

A Proposal to Create an Office of Indian Affairs within the Brown Administration to Improve Tribal and State Relations

The purpose of this brief is to propose that the Governor's Office support the creation of an Office of Indian Affairs on Tribal and State relations that will be responsible for implementing consultation and collaboration between the California State Government and California's Sovereign Tribal Governments.

Background

These critical times call for a shared vision, goals, and priorities between Tribal Governments and the State of California. This administration can make this happen. California faces many challenges in this time of crisis, most critical include the budget deficit, unemployment, climate change, and limited resources. The same is true for Tribal Governments. Both sovereigns share the fate of California, whether the issue is jobs, water shortages, food shortages, wildfires, or other natural disasters. The State's serious problems do not begin and end at jurisdictional boundaries.

California Tribes are unique in that their constituents hold citizenship at three levels: tribal, United States, and the State of California. Thus, the State has an obligation to American Indians living in California, just as they do every other citizen. Also, as citizens and residents of California, Tribes have a shared responsibility and obligation to work together with the State to promote the common good. By identifying areas of mutual concern and working toward consensus and partnerships, the State and Tribes can begin to resolve hundreds of years of mistrust, jurisdictional conflicts, and the lack of communication and education that leads to continued adversarial positions.

The historical adversarial model between California Tribes, the State, and local governments is usually single-issue oriented, despite the complexities and reach of legal decisions. The pattern of tribal state relationships has typically been driven by costly lawsuits or controversies that divide and solidify negative perceptions by all parties involved, including the public. Once legislation or legal procedures begin, because of failure to consult or communicate at a level of true authority, there is diminished room for mitigation or compromise. The result often leads to costly, inadequate, and limited solutions that fail to respect the needs of the all citizens of California, Indian and non-Indian.

Why an Office of Indian Affairs on Tribal-State Relations?

- Federally recognized tribal governments are sovereign nations according to the U.S. Constitution, and federal law. This designation is not due to race, but rather recognition of their inherent rights as the original self-governing inhabitants of the United States.

- As sovereign governments recognized by the United States Constitution, federal and presidential policy, courts, and congressional acts, tribal governments have rights and authority that is equal to state governments and in some instances is parallel to federal jurisdiction. This fact obscured by historical circumstances, and lack of education about tribal governments often leads to resistance and power struggles between tribes and local jurisdictions when Tribal Governments seek to exercise their rights or adapt to modern changes and pressures.
- New issues, and the economic benefits of tribal government gaming (See Attachment 1) have given Tribes the impetus and resources to exercise their heretofore misunderstood or ignored rights and governmental authority. This has given rise to the need to develop new state and local governmental protocols, education of both state and tribal government personnel about each other's respective rights and responsibilities and clarification of developing areas of conflict or gray areas where tribal and state rights, interests, and laws intersect.
- Tribes that have gaming income provide the State an estimated \$1 billion per year through revenue sharing, mitigation and local public safety services with local governments, and contributions to cities and non-profits. Tribes with an economic base from gaming use these revenues to develop their governmental infrastructure and services, and are involved with improving transportation, public safety, and the environment that benefit the local regions. In addition, Tribes are supplementing services such as fire, emergency, and police protection, public transportation to both the reservation and neighboring communities through contracts and mutual aid agreements.
- The State has no authority over Tribal lands, as they are federal trust lands, like parks and military bases, except for concurrent criminal jurisdiction. The exception being executed agreements between the two governments. Encouraging tribal partnerships in public safety services, for example, can supplement services local governments cannot afford.
- The cost to the State for litigation with Tribes over issues such as sacred lands, gaming, water rights settlements, hunting and fishing rights, rights-of-way and other State policies and legislation that affect Tribes, could be drastically reduced by discussion, education, and negotiations aimed at fair settlements, sharing common goals, accountability and representation, thus saving the State and Tribes millions of dollars (See Attachment 2).
- Tribes have been stewards of environmental reverence since time immemorial. Tribes and the State have common goals to improve the environment and the Tribes would like to be a part of the solution for urgent climate change policies addressing green house gas emissions, health concerns, clean air and water,

alternative energy and other environmental issues. Tribal governing policies and activities could complement, and augment, rather than compete with the State's environmental initiatives.

