

**H.R. 4893, TO AMEND SECTION 20  
OF THE INDIAN GAMING REG-  
ULATORY ACT TO RESTRICT  
OFF-RESERVATION GAMING**

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**LEGISLATIVE HEARING**

BEFORE THE

COMMITTEE ON RESOURCES  
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

Wednesday, March 15, 2006

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**LEGISLATIVE HEARING ON H.R. 4893, TO  
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**Wednesday, March 15, 2006  
U.S. House of Representatives  
Committee on Resources  
Washington, D.C.**

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The Committee met, pursuant to call, at 3:03 p.m. in Room 1324 Longworth House Office Building, Hon. Richard W. Pombo [Chairman of the Committee] presiding.

Present: Representatives Pombo, Gibbons, Grijalva, Herseth, Kildee, Pearce, Wu, Costa, Udall of New Mexico, Walden

**STATEMENT OF THE HON. RICHARD W. POMBO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

The CHAIRMAN. The Committee on Resources will come to order. The Committee is meeting today to hear testimony on H.R. 4893, a bill to amend Section 20 of the Indian Gaming Regulatory Act to restrict off-reservation gaming.

Under Rule 4[g] of the Committee Rules, any oral opening statements at hearings are limited to the Chairman and the Ranking Minority Member. This will allow us to hear from our witnesses sooner and help Members keep to their schedules. Therefore, if other Members have statements, they can be included in the hearing record under unanimous consent.

At this time, I ask unanimous consent to allow Mr. Wu of Oregon to participate in today's hearing. Without objection, so ordered.

H.R. 4893 is the product of nearly two years of Committee hearings, tribal consultation, and meetings with county and state officials and private citizens' groups. During this time, I made two discussion draft bills available to the public for review and comment. I intend to continue in this spirit of openness and transparency as the bill moves through the committee process and to the Floor.

Indian gaming in 2006 looks a lot different from Indian gaming in 1988, the year that the Indian Gaming Regulatory Act was signed into law. Measured in terms of revenue, it has grown 100 times in size over 18 years. In this light, there is almost no way that Congress can escape a review of IGRA.

An industry that has grown by such leaps and bounds on reservation is now proposing new casinos off reservation in order to obtain access to more lucrative markets. In many cases, proposals to build casinos in communities that did not expect them are a great source of distress to private citizens, landowners, and nearby Indian tribes. Keeping those facts in mind, here are the basic problems the legislation is meant to address.

Some tribes seek to cross state lines to open casinos in states that currently have no recognized tribes or Indian gaming. The resulting backlash in those states affects not only these tribes but all of Indian gaming. Some tribes filed lawsuits or claims seeking to recover land in areas more lucrative for gaming. Often these claims are filed seeking large areas of land with the intention of forcing a settlement involving a casino and a small parcel of land in compensation.

There are tribes who currently have a gaming operation but seek better, more lucrative land closer to population centers. Landless, newly restored, and newly recognized tribes sometimes try to stretch the limits of what area qualifies for an initial reservation in order to get the most lucrative lands possible for gaming, irrespective of their ties to that land.

In these foregoing examples, local communities and nearby Indian tribes feel that they have no power in the land-into-trust process to oppose casinos that they are not in favor of. H.R. 4893 will make these problems disappear.

The bill repeals the two-part determination, the land claim exception, and establishes new requirements for newly restored, recognized, and landless tribes to meet. The requirements for more local participation are my response to strong comments I have received over the last two years from states and county governments.

Finally, to encourage consolidation of gaming facilities within existing reservations where casinos are welcome, the bill authorizes tribes to collocate their casinos when invited by the host tribe.

H.R. 4893 is a carefully balanced, reasonable bill that provides a tune up for an important economic engine for tribes. I look forward to hearing from today's witnesses. I would like to call up our two witnesses today, Jim Cason, the Associate Deputy Secretary of Interior; and Phil Hogen, Chairman of the National Indian Gaming Commission. They are accompanied, respectively, by George Skibine and Penny Coleman.

If I could have you stand and administer the oath. Please raise your right hand.

[Witnesses sworn.]

The CHAIRMAN. Thank you. Let the record show they answered in the affirmative.

Let me take this time to remind all of today's witnesses that, under Committee Rules, oral statements are limited to five minutes. Your entire written statement will appear in the record.

We are going to begin with Mr. Cason.

