site along Interstate 80 within Placer County in the late 1990s, UAIC chair Jessica Tavares recalled in a 2007 interview the "ugly" battle against casinos. The local community hated them initially because of the UAIC's exemption from local laws, she said. Fortunately for the UAIC, Tavares hired Sacramento lawyer Howard Dickstein, "Godfather of California Indian Law," at the recommendation of Jackson Rancheria and Yocha Dehe tribal chairpersons. (In late 2011, some members of the UAIC criticized Dickstein's \$26 million in legal fees as excessive.)⁴³

When the UAIC considered a piece of property in Penryn, off I-80, in March 1996, local resident Cheryl Schmit began her metamorphosis from a self-identified soccer mom into one of the state's most prominent and articulate spokespersons for citizens concerned about Indian gaming. Schmit and three hundred other community members met en masse with the UAIC's lawyers, and they were shocked to hear that there was "nothing you can do about this." The sixty-acre parcel the UAIC proposed to buy was clearly inappropriate for a gaming site. Not only was

it not zoned for a large business, it lacked sewage hookups and was adjacent to a Zen center, churches, and children's play areas. The Placer Citizens for Community Rights (a precursor of the statewide watchdog organization, Stand Up for California) formed soon thereafter. Becoming educated about Indian gaming and making contacts with elected officials, the Placer citizens organized a conference and funded a trip to Washington, DC. Cheryl Schmit emerged as a leader because she had the free time to do the legwork for the organization—writing letters and making telephone calls—and because she had curiosity, drive, and personal connections. The Lungrens (Dan Lungren was then California attorney general) were neighbors and members of the same church. Schmit gained access to UAIC planning meetings and entered the fray of state referendum campaigns; she and her allies succeeded in including language that new casinos be located no closer than two miles from churches, homes, or schools. Schmit's overriding concern as a gaming watchdog was the nuts-and-bolts issue of land use raised by Indian gaming. She was determined to remedy the problem of locally elected officials who had lost their ability to protect citizens. Teaming up and taking the "bull by the horns," as she called it in a 2011 interview, Placer citizens demanded that the Auburn tribe work *with* them.⁴⁴

What diffused the ugly confrontation between the UAIC and the Placer Citizens for Community Rights, according to both Tavares and Schmit, was the UAIC's accommodating stance and Dickstein's pragmatic attitude that no casino would be successful without the support of the community. After being shown an environmental impact statement on the proposed Penryn property and hearing the community's objections, the tribe and its advisors agreed to search for a more suitable location. Robert Weygandt, Placer County supervisor, located a more suitable forty-nine-acre site off Highway 65 in an area zoned for industrial use and buffered by open land. The UAIC agreed to some other major concessions regarding environmental protections and mitigation of off-reservation financial impacts, so that Placer County citizens would not have to subsidize an economic venture for which they received an unequal return. By 1998, prior to Governor Pete Wilson's compact negotiations, the UAIC had agreed to compliance with the California Environmental Quality Act. It is noteworthy that the tribe's memorandum of understanding with Placer was signed in December 1997, *before* the historic Proposition 5 and 1A battles and *before* the Wilson administration approved the 1999 compacts. The environmental protections and enforcement mechanisms for mitigating impacts were included in the language of UAIC's original 1999 compact, but it was later stripped of these progressive elements, said Schmit, for political reasons; ultimately, these features were restored when the UAIC compact was renegotiated in 2004.⁴⁵

The collaborative effort with community organizations and county officials framed the Thunder Valley Casino's development within the county's police powers and growth plan. Compromise was a political necessity, for the UAIC needed the strong endorsement of Placer County to gain the Department of the Interior's