- Tribal communities are untapped sources for green jobs and other forms of economic development. Tribal governments have shown through gaming and other entertainment and hospitality venues how economic development on Tribal lands brings jobs and economic spin-offs to entire regions and neighboring communities.
- Tribal governments have zoning, regulatory, environmental, land use-planning authority over tribal lands, and have the capacity to initiate new economic enterprises and create jobs quickly without the costs and long turn-around times of local and state permitting processes.
- California's Tribal governments strive to bring modern services to their communities that other communities in California enjoy. Tribal communities have suffered 160 years of economic depression and isolation from the mainstream of events. Even the relatively few Tribes that have a sound economic base because of gaming revenues are still 10–20 years behind in the establishment of adequate governmental infrastructure, housing and other services to their respective communities. It is well known that the many Tribes lack confidence or trust in regional planning and entering into agreements with the State and local governments, this can be improved for the betterment of both Tribal and State communities.
- Although some Tribes have the resources to improve their communities, there are many Tribes that cannot afford the professional expertise to develop green jobs, conservation, public safety, air and water quality policies that fit their diverse, population, economic, geographic profiles, and locations. Tribes did not independently create the water, air, or other population growth and climate related degradations, but are affected by these impacts. Consultation efforts to reach out to the Tribal communities would improve the communication, collaboration, and use of resources to address common goals.
- Tribal Governments are many within the boundaries of the State, and like the State, government must work within the federal governmental confines. Many Tribal Governments have very little understanding of the complexity of the State bureaucracy, problems, or State resources outside the gaming arena. The Tribes do understand, however, their own respective problems and needs, many of which are the same among all the Indian nations and the State. A sharing of information, priorities, and goals will facilitate a sense of shared responsibilities and encourage a cooperative approach to addressing California's future, both between Tribes, the State, and the federal government.

- Tribes need opportunities to expand into other forms of economic development other than gaming. The Tribes could be partners in expanding the State's economic base, jobs, and green and future technologies. Working together, recognizing the unique status of Tribal governments and unexplored possibilities, both the Tribes and the State will be better prepared to meet current and future challenges.
- Tribes have access to federal grants that could supplement the limited funding sources of the State and at the same time benefit the Tribal communities. These resources range from wildlife, education, and health care to future energy development and jobs, conservation, agriculture, research and development, broadband, transportation, and community development grants, to name just a few.
- Successful institutionalized channels of communication and conflict resolution, as well as a vehicle for consistent policy development across the complex issues on a government-to-government basis are being employed by many states. In fact, the National Conference of State Legislatures has recognized a number of models currently implemented across the nation as vital components of good governance and positive intergovernmental relations.¹
- Given a proper place at the table, along with a mechanism to focus policy discussions and negotiate collaborative agreements, Tribes would be in a position to share responsibility for the future of the State in ways more productive than illegally taxing Tribal enterprises.

Office of Indian Affairs Structure

The Office of Indian Affairs would be placed under the authority of the Governor's office, staffed by a Secretary of Indian Affairs appointed by the Governor.

The mission of the Office of Indian Affairs is to improve the quality of life for Native American citizens working through a government-to-government relationship between the Tribal governments and the State. The initial goal of the Office of Indian Affairs is to improve tribal state relations and to identify mutual areas of concern, accountability, authority and procedural rules.

General goals:

¹ National Conference of State Legislatures, Government to Government: Models of Cooperation between States and Tribes, (April 2009), <http://www.nijc.org/pdfs/TTAP/NCSLGovttoGovt.pdf>, accessed on January 9, 2011.

- Facilitate creation of statewide state-tribal partnerships that provide a framework for communication and conflict resolution.
- Advocate for increased federal funding for Tribes.
- Promote consistent, well-researched, non-partisan policy development across diverse, complex issues on a government-to-government basis.
- Create and promote historical and tribal governance educational materials for public use and training of state employees, legislative staff and local governments.

Funding the Office of Indian Affairs

Recognizing the State is suffering from a critical budget shortfall, one option for funding the Secretary, staff and related costs to the operations of an Office of Indian Affairs could be funded by the tribal governments. An equitable solution would be to use funds provided from fees being paid to the State as part of the Tribal-State gaming compacts. This would require exploration and discussion, and possibly legislation and agreement by the Tribes and the State. This use would meet legal requirements that gaming funds must be used for gaming related impacts and services that benefit the Tribes. It would also meet the intent of many tribal governments engaged in gaming that funds paid to the state should ultimately benefit and improve direct governmental relationships between tribal governments, local governments, their neighboring communities.

Why Now?

The pressure is mounting, given the budget deficit, high unemployment rate, climate change, drought, and an end to cheap water, electricity, and oil, the State has an obligation and the need to work with Tribal governments on these issues and many more to come. Yet this can only be done through inclusion of the Tribal governments and with a sincere desire by the State to settle obstacles and issues in a true spirit of cooperation and collaboration between the respective governments.

While Tribes are equal sovereign governments through federal law, the resources and power have never been equal. The State has always had more economic and political currency than the Tribes. This has often led to the State overstepping, abusing, or ignoring Tribal needs, rights, and authority. The result has been abject poverty, loss of natural resources, and opportunities. The unsatisfactory conclusion has resulted in litigation, not mutually beneficial agreements. This historical imbalance can be corrected by the State and Tribal cohesion. Many Tribal communities lack revenues and expertise to develop sustainable economies from agriculture, manufacturing, retail, research, development, and agreements to export and import services within the

State, foreign governments and among each other. Working together would create greater self-sufficiency among the State and Tribes.