**STATEMENT OF JAMES CASON, ASSOCIATE DEPUTY SECRETARY, U.S. DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY GEORGE SKIBINE, ACTING DEPUTY ASSISTANT SECRETARY - INDIAN AFFAIRS FOR POLICY AND ECONOMIC DEVELOPMENT, U.S. DEPARTMENT OF THE INTERIOR**

Mr. CASON. Good afternoon, Mr. Chairman. Thank you so much for giving us an opportunity to come up and discuss H.R. 4893, a bill to restrict Indian gaming and amend Section 20 of IGRA. I have a couple of brief comments to make, and then we will leave the rest of the time for questions from the Committee.

First, the bill being relatively new, the Administration has not taken a position on the bill yet, so what I am offering is some observation and comments that we can discuss later.

First, it is clear that Congress has a plenary power to establish the rules of the game to allow Indian gaming in certain ways. It did so initially with establishing IGRA, and Congress has the power to amend the rules. However, there is some concern on our part about the effects of amending the rules that we are looking at here.

One of the things that we would like to just get on the table is that there is both a good side of the issue of Indian gaming, which is initially when the bill was passed in 1988, there was a recognition that Indian Country, as a subpopulation of the United States, is relatively poor and that the need for economic development was a profound one and that seeing on the horizon a general constraint on tax revenues that could be provided to Indian Country to foster economic development and operations of the Indian programs would not be a complete enough answer, Congress provided an opportunity for self-economic development through gaming. As you mentioned, Mr. Chairman, that has had a pretty profound effect on Indian Country so far, getting us to a position of producing about \$19 billion into Indian coffers in various quarters. So it has an important element to play in Indian Country.

We also have some of the same concerns as the Administration and the Department of the Interior about the prospects for reservation shopping and venue shopping, and, in large part, the Department of the Interior is on the front line of managing that issue, and we have that concern as well. But in terms of how to address that concern, one of the things that we would like to discuss with the Committee is the right tools to look for a proper balance between affording opportunity to Indian Country and how we manage the concerns of the public about venue shopping or reservation shopping.

So we would like to have some opportunity in providing feedback on the bill to talk about other mechanisms that might be used, both regulatory or statutory, to try and constrain in a proper way what the concerns are about reservation shopping and venue shopping.

The end result of our thinking process so far is that we would like to see if we can find the right balance between the concerns of the public and the needs of Indian Country, and it appears at this point that where we are with the bill is that there is a prospect that those who had their reservation lands as of 1988 end up in a relatively good position that they can conduct gaming on

reservations. It would constrain their ability to come off the reservation to better opportunities to conduct gaming, and those who are landless tribes or new tribes, newly recognized tribes, would not have the privilege of using gaming as a tool to foster economic development.

So we would like to see if there are other tools that we can bring to bear to try to have both the benefits of economic development and constrain reasonably how it gets used.

So with that, Mr. Chairman, that is our opening statement, and I am happy to answer questions.

[The prepared statement of Mr. Cason follows:]

**Statement of James Cason, Associate Deputy Secretary,  
U.S. Department of the Interior**

Good morning, Mr. Chairman and members of the Committee. My name is James Cason, and I am the Associate Deputy Secretary at the Department of the Interior. I am accompanied by George Skibine, the Acting Deputy Assistant Secretary—Indian Affairs for Policy and Economic Development at the Department of the Interior. I am pleased to be here today on the Department's behalf to speak to some of the issues raised by H.R. 4893, a bill to amend Section 20 of the Indian Gaming Regulatory Act (IGRA) to restrict off-reservation gaming.

The Administration has not yet determined a position on H.R. 4893, which was introduced just last week on March 8, 2006. The bill modifies the current law in significant ways, and we will need time to assess the implications of these proposed changes. As noted below, however, there are some provisions in the bill that raise important issues to be addressed.

H.R. 4893 would eliminate the so-called "two-part determination" exception contained in Section 20(b)(1)(A) and would eliminate the "settlement of a land claim" exception contained in Section 20(b)(1)(B)(i). The bill would also modify the exceptions contained in Section 20(b)(1)(B)(ii) and (iii) by imposing additional requirements before gaming can be authorized on land taken into trust for restored, newly-recognized, or landless tribes. The bill would add a new subsection (e) to Section 20 to permit an Indian tribe to host one or more other Indian tribes to participate in gaming activities on the host tribe's reservation. Finally, H.R. 4893 would add a new subsection (f) to prohibit tribes from conducting gaming outside of a State in which the tribe has its reservation as of the date of enactment. The only exception would be for tribes that have contiguous land to that reservation in another State.