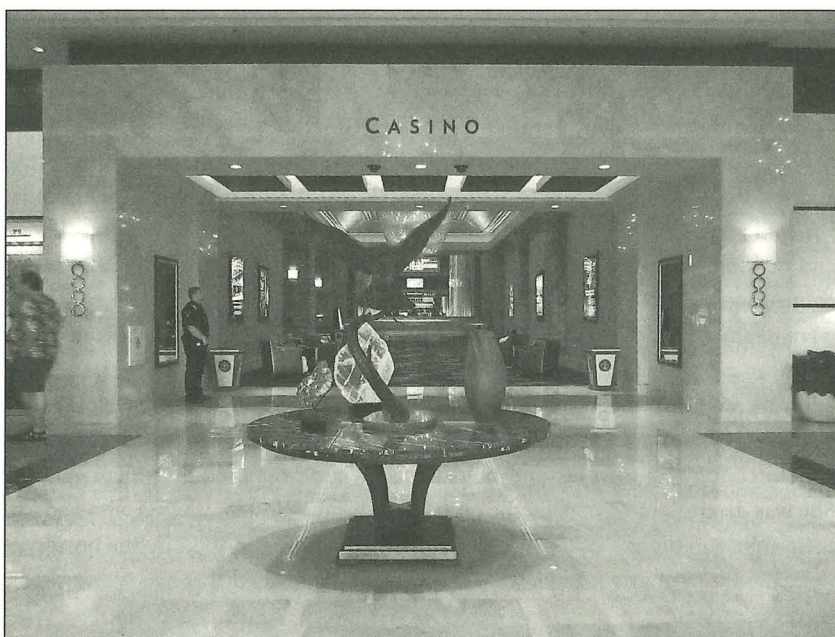


FIGURE 13.3. Thunder Valley Casino (interior). Photograph by Tanis C. Thorne.

endorsement of the trust conversion of the Thunder Valley site. Without trust land, there could be no casino. The UAIC signed a memorandum of understanding with Placer County (amended in 2003) in return for the county's support for trust land conversion. Following Department of the Interior approval and a federal appeals court decision in September 2002, the acreage for the Thunder Valley Casino was finally taken into trust. The UAIC "had integrity," Schmit said; if all California Indian nations were as reasonable as the UAIC, she would not have had objections to Indian gaming, she stated.⁴⁶

Political expediency was a priority for the casino investors and the tribe. According to one source, meeting the construction deadlines was a priority, and success in doing so permitted investors to quickly recoup their capital investments for infrastructure development. (The Red Hawk Casino of the Shingle Springs Rancheria along Highway 50 was not so fortunate; that casino opened just as the economic downturn of 2008 hit the nation, and it totters on insolvency.) The UAIC is remarkably transparent and accommodating compared to other Indian gaming groups. Its management is pragmatic, rather than politically charged. The decision was made to avoid financial overextension by reducing the number of floors planned for the hotel, for example. The initial concerns of the Roseville and Rocklin communities about the presence of a casino have been allayed. There have not been protests in the non-Indian community about negative impacts on business. Generally there has been a trajectory of improving local attitudes toward

the casino. Jobs have been created, and no apparent increase in crime or traffic congestion or gambling addiction has materialized.⁴⁷

New Deals in California's Fiscal Crisis

When an energy shortage debacle caused a \$35 million shortfall in the California state budget in 2003, the state economy faltered. Gov. Gray Davis looked to the prospering Indian gaming industry for needed revenues, as his successor, Arnold Schwarzenegger, would also do. Davis contemplated the possibility of allowing more slot machines (beyond the two thousand maximum per tribe allowed by the 1999 compacts) in return for the state's greater share of the gaming profits. Subsequently, Schwarzenegger launched a campaign to recall Davis in 2003, followed by his own successful bid for the California governorship in 2004. Schwarzenegger charged Davis and other Democratic candidates for reelection in 2004 with accepting tribal gaming contributions and being in the hands of "special interests." His banner campaign issue was calling for California Indians to "pay their fair share" as California's economy continued to stagger from deficits. Schwarzenegger's claim that California's political system had fallen into the hands of "special interests" was bolstered by the phenomenal sums—\$120 million from 1998 to 2003—California gaming tribes were pouring into proposition battles, lobbying, and campaign contributions. His charge that California gaming tribes were not paying their fair share resonated because of the well-known fact that the Pequot, in their 1992 compact with Connecticut, had contracted to pay 25 percent of gaming profits to the state. By 2003, when California gaming was enjoying profits of \$6 billion, Connecticut was collecting \$400 million in revenue from tribal gaming whereas California was collecting only \$131.6 million, a disparity Schwarzenegger was determined to correct. In his September 2004 preelection campaigning, Schwarzenegger expressed his determination to capture 25 percent for the state's general fund to lessen the state's budgetary shortfall of \$300 million.⁴⁸