There are benefits for the State as Tribes become increasingly self-sufficient. Tribal gaming is an example, this single type of business created tens of thousands of jobs (for Indians and non-Indians alike), a life line for millions of small business vendors, health care coverage for both tribal members and employees, and a welfare safety net, removing Tribal members on many reservations from any form of government tax-payer assistance.

Native heritage of Tribal traditional relationships to nature is an example of an untapped resource, as is the American Indians traditional reverence of the land. The State has the expertise and resources to help expedite mutually beneficial relationships and partnerships. Many states have made significant strides in working with tribal governments in their respective states settling water disputes, drought planning, economic initiatives, ecology, conservation, health care, criminal justice, public safety, and other critical issues. These successes have resulted from different approaches by state governments. But the precedent setting achievements were only possible because of a strong commitment by the states' governor, and from the flow of authority beginning at the top, not the bottom.

Tribal laws, Tribal governments, the legal climate, and acts of Congress are constantly changing. It would benefit the State to be advised of the impacts and opportunities to work with Tribes, arising from the national arena.

For years, Tribes have viewed the State as their enemy, many still do. Others, however, believe that the new administration and the times offer opportunities, indeed the necessity, to develop mutual planning, cooperation through respectful consultation and collaboration. It will not be easy, given the disparate geographies and economics of Tribal governments. There will be differences of perspectives, and many obstacles. But the State cannot afford to deal with the issues that confront all of the people who reside in California without considering and including one third of the Tribal territories that are home to California's original inhabitants. At the same time, Tribes need to be brought into California's future, and participate as partners in solving the uncertainties that lie ahead.

An Office of Indian Affairs in the Governor's Office will foster and implement collaboration for the Governor's Office through procedural processes that will induce efficiency and effectiveness towards reaching respective and common goals with the California State government and California sovereign Tribal Governments for the benefit of all California citizens.

Attachment 1

Below are key findings from three studies evidencing increased revenues circulate within local and regional economies where Tribal Government economic development enterprises exist.

A. Taylor Krepps (2000) Research Findings (p. 30):

- Indian casinos in more rural and poorer markets have a **net positive impact** on the surrounding communities.
- Gross incomes rise and certain crime rates fall when Indian casinos are introduced near non-Indian communities.
- The income gap between communities that witnessed a non-Indian casino introduction and those that saw a proximate Indian casino introduction closed.
- Indian gaming is not only a development tool that poorer-than-average tribes have used to pull ahead in their cohort (Cornell et al.), it is a tool of development by which tribes have improved the economic lot of their non-Indian neighbors as well.²

Conclusion:

“As quite a few states, have explicitly committed themselves to developing their poorer and rural areas, this research indicates that there is reason to believe tribes and states need not be adversaries over compacting for casinos as they have been. Particularly where tribes are located in rural and poor regions, states need not be concerned about cannibalization and substitution effects swamping the benefits of gaming.”³

B. Economic Impact of the Chumash Casino Resort on the County of Santa Barbara (2008).

Key Findings:

1. The Chumash Casino Resort is a significant economic enterprise in Santa Barbara County.
- It is one of the largest employers in Santa Barbara County.

² Taylor, Krepps. The National Evidence on the Socioeconomic Impacts of American Indian Gaming on Non-Indian Communities (2000), <http://sugarbowlcasino.org/Harvard-Project.PDF>, accessed on January 9, 2011. See also, Stephen Cornell and Miriam Jorgenson, The Nature and Components of Economic Development in Indian Country, May 15, 2007, <http://nni.arizona.edu/resources/inpp/2007CornellJorgensen.pdf>, accessed on January 9, 2011.

³ Ibid.

- Between 2001 and 2006, the Casino was the second fastest growing employer in Santa Barbara County, creating nearly 900 new jobs.
 - It has one of the larger direct payrolls in the County and average salaries of all workers at the Casino Resort are higher than average salaries for all workers in Santa Barbara County.
2. Annual operating and capital expenditures have a large direct, indirect, and induced impact on the level of economic activity in Santa Barbara County.
- The total economic impact is large at over \$350 million in total dollar sales in Santa Barbara County.
 - The 1,587 direct jobs at the Casino account for an additional 703 jobs created in the Santa Barbara County economy. These additional jobs produce an additional \$30 million in payroll dollars.
3. Because governments are not taxed, much of the tribal government-owned Casino operation is exempt from state, federal, and local taxation. However, the indirect and induced spending that occurs off tribal lands generates a significant amount of taxable activity.
 4. The largest tax is from payrolls, paid by both Casino workers and the Casino, and income taxes paid to the federal and state governments.
 5. The Casino serves as an additional attraction of visitors from adjacent counties to Santa Barbara County.
 6. The presence of the Casino gives more visitors more reasons to travel to Santa Barbara County and spend dollars on other visitor attractions, restaurants, local hotels, and general merchandise.