Nearly twenty years ago, Congress enacted IGRA as a tool to promote tribal economic development and self-sufficiency. Certainly, Congress' vision has been realized, and gaming has enabled well over 200 Indian tribes to generate their own revenue and reduce their reliance on Federal funds to implement a variety of tribal economic initiatives in the areas of health, housing, education, and other government services. Consistent with IGRA, the Department supports the right of Indian tribes to engage in gaming activities for the purpose of developing strong tribal economies.

The success of Indian gaming in general has had the perhaps unintended consequence of fostering proposals for Indian gaming facilities on off-reservation lands, often near interstate highways or urban areas, and sometimes in states where the tribe is not presently located. Currently, the Department has identified twenty-three pending applications to take off-reservation land into trust for gaming under the exceptions contained in Section 20, and we are aware that there are numerous other proposals in the making. The Department has raised concerns in the past regarding the scope of the exceptions contained in Section 20, and we support the efforts of this Committee to address some of these issues. For instance, we agree that it makes sense to require a tribe to have a historical nexus to the area where the land for gaming purposes is located, and to extend the analysis of detriment to the surrounding community and a requirement to negotiate inter-governmental agreements for the purpose of mitigating direct impacts.

However, the bill would also impose some additional requirements on restored, newly recognized, and landless tribes that could effectively stifle any opportunities these tribes may have to engage in gaming activities under IGRA. The bill would also grant veto power to State legislatures and nearby tribes located within 75 miles of a proposed acquisition, provisions that may not be necessary to achieve the



intended goal of the legislation. As you know, since IGRA was enacted, only three off-reservation casinos have been approved pursuant to the current two-part determination contained in Section 20(b)(1)(A). Under current law, tribes can choose to submit an application for a two-part determination at any location, and can seek out willing communities. That will not be the case for restored, newly recognized and landless tribes if this bill becomes law, for these tribes will have to stay in an area where they have historical ties. H.R. 4893 would thus make the above process more difficult for newly recognized, restored, or landless tribes by requiring the state legislature and nearby tribes to concur, in essence adding a veto power.

Subparagraph (E) requires the tribal applicant to pay for an advisory referendum, which could be a problem for restored, newly recognized or landless tribes. As a general proposition, these tribes have very limited financial resources, and thus would not be in a position to fund the cost of a referendum unless they are sponsored by a wealthy developer. This provision could force such tribes to rely on the financial resources of third parties.

Finally, a new subsection 20(e) proposed in the bill allows for the creation of tribal partnerships for class II and class III gaming development. We agree with the purpose of this subsection, but would like to work with the Committee on certain aspects, such as liability, sovereignty, jurisdictional, and agreement approval issues.

This concludes my statement. I will be pleased to answer any questions the Committee may have. Thank you.

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The CHAIRMAN. Thank you. Mr. Hogen?

**STATEMENT OF PHILIP N. HOGEN, CHAIRMAN, NATIONAL INDIAN GAMING COMMISSION; ACCOMPANIED BY PENNY COLEMAN, GENERAL COUNSEL, NATIONAL INDIAN GAMING COMMISSION**

Mr. HOGEN. Good afternoon, Chairman. I bring you greetings from the National Indian Gaming Commission. Commissioner Choney, who is the other half of the Commission right now, is out in Oklahoma meeting with the national tribal gaming regulators, but he sends his greeting.

The relatively narrow mission of the National Indian Gaming Commission is to regulate gaming, so most of our days are spent looking at rules to play blackjack and things of that nature. But it is important that we know and understand that that gaming that is conducted by Indians pursuant to the Indian Gaming Regulatory Act is, indeed, on Indian lands, as that term is described by the Indian Gaming Regulatory Act, and that, as your bill obviously points out, is not a simple task.

So there are times that we have to inquire into the nature of that tribe's ownership of those lands and what its history may have been, and we have found that there is not a single model that is one single model that would apply uniformly to all of those situations. I could, but I do not think I will right now, go through the existing framework, but that is the framework that we are working with today.

We have a lot of Indian lands issues on our plate right now. Some 32 situations confront us where either NIGC or the Department of the Interior likely will opine whether those places are Indian lands pursuant to the current law. Fifteen of those that are before us are questions that raise the issue, are these tribes restored tribes, and are the lands that they seek to game on, and in some cases, are gaming on, restored lands, as that issue is defined in the Indian Gaming Regulatory Act?