In 2004, the Schwarzenegger gubernatorial campaign was a redefining moment in California's roller coaster ride over Indian gaming, uniting the various groups wishing to check Indian gaming, putting gaming tribes on the defensive, and polarizing politics. Significantly, the paternalistic rationale for California Indians' entitlement for gaming as self-help or compensation from past injustice was transformed; continued public support for Indian gaming now became a remedy for the state budgetary crisis. The representation of California Indians changed from victims to "special interests": "rich" or "greedy" people whose inordinate wealth was corrupting the democratic process, according to adversaries. California Indians realized that they were very vulnerable to changed public perceptions. If they were perceived as a homogeneous group of "rich" people who could afford to pay their own way, vital Indian welfare services, shared by the federal and state governments, might be cut for marginal or indigent tribes.⁴⁹

In 2004, prosperous California gaming tribes, fortified by expensive legal talent, prepared for battle. They were resolved to defend themselves from “shake-downs” by the state government: sovereign entities cannot be taxed and IGRA explicitly prohibited it, they argued. Across the nation, many Indians viewed IGRA’s requirement that tribes make compacts with states as an invasion of tribal sovereignty. Tim Giago, editor of *Indian Country Today*, went further; he viewed the Pequot compact that paid 25 percent of profits to Connecticut as extortion money. IGRA’s requirement “opened a can of worms that crawled across America,” wrote Giago.⁵⁰ In its amended 2003 MOU with Placer County and its 2004 amended compact with the state, the UAIC agreed to several concessions that other tribes interpreted as surrendering sovereignty.

Governor Schwarzenegger could not legally require the existing gaming tribes to pay a greater share, as their compacts would not expire until 2020. On the 2004 ballot, hardball politics were put into play. A coalition of non-Indian gaming interests put Proposition 68 on the ballot, which threatened the loss of the Indian monopoly on Class III gaming if the Indians did not agree to comply with more stringent regulations and to make more contributions to the state’s coffers. The powerhouse southern California gaming tribes created a huge war chest of money to defend their sovereign rights, expending enormous sums to put Proposition 70 on the ballot. Proposition 70 would have given the gaming tribes virtual *carte blanche* to expand gaming operations as far as they wished. Neither proposition passed.

Spectacular Indian casino profits on the one hand and state budget crises on the other were feeding the multiplying worms. California, like many other states facing budgetary shortfalls, became heavily invested in Indian gaming. Schmit of Stand Up for California decried the imbalance created by Proposition 1A and the “unanticipated consequences of IGRA.” What California voters had not anticipated—and did not know was a legal possibility when they approved Propositions 1A and 5, Schmit argued—was that market demands were driving relentlessly toward unchecked expansion of Indian gaming. The special circumstances in California, with its market demand and numerous “restored” tribes like the UAIC and an even greater number of “emerging” tribes—that is, those applying to be federally recognized—meant potential growth of gaming into dozens of new locales. As of 2007, twenty-three federally recognized tribes in California were seeking trust land under the exceptions provision of IGRA (the “Section 20 concurrence” rule).⁵¹

Ironically, the governor’s goal of collecting money for the general fund and imposing stronger regulations fueled casino expansion. State politics went on a wild ride in 2004. The governor was determined to keep his campaign pledge and was also willing to gamble. His strategy against very sophisticated opponents from 2004 to 2007 could be compared to a game of roulette in which he put big piles of chips on certain Indian casinos, hoping for a big payout for the state.

Schwarzenegger hoped to leverage powerhouse gaming tribes with a tradeoff: more slots for more money to the state. Viejas, having “built up political muscle and experience interacting with California on a government-to-government basis,” was one of the first California tribes to enter compact amendment negotiations. “The challenge was daunting and the stakes were high,” said Anthony Pico.⁵² Subsequent to amending its 1999 compact in 2004, the Viejas Band of Capitan Grande Indians had the legal right to install an unlimited number of slot machines (with a sliding scale of payments to the state’s general fund) and to add another gaming facility. The Viejas compact extension went to 2030, instead of 2020, allowed for “a longer-term business plan to meet enterprise and government needs,” and provided for “enhanced exclusivity in Viejas[s] geographic market.”⁵³

