



## ***North Fork Rancheria's Victory May Result in an IGRA Amendment***

by Penny Coleman

The recent issuance of secretarial gaming procedures for the North Fork Rancheria of Mono Indians should finally end the Nation's fight over its economic life. The Nation should now concentrate on developing its Class III gaming facility. Instead, the Nation must fight, not only on its own behalf, but on behalf of tribal nations across Indian Country, proposed legislation that would amend the Indian Gaming Regulatory Act (IGRA), grant extraordinary powers to the State, and take away its right to conduct Class III gaming.

### **The Back Story**

North Fork Rancheria sought to acquire land under IGRA's two-part process, apparently because the Nation does not own the land at the Rancheria itself. The two-part process requires the Secretary of the Interior determine under 25 U.S.C. §2719(A)(1)(b) that the trust acquisition is in the best interest of the Nation and the acquisition is not detrimental to the surrounding community. Further, the Governor had to concur in that determination. The Nation was successful in its pursuit and 305 acres were acquired in trust near Madera, 38 miles from its existing 80 acres of trust lands that are located within the Sierra National Forest. The 305 acres are within territory ceded by the tribe's predecessors by an unratified treaty.

Subsequently, in 2012, the Nation and State of California entered into a compact which was ratified by the state legislature in 2013. In October 2013, the Department of the Interior published a notice that the compact was in effect. What followed can be best described as an ill-considered attempt to prevent the Nation from conducting Class III gaming. Millions were reportedly expended supporting a state referendum, Proposition 48, to nullify the compact. That referendum was successful in 2014, and it appeared to many that the Nation was out of options. Certainly, the State believed that its hands were tied. And it refused to negotiate another compact.

Consequently, the Nation successfully sued under IGRA based on the State's failure to negotiate in good faith. In 2015, the United States District Court found that the State failed to negotiate in good faith and ordered the State and Nation to negotiate a compact which was ultimately presented to a mediator. The mediator chose the Nation's compact as best comporting with IGRA. Upon the State's refusal to agree to the mediator chosen compact, the compact was submitted to the Secretary of the Interior to issue gaming procedures.

### **Secretarial Procedures**

On July 29, 2016, the Assistant Secretary – Indian Affairs issued procedures governing the North Fork Rancheria Class III gaming. The procedures differ little from the many compacts entered into between other Indian Nations and the State of California with one caveat. While the procedures contemplate that the State will have a regulatory role, the Department of the Interior recognizes that it cannot order the State to assume regulatory responsibilities over the Nation's gaming facility. As a result, the procedures allow the State 60 days to opt in to having a regulatory role. If does not do so, then the National Indian Gaming Commission assumes that role.

### **IGRA Amendment**

The Secretarial Procedures should have allowed the Nation to quit the national stage and ride off into the sunset. Unfortunately, Congressman LaMalfa has other ideas.

Congressman LaMalfa introduced HR 5079, a bill to amend IGRA, and with one broad stroke eliminate Secretarial Procedures for any land acquired in the State of California under the two-part provision. He does this by allowing the state legislature or the citizenry via referendum to have veto power over any Secretarial Procedures. To that end, HR 5079 specifically finds that "Congress did not intend for this section [25 U.S.C. §2719(b)(1)(A)] to allow for tribal gaming facilities on after-acquired lands over the express objections of the voters of the State." Of course, this finding is completely inconsistent with the express wording of IGRA. It is also inconsistent with the Governor's concurrence that the trust acquisition of the lands for a gaming operation is in the best interest of the Indian Nation and not detrimental to the surrounding community. Nonetheless, Section 3 of HR 5079 provides that when land is acquired under the two-part determination of §2719(b)(1)(A) and the State of California legislature does not ratify a gaming compact or the electorate rejects the compact through a referendum, the Secretary of the Interior does not have the authority to issue Secretarial procedures, or approve a compact, or consider a compact deemed approved after 45 days.

While this IGRA amendment may seem intended solely to stop North Fork Rancheria from conducting Class III gaming, the legislation will likely have a much further reaching impact by limiting the potential for all Indian Nations located in the State. None of the 100 plus Indian Nations in

the State of California can be infallible in predicting its long range future. An individual Indian Nation cannot possibly know whether, during the next seven generations, it will need to seek a two-part determination under IGRA. But if IGRA is amended, whenever an Indian Nation obtains an affirmative two-part determination, it will likely face a state referendum as the North Fork Rancheria has. Furthermore, with the veto power granted under the amendment, it will be the State and the electorate, not the Indian Nation, which will decide how the Nation's land will be used.

Just as important is the precedent this legislation sets. A major amendment to IGRA, which grants such broad authority to the State, will encourage other states to seek legislation amending IGRA. Certainly, states will argue that,

if the State of California has veto authority over gaming, why shouldn't all states have such authority.

Indian Nations need to decide if they want to allow this kind of attack on IGRA. The North Fork Rancheria of Mono Indians encountered difficult and expensive barriers to establishing its Class III gaming operation. It persevered and successfully surmounted each barrier. As a result, its gaming future looks promising. Nevertheless, an IGRA amendment may prove insurmountable not only to North Fork Rancheria but also to Indian Nations across the country. ♣

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