So in some instances, there is already land in trust, but the determination, are these Indian lands under IGRA, has not yet been

made. In one instance, the land is in trust, the tribe has not opened its facility, but they seek to do that soon, and they have submitted to NIGC a site-specific ordinance, that is, an ordinance that defines, identifies these particular lands. Under IGRA, we have a limited time within which we can approve or disapprove those ordinances, so that starts the clock running with respect to those decisions.

Looking back, there have been 10 instances when either NIGC or the Department of the Interior have already concluded that lands qualify as restored lands, and in three instances, the Department of the Interior has identified lands where this gaming is occurring as the initial reservations of tribes, and, as has been often talked about, there are only three instances where the two-part determination, the Governor concurring with the Secretary, has permitted gaming on such lands.

With respect to the current bill, as we are studying it, we are not clear what the bill's application will be to these existing and proposed facilities, that is, we understand that theoretically it is prospective, but is it prospective to those lands that are already into trust and things of that nature, and we hope that can be clarified as this process continues.

We would also observe that this impact will be primarily on those tribes that are trying to get in the game, that are landless and, in many cases, resourceless, and they may be the least well-situated to fund the challenge that would then lay before them under a different arrangement. Unfortunately, in some instances, such tribes are susceptible to folks that we perhaps would rather see they not partner with in connection with getting into gaming, given the concern we have for suitability.

We have been trying to do several things at NIGC to get our arms around this. We are establishing an Indian Lands Data base so that we can have before us in readily accessible measure a data base that identifies the Indian lands. We are trying to come up with some licensing regulations that would say when the tribe licenses its own facility, they would have to identify the lands and clearly certify and establish the background therefore that these are Indian lands under the Indian Gaming Regulatory Act.

We are also working with the Department of the Interior to come up with a memorandum of understanding to better coordinate their activities and ours as we address these, and, of course, the Department is working on a two-part determination set of regulations, and we are working with them in that connection.

That basically concludes my statement, and I stand ready to respond to questions.

[The prepared statement of Mr. Hogen follows:]

**Statement of Philip N. Hogen,  
National Indian Gaming Commission**

Good afternoon Chairman Pombo, Ranking Member Rahall and members of the Committee.

I am Philip Hogen, an Oglala Sioux from South Dakota, and I have had the privilege of chairing the National Indian Gaming Commission (NIGC) since December of 2002. Currently the NIGC consists of two members, Associate Commissioner Cloyce Choney and me.

I understand the Committee seeks to gather comments on H.R. 4893, introduced by Chairman Pombo last week. Further, I understand that the Committee desires

an explanation of the role and function of the NIGC as it relates to determining the status of Indian Lands for purposes of regulatory oversight and the application of current statutory definitions in the determination of Indian land status.

The narrow mission of the NIGC is to provide regulatory oversight of gaming conducted by Indian tribes on their lands. To accomplish this mission, occasionally, we need to take a broader view of Indian tribes as part of regulating their gaming activities. In the context of this hearing, this occurs when we need to determine if gaming activity tribes conduct is in fact occurring on those lands which Congress categorized as eligible for such gaming under the Indian Gaming Regulatory Act (IGRA). Mere ownership of land by Indian tribes does not qualify those lands as permissible sites for gaming under the Indian Gaming Regulatory Act. Rather, in IGRA, Congress limited such gaming to "Indian lands" as it then defined that term in that Act.

Thus, the nature and quality of a tribe's ownership of lands where it intends to conduct gaming must be understood and analyzed by the NIGC to conclude that where the tribe's bingo hall or casino is located so qualifies.

America's Indian tribes are very diverse. Their histories and cultures vary from Northwestern fishermen, Navajo shepherds, hunters of the Plains, Pueblo farmers, woodsmen of the Eastern forests as well as many others. One common characteristic that all tribes share, however, is that they once owned and lived on lands that were subsequently owned and occupied by what became the dominant society. Land-based treaty tribes, such as my own tribe, the Oglala Sioux in South Dakota, retain some of the lands they originally owned, while ceding away the vast majority of the lands they once owned and occupied. Other tribes were totally divested of the lands they owned and lived on when they encountered what is now the dominant society, having been relocated elsewhere by the federal government, or otherwise forced from those lands. Notwithstanding their removal or eviction, many of those tribes kept their communities intact, and later acquired new homelands and in some instances, although such acquisitions have not yet occurred, aspire to so acquire new homelands.