Morongo, like Viejas, was one of the several tribes that had reached the two-thousand slot ceiling. It was completing its huge new casino/hotel and wanted to expand. When the governor made additional demands, which would lessen Morongo authority vis-à-vis local non-Indian governments, talks broke down. Facing defiant resistance from most tribes with existing compacts, the governor adopted the more promising approach of negotiating for a much higher percentage of profits from those California tribes that did not yet have compacts. By June 2004, things looked promising for the governor: ten new compacts promised to put a projected \$350 million to \$500 million into the state coffers. The California legislature approved compacts that promised \$1 billion in immediate revenues for transportation bonds and 15 percent annually from slot-machine revenues. Ratifying only six new compacts in his administration, the governor ultimately could not fulfill his campaign promise because he encountered organized resistance from several of the well-financed, politically astute gaming tribes, legal obstacles to retroactive payments, and consolidated popular opposition to new urban and even rural casinos.⁵⁴

Environmental Reforms of 2004

The 2004 compacts were qualitatively different than the 1999–2000 compacts. There were stronger environmental protections and increased input from local communities about casino siting, construction, and cost-sharing of off-reservation impacts. The post-2004 compacts incorporate many reforms pioneered by the UAIC in the late 1990s; tribes no longer contribute to IGSDf but must negotiate directly with local communities for mitigation. A little-known but excellent summary titled “Tribal Gaming and Community Planning in California: A Primer for Policymakers, the Public and the Press,” published by the California Planning Roundtable in October 2007, argues persuasively that 2004 marked a significant shift toward gaming tribes’ sensitivity and accommodation to the needs and demands of the city and county communities. These 2004 compacts require “intergovernmental agreements for off-site mitigation and public service costs.” Previously, such agreements with local governments to share costs were prescriptive and voluntary. After 2004,

the signing of memorandums of understanding with county and city governments became the norm prior to compact ratification or trust land acquisitions. Before the rise of Indian gaming, the report noted, “most jurisdictions had little interface with tribal land use,” as Indian lands were in rural areas, far off the beaten path; economic activity there had minimal impact on non-Indians. However, suburban growth moved the non-Indian population toward Indian lands. “Increasingly, decisions related to tribal gaming have consequences for non-tribal lands,” the roundtable concluded. Infrastructure extension—roads, sewage systems, and water service—is a necessary step to a casino’s construction. “Off-site impacts” are a major concern both before and after casino construction.⁵⁵ Policy shifted to require each tribe entering a compact after 2003–4 to file a tribal environmental impact report (TEIR); before a project for casino development begins, tribes are required to enter agreements regarding mitigation of off-site environmental impacts. Expansion of existing gaming facilities also requires a TEIR. Establishing and operating casinos have important implications for land use and environmental planning for “growing numbers of California communities.”⁵⁶ Viejas, to compensate San Diego County for its expansion to twenty-five hundred slot machines, agreed to pay \$1.2 million for road improvement for off-reservation impacts in December 2005; this was the first intergovernmental agreement signed in San Diego County under the new compacts.⁵⁷ “We have made some compromises,” said Pico, the Viejas chair. “We do our best to incorporate the public’s concerns. . . . We value the input of our neighboring communities and local governments, and take their thoughts and concerns into consideration.”⁵⁸ The Department of the Interior also developed new rules in the early twenty-first century requiring both environmental reviews and support from community leaders for Indian casino construction and expansion.⁵⁹

While many California gaming tribes make very generous voluntary donations to their communities on a regular basis to maintain goodwill, the 2004 compacts included compulsory payments and ongoing and enforceable provisions for renegotiations. The concessions included agreements to pay the county the equivalent of property tax income lost when fee land is converted to trust status, compliance with county codes, and compliance with the environmental standards set by the state in the California Environmental Quality Act (CEQA). What Placer County gained from the compacts was quite significant: (1) payment of an amount equivalent to lost property taxes as well as the county right to a share of sales taxes and transient occupancy taxes collected by the tribe; (2) tribal compliance with the county general plan, ordinances, and building standards; (3) a review process using CEQA-like procedures; (4) mitigation for traffic, reimbursement for law enforcement and fire protection costs, and contributions to the county open-space program. The Sheriff’s Department was slated to get \$1.2 million a year from the UAIC, a sum that could be renegotiated as the tribe agreed to surrender its sovereign immunity to legal action. An anticipated \$121 million under the MOU was expected to go to the county over twenty years.⁶⁰