Increased transient occupancy taxes collected by local jurisdictions are a result of the Casino attracting many out-of-County visitors who stay overnight in Santa Barbara, Santa Ynez, Solvang, and Santa Maria.⁴

C. **2006 California Tribal Governments Economic Analysis.**

Key Findings:

1. Locating Tribal Gaming on Reservations Distributes Benefits to Poor Regions and Residents of California who live Near Reservations.
- Tribal government gaming in California located on reservation lands, concentrates employment and other benefits in counties that need development the most.

⁴ The California Economic Forecast, Economic Impact of the Chumash Casino Resort on the County of Santa Barbara (2008), iii, http://www.sbcta.org/Final_Report_Chumash.pdf, accessed on January 9, 2011.

- Median family income in Census tracts within 10 miles of an Indian gaming facility in 1990 was merely \$32,515 (in constant 2000 prices), as against \$46,255 in the non-gaming tracts. By 2000, median family income grew significantly more in the gaming than in the non-gaming tracts (55% versus 33%).
 - Due to the establishment of tribal government gaming, between 1990 and 2000 the poorest communities saw the largest increases in median family income and greatest decreases in the number of families on public assistance.
2. The Off-reservation impacts of Indian gaming in California are Significantly Positive and Local Governments near Indian Gaming Facilities Recognize their Benefits.
- Analysis of Census tracts in 1990 and 2000 reveals that the introduction of gaming in an area had the effect of raising median family incomes in that and neighboring tracts by as much as 30– 60 percent at very low levels of income. As median family income rises, this effect diminishes, meaning that tribal government gaming helps those that need it most.
 - Census tracts in close proximity to reservations with tribal government gaming experienced a more significant increase in overall employment growth (about 3.9 percent) between 1990 and 2000 than tracts not in close proximity to Indian gaming, even after controlling for population growth.
 - The total number of employed persons over 16 years old increased 15.1% in gaming tracts, compared to a 10.9% increase in non-gaming tracts. Both gaming and non-gaming tracts saw a slight increase in overall unemployment rates from 6.9% to 7.5% in non-gaming tracts and from 7.3% to 7.7% in gaming tracts.⁵

⁵ Center for California Native Nations, An Impact Analysis of Tribal Government Gaming in California: Summary of Key Findings (January 2006), <http://www.ncaiprc.org/files/An%20Impact%20Analysis%20of%20Tribal%20Gaming%20in%20California.pdf>, accessed on January 9, 2011; For full analysis see <http://ccnn.ucr.edu/publications/ImpactAnalysisRpt.pdf>, and California Nations Institutional Development and Intergovernmental Relations Report at <http://www.ccnn.ucr.edu/publications/InstitutionalDevelopment.pdf>, accessed on January 9, 2011.

Attachment 2

There are a myriad of examples of successful collaborative and dispute resolution processes employed as alternatives to protracted litigation across policy issues, diverse stakeholders, and at intergovernmental (federal, tribal, state and local) levels.

Below are links to sample resources that describe such efforts.

Collaborative Problem Solving and Consensus Building http://www.crinfo.org/CK_Essays/ck_consensus_building.jsp

http://www.beyondintractability.org/essay/consensus_building/

Conflict Resolution Information Sources:

<http://www.crinfo.org/resources/ck-essays.jsp>

Culture and Conflict

http://www.beyondintractability.org/essay/culture_conflict/

A Manager's Guide to Resolving Conflicts in Collaborative Networks

<http://www.businessofgovernment.org/sites/default/files/ConflictsCollaborativeNetworks.pdf>

Collaborative Democracy Network Resources

<http://www.csus.edu/ccp/cdn/publications/>

Environmental Conflict Resolution: Performance Evidence from the Field

<http://sro.srs.gov/EATC%202009/ecrperformanceevidencefromthefield.pdf>

ECR Cost-Effectiveness: Evidence from the Field

http://www.ecr.gov/pdf/ecr_cost_effect.pdf

Alternative Dispute Resolution in Environmental Enforcement Cases: A Call for Enhanced Assessment and Greater Use

<http://www.adr.af.mil/shared/media/document/AFD-070724-030.pdf>

Designing and Managing Cross-Sector Collaboration: A Case Study in Reducing Traffic Congestion

<http://www.businessofgovernment.org/sites/default/files/Designing%20and%20Managing.pdf>