Thus, there is not a single model that applies to the lands of all Indian tribes with respect to lands they own, occupy or conduct their businesses upon. It therefore is somewhat problematic to develop a fair and even handed system or set of rules that classifies those lands where tribes can govern and conduct activities such as gaming. On a daily basis the NIGC attempts to apply the existing rules, and that application is not without its challenges. The NIGC thus agrees it is appropriate to evaluate this process, and consideration of H.R.4893 is an opportunity to do that.

It might first be useful to look at the history of the process which has been followed to date in determining those properties that have been found to be "Indian lands" for purposes of conducting tribal gaming under IGRA, as well as some instances where lands have been determined not to so qualify.

When Congress enacted IGRA in October of 1988, it specified that "Indian lands" would include lands *within the limits of then existing Indian reservations and lands held in trust for tribes and individual Indians over which the tribes exercised governmental powers.* The Act then further specified that *lands acquired after the enactment of IGRA (October 17, 1988), could only be used for Indian gaming if they were within or contiguous to a reservation that was then in existence, or, if the tribe had no reservation on that date, then, if such lands were in Oklahoma, that they were acquired within the boundaries of the tribe's former reservation or contiguous to other pre-IGRA trust lands held by Oklahoma tribes in Oklahoma. Elsewhere, such lands had to be within the tribes last recognized reservation (in the state where in they were then located) or, a two-part determination occurred, wherein the Secretary of the Interior concluded that acquisition of such lands for gaming purposes would be in the best interest of the tribe and not detrimental to the surrounding community, and the governor of the state wherein the lands were located would have to concur in that determination.*

Further exceptions, where post-IGRA acquisitions could be utilized for gaming included instances where lands were taken into trust as part of the settlement of a land claim, the creation of an initial reservation of a tribe under the federal acknowledgment process or the restoration of lands for tribes that were restored to federal recognition.

As we previously testified before the Senate Committee on Indian Affairs, for a tribe to be restored to federal recognition under the IGRA, it must have been previously recognized; it must have lost its recognized status; and it must be returned to a recognized status.

Whether lands are restored lands requires a case-by-case analysis. Under the federal court decision on lands of the Grand Traverse Tribe and other court decisions, the factors to consider include (1) the factual circumstances of the land acquisition;

(2) the location of the acquisition (including such questions as whether it is close to the tribe's population base and important to the tribe throughout its history); and (3) the temporal relationship of the acquisition to the tribal restoration (in other words, was this land acquired a year after the tribe was restored to recognition or 30 years later and after the tribe acquired 20 other parcels).

As a result of this process, there are many Indian lands questions pending. At least fifteen of these pending opinions present the question of whether the lands qualify as restored lands under IGRA. Two of the tribes already have open facilities and another is scheduled to open its facility by June of this year. All three of these tribes already have their land held in trust. Another tribe also has its land held in trust but does not have a gaming operation. That tribe has submitted a site specific ordinance to the Commission for approval. By statute, we must approve or disapprove ordinances within 90 days.

The Department and the NIGC have issued an additional ten opinions where we have concluded that the tribes' lands qualify as restored lands. Of those ten, seven tribes have open gaming facilities. The other three tribes have pending trust acquisitions.

In addition, the Department has approved trust acquisitions for three tribes that would qualify as initial reservations. None of these three tribes has an open gaming facility on these parcels.

The Secretary has issued three positive two-part determinations since the passage of IGRA where the Governor of the State has concurred in that determination and the land was acquired into trust. There are a number of other proposed trust acquisitions that would qualify for gaming only if the Secretary makes a positive two-part determination and the Governor concurred in that determination.

Finally, one tribe falls within the settlement of a land claim exception. That Tribe is operating a facility and is moving forward to establish a second facility under the same exception.

While these tribes are not the entire universe of those that are potentially impacted by H.R. 4893, we have attached an exhibit to reflect the existing and potential facilities described above.

It is unclear to what extent this bill is intended to impact the existing and proposed facilities. While there is a savings provision that indicates that the legislation is intended to apply prospectively only, that provision arguably only saves those agreements that are already in place. It is not clear how the savings provision would affect tribes with lands that are already acquired into trust but have no gaming facility or existing gaming facilities that are playing only Class II games and do not have a tribal-state compact. It is also unclear what the intent of the proposal is when agreements, such as compacts, expire on their own terms.