During the planning stage of the construction of the Thunder Valley Casino, the UAIC approached the City of Lincoln to negotiate a hookup to the city's wastewater treatment plant, a move that exemplifies the intergovernmental activity central to the effort. When some protests arose and this MOU was legally challenged and then tossed out, the tribe built its own treatment plant. Subsequently, another MOU was negotiated with Lincoln, which created the option of a future hookup to Lincoln as a backup; this agreement included a tradeoff in which the tribe would contribute financially to Lincoln's public library. City planner Rodney Campbell thought the UAIC's decision to build its own wastewater treatment plant was worse for the environment, as the city had higher standards for treatment before discharging the effluent into the Auburn Ravine; also, he added, the tribe was burdened with the unnecessary responsibility of building and maintaining its own wastewater treatment when it really would rather have avoided that undertaking. The UAIC has been making its "voluntary" contributions to the City of Lincoln, though it has not had to access the city's wastewater treatment system to date.⁶¹

These MOUs and their accommodations with city and county governments particularly apply to newcomers to the compact negotiation table and especially to restored tribes seeking trust land in prime locations such as urban areas. The Graton Rancheria, applying for trust land in Rohnert Park in Sonoma County, and the Guidiville Pomo and Scotts Valley Pomo (each seeking urban casino trust land in Richmond in Contra Costa County), for example, have gone through rigorous and costly environmental reviews over the last few years; they have signed MOUs with counties and cities, but their efforts to gain trust land approval from the federal government have failed.⁶² The Enterprise Rancheria is a Maidu group of Butte County that wants to acquire additional trust land in a more promising location in Yuba County. In 2002, Enterprise signed a MOU with Yuba County. Marysville was offered \$3.5 million over fifteen years to accept the trust land conversion, but, in November 2005, local voters said no to a Marysville casino. Graton Rancheria opens its casino in November 2013, but Guidiville and Scotts Valley were unsuccessful in their bids for trust land.

In a number of instances, California cities have been eager to embrace proposals that involve the creation of trust land in urban areas (so called "off-reservation gaming") because municipal governments are desperate for revenues. Barstow's willingness to host the combined Big Lagoon and Los Coyotes communities' casino was praised by one environmental historian as enlightened public policy. The argument is made by other leading analysts of Indian gaming that, as long as tribal sovereignty is respected, there is a win-win situation for all when compromises, or "mutual give and take between equals," are made via intergovernmental agreements.⁶³ Barstow needed the economic uplift the gaming enterprise would bring: jobs and guaranteed payments to the city. Los Coyotes needed a better casino site than its existing reservation; Big Lagoon's home reservation was too environmentally sensitive for a large development. However, the proposed compact for the Big

Lagoon–Los Coyotes casino created considerable controversy, and the Department of the Interior voted thumbs down on the project.⁶⁴

Urban Casinos and Schwarzenegger's Waterloo at San Pablo

The governor's major triumph was an August 2004 compact for 25 percent of profits from the Lytton Band of Pomo. In San Francisco's East Bay region, a messy political fight disillusioned Californians about tribal reservation shopping. The homeland of the Lytton Band of Pomo is in Sonoma County, but, in 2000, Rep. George Miller, whose congressional district included San Pablo, introduced language into the fine print of an appropriations bill (the "stealth amendment," according to its critics) that granted a new 9.5-acre reservation off I-80 in the densely populated city of San Pablo. The governor's 2004 compact with the Lytton Band gave the tribe a monopoly over a thirty-five-mile radius for high-stakes gambling; in return for giving the state 25 percent of the take, the tribe could install up to five thousand slot machines in a planned, multistory six-hundred-thousand-square-foot facility that would cost \$4.5 million. The Lytton Band's casino would be the biggest in the American West as well as the state's first urban casino. It would create sixty-six hundred new jobs in a town with a \$2 million budget shortfall in 2004 and would give the state a projected \$125 million of \$500 million taken in annually at the casino. There were immediate protests, especially due to concerns about traffic congestion, and the tribe quickly agreed to scale down the casino to twenty-five hundred slots.⁶⁵ General opposition to urban casinos doomed the project, however, and the California legislature failed to ratify the Lytton compact. Cheryl Schmit nonetheless saw the failed Lytton compact as a good model of how locally empowered citizens could make the system work. The proposed compact had conformed to the environmental standards and intergovernmental compromises of the other 2004 compacts. Parties standing to gain, like unions seeking construction jobs, were involved, and there were county and city mitigations; for example, CalTrans would get money for road infrastructure improvement for the freeway, and the state would get a hefty amount of money that would help with budget balancing.⁶⁶

Epitomizing the potential for expansion of Indian gaming into new areas, the San Pablo case had some important political by-products. In May 2005, Governor Schwarzenegger formally announced a new policy against urban casinos. The governor said that those seeking trust land for casinos must have approval from local jurisdictions. He also said that state agencies should review proposals for urban casinos.⁶⁷ In 2006, John McCain, head of the Senate Indian Affairs Committee, came out in opposition to "reservation shopping," stating it was not Congress's intent that gaming grow so fast. US senator Dianne Feinstein became committed to preventing any future Indian casinos in the San Francisco Bay Area. Feinstein opposed the plan to approve the billion-dollar casino/hotel complex the Guidiville Band of Pomo proposed for a former naval depot (Point Molate) near the Richmond–San Rafael Bridge, despite the fact that the tribe's investor reached an

agreement with environmental groups to pay \$48 million to buy and protect prime shoreline adjacent to the proposed casino.⁶⁸

The general movement to empower local communities by requiring environmental impact studies and mitigations is opposed by several powerful California Indian gaming nations. The UAIC has been severely criticized for being traitors, and this situation has created a breach within the Indian gaming community.⁶⁹ Denying that the UAIC's compact is the "model" or template for future agreements, CIGNA in 2006 was developing its own guidelines. Agua Caliente's agreement with the City of Rancho Mirage is one of the sole exceptions to southern California gaming tribes' (those with 1999 compacts) stalwart and united refusal to make such intergovernmental compacts, as the tribes claim this is a violation of their sovereignty rights.⁷⁰

The strongest southern California gaming tribes met with the governor to amend their 1999 compacts in 2006 because they wished to expand the number of slot machines they were operating and because investors were hesitant to provide capital on improvements with only fourteen years remaining on the existing compacts. Five of the richest gaming tribes in southern California—the San Manuel, Morongo, Sycuan, Agua Caliente, and Pechanga—engaged in negotiations for one of the "biggest gaming expansion[s] in recent national history," adding seventeen thousand to twenty-two thousand new slot machines and giving the state an anticipated \$506 million in revenue. Morongo would be allowed to add up to fifty-five hundred slot machines to its existing two thousand, for example. An awkward coalition that mobilized to defeat the amended compacts was composed of the UAIC, Pala, and horse-racing groups, as well as labor unions and Stand Up for California. Doug Elmets, spokesperson for the UAIC, argued that the five compacts would give tribes with big casinos the power to "blow small and medium tribes out of the water." When the state assembly demanded concessions for increased regulation, San Manuel dropped out, but the other four agreed to compromise regarding environmental protections, building code compliance, and intergovernmental agreements. Compact ratification for the "Big Four" was a hard-fought battle nonetheless. Even after the California legislature and the Department of the Interior gave their approval, opponents demanded that the matter be put before California voters in a referendum. Agua Caliente tried unsuccessfully to get the referendum vote quashed in the courts three times. A tribal lawyer from Agua Caliente said the referendum was gratuitous and unfair because it amounted to changing the rules in the middle of the game. To Cheryl Schmidt, the 2007 compacts were a betrayal of the hard-won reforms of 2004 because they left cities and counties out of the process of determining what constitutes adequate mitigation for casino environmental impacts. For most California voters, the 2007 compacts promised tax relief. For Schmit and for the southern California gaming powerhouses, what was vitally at stake was the principle of sovereignty and how compacts were to be negotiated. Southern California tribes expended from \$118 million to \$124 million to gain

52.6 percent voter approval. The feared consequence of the 2007 compacts for many—the delivery of even more political power to the richest and most powerful tribes—was muffled by the financial recession that began in 2008.⁷¹ The Sycuan tribal council voted down the compact the tribe had spent \$6 million to secure.