We also note that the major impact of the proposed legislation will be on restored, newly acknowledged or landless tribes. These tribes usually have the least resources available to fund an advisory referendum and a Secretarial two-part determination. It is our experience that such tribes are susceptible to partner with those who take advantage of tribes under these circumstances because traditional financial support is not available for a difficult process with such an uncertain outcome.

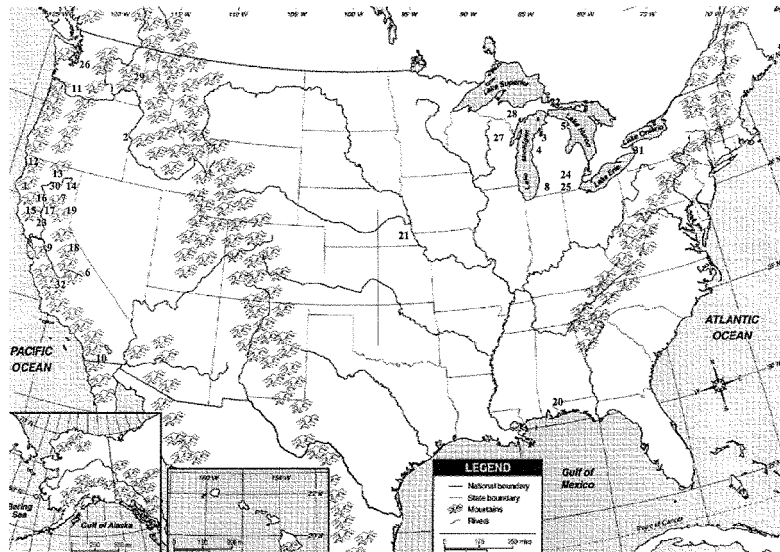
Finally, having recognized the difficulties that the post 1988 exceptions pose to the NIGC, the tribes, and the surrounding communities, we have undertaken several initiatives to bring clarity to the process. First, we are establishing an Indian lands data base. That data base will identify all of the existing and proposed facilities, include documentation necessary for an Indian lands analysis, and identify whether the lands were acquired after October of 1988 and fall within one of the post 1988 exceptions. Second, we are drafting licensing regulations that, as proposed, would require tribes to notify the NIGC before it opens a new gaming facility and would require tribes to document that the gaming facility is located on Indian lands. Third, the Indian lands determinations are presently issued pursuant to a memorandum of understanding between the NIGC's Office of the General Counsel and the Department of the Interior's Office of the Solicitor. We are working with the Department to develop a strategy for improving coordination between the two offices. Finally, we are assisting the Department of the Interior on its draft regulations which will establish a process for issuing Secretarial two-part determinations and more clearly define the restoration and initial reservation exceptions.

I would like to thank the Committee for holding this hearing and will be happy to answer any questions that you may have.

EXHIBIT 1

Potentially Impacted Tribes

March 15, 2006



See accompanying chart for number reference  
All locations are approximate

32.5% - Gaming  
67.5% - No Gaming

EXHIBIT 1a

Potentially Impacted Tribes

March 15, 2006

TRIBE	IGRA Exemption	Gaming Facility Open (Y/N)	Tribal/State Compact (Y/N)	County	State	Map Ref.
Poarch Band of Creek Indians	Restored Lands - Pending	Yes	No	Montgomery	AL	20
Bear River Band of Rehnerville Rancheria	Restored Lands - Issued	Yes	Yes	Humboldt	CA	1
California Valley Miwok Tribe	Restored Lands - Pending	No	No	Merced	CA	10
Enterprise Rancheria of Maidu Indians of California	Restored Lands - Pending	No	No	Yuba	CA	30
Graton Rancheria	Restored Lands - Pending	No	No	Sonoma	CA	13
Greenville Rancheria	Restored Lands - Pending	No	No	Tehama	CA	14
Guadalupe Rancheria	Restored Lands - Pending	No	No	Mendocino	CA	15
Hohemacel Pomo of Upper Lake	Restored Lands - Pending	No	No	Lake	CA	16
Hogland Band of Pomo Indians	Restored Lands - Pending	No	Yes	Sonoma	CA	17
Jone Band of Miwok Indians of California	Restored Lands - Pending	No	No	Amador	CA	18
Mechoopda Indian Tribe of the Chico Rancheria	Restored Lands - Issued	No	No	Sutter	CA	6
Moortown Rancheria of Maidu Indians of California	Restored Lands - Pending	Yes	Yes	Butte	CA	19
North Fork Rancheria of California	Restored Lands - Pending	No	No	Madera	CA	32
Paskenta Band of Nomlaki Indians	Restored Lands - Issued	Yes	Yes	Tehama	CA	7
Scotts Valley Band of Pomo Indians of California	Restored Lands - Pending	No	No	Contra Costa	CA	23
United Auburn Indian Community	Restored Lands - Issued	Yes	Yes	Placer	CA	9
Elk Valley Rancheria	Restored Lands - Pending	No	Yes	Del Norte	CA	12
Ponca Tribe of Nebraska	Restored Lands - Pending	No	No	Pottawattamie	IA	21
Keweenaw Bay Indian Community	Two-Part Determination (Issued)	Yes	Yes	Manistee	MI	28
Little River Band of Ottawa Indians	Restored Lands - Issued	Yes	Yes	Manistee	MI	4
Little Traverse Bay of Odawa Indians	Restored Lands - Issued	Yes	Yes	Emmet	MI	5
Match-E-Be-Nug-She-Wish Band of Pottawatomii Indian	Initial Reservation*	No	No	Allegan	MI	24
Notawaseppi Huron Pottawatomii Band	Initial Reservation*	No	Yes	Calhoun	MI	25
Pokagon Band of Pottawatomii Indians	Restored Lands - Issued	No	Yes	Berrien	MI	8
Sault Ste. Marie	Restored Lands - Pending	Sch to open shortly	Yes	Mackinac	MI	22
Grand Traverse Band of Ottawa Indians	Restored Lands - Issued	Yes	Yes	Grand Traverse	MI	3
Seneca Nation	Settlement of a Land Claim	Yes	Yes	Niagara	NY	31
Confederated Tribes of Coos, Lower Umpqua & Siuslaw	Restored Lands - Issued	Yes	Yes	Lane	OR	2
Kalispel Tribe	Two-Part Determination (Issued)	Yes	Yes	Spokane	WA	29
Snoqualmie Tribe	Initial Reservation*	No	Yes	King	WA	26
Cowlitz Tribe	Restored Lands - Issued	No	No	Clark	WA	11
Forest County Pottawatomii	Two-Part Determination (Issued)	Yes	Yes	Forest	WI	27

\*No Secretarial proclamation issued to date

See accompanying map for reference

The CHAIRMAN. Thank you. I thank both of you for your testimony. Before we begin on the questions, I would like to recognize

former House Member, Senator Ben “Nighthorse” Campbell, who has joined us today.

[Applause.]

The CHAIRMAN. I would like to begin the questions, and I have a couple of questions for Mr. Skibine. I am going to ask you a series of questions that I would like you to answer with a yes or no answer, if at all possible.

You were quoted in a March 1, 2006, Las Vegas Review Journal article where you testified in front of the Senate, the Indian Affairs Committee, stating, “The Interior Department has approved only three applications for off-reservation gaming since the regulatory act was enacted in 1988.” You went on to say, “Historically, off-reservation gaming really hasn’t been a problem.” Do you stand by those quotes from your sworn testimony in front of the Senate?

Mr. SKIBINE. I do if it is from sworn testimony before the Senate. I think what I was referring to is we only have approved three off-reservation gaming acquisitions under the two-part determination.

The CHAIRMAN. Which is what I wanted to get into. We are all familiar with the two-part exception as one way that a tribe can get land into trust for gaming purposes after the enactment of IGRA, but it is only one of many ways that a tribe can do this, and that is, I think, the issue here.

So focusing solely on the two-part determination and then saying that since only three tribes have successfully gone through the process, does that give an accurate picture of how many casinos have opened on land that was not held in trust on October 17, 1988?

Mr. SKIBINE. No, because—

The CHAIRMAN. OK. Are you familiar with the testimony that Former Assistant Secretary of Indian Affairs Kevin Grover gave to Congress in 1998 when he testified that BIA had approved 13 land acquisitions under Section 20 exemptions as of 1988?

Mr. SKIBINE. I do not recall that particular testimony, but I can tell you how many we have approved as of today under any of the exceptions in Section 20.

The CHAIRMAN. The former Acting Assistant Secretary of Indian