Big Money and Charged Politics

Contradictions characterize California gaming's recent history. Indian gaming is obviously big business. Investors continue to provide the backing for dozens of California tribes to develop casinos in good locations where there are untapped markets. These efforts continue despite the fact that citizens—in various northern California counties in particular—have effectively mobilized to contest sitings of casinos and trust land conversions in various locales; various local, state, and federal authorities continue to press for stronger regulatory control of an industry that grew in a regulatory vacuum. There are confusing cross-currents as Indian gaming's further expansion promises needed local revenues, tax relief, and jobs in California's ailing economy, while Indian gaming also has some negative economic impacts on certain sectors of the population. California's federally recognized and unrecognized tribes continue to be dealt with on a case-to-case basis under the law, which inhibits the formation of standardized guidelines.

There are discernible trends, however; one indicates that community leaders have an increased voice in dealing with environmental impacts. Upon his election as California governor in 2010, Jerry Brown planned to open negotiations to amend the remaining 1999 compacts to bring the rest of the compact tribes in compliance with the new environmental standards and regulatory controls. As of 2012, he had negotiated two, one with the Habematolel Pomo of Lake County and one with the Pinoleville Pomo of Mendocino County. Regulatory controls are in place, and 15 percent of the Pinoleville casino net goes to local communities in exchange for operating nine hundred slots.⁷² Another observable trend is that it is more and more difficult for a tribe to open a casino on recently acquired trust land.⁷³ It comes as little surprise to anyone in today's economy that those that have, get more, and those who don't, have less and less of a chance at the big jackpot. Those with ample reservation land in good locations are reasonably secure. Those without trust land face a dauntingly difficult uphill battle. Those with prosperous gaming operations already can apply to have trust land conversions of private property they have acquired with casino profits. However, gaming watchdog groups are chipping away at the Department of the Interior's broad discretionary power to make such trust conversions for either landed or landless Indian nations. In 2008, the Department of the Interior announced a more restrictive policy regarding fee-to-trust conversions after a district court judge found the fee-to-trust process to be flawed. The 2009 Supreme Court decision in *Carcieri v. Salazar* represents a more restrictive policy on trust conversions: only tribes under federal jurisdiction prior to 1934 are eligible. Section 20 of IGRA provides one of the few avenues remaining

for a tribe without trust land before IGRA (1988) to gain it.⁷⁴ Sen. Dianne Feinstein introduced Senate bill S. 771, the Tribal Gaming Eligibility Act, to amend section 20 of IGRA and prohibit “off-reservation gaming” by requiring “substantial modern” as well as ancestral connection to newly acquired land. Schmit and Feinstein apparently shared the view that the intent of IGRA has been distorted, shifting from an original focus on tribal economic development and self-sufficiency to become a vehicle for constantly expanding casino operations. *Indian Country Today* denounced the Feinstein bill as a travesty that would make it nearly impossible for restored or newly recognized tribes to open casinos. Only five tribes nationally operate off-reservation casinos under the two-part determination of section 20 of IGRA, so some argue that the urgency to close this loophole is overblown.⁷⁵

California voters seem to be content with any and all contributions by casino tribes to the state budget. Gaming tribes continue to give generously to sweeten relations with their communities. The established gaming tribes are less constrained by mandatory requirements to compensate counties, but they too have absorbed a lesson. Retiring an advertisement about the cruelties suffered by Santos Manuel, the reservation’s first captain and stalwart defender, San Manuel currently airs a “Healthy Communities” video commercial on television stations. San Manuel’s million-dollar donations for cancer research at Loma Linda University are showcased; an image of historic Indians helping white pioneers cross the difficult mountain passes is also featured. Both images underline the good neighbor theme. The commercial ends with the message, “Indian Tribes and California Together: One Community.”⁷⁶ Cooperation is the watchword in California gaming for the foreseeable future.

River City and Valley Life

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OF THE SACRAMENTO REGION**

EDITED BY

Christopher J. Castaneda AND Lee M. A. Simpson

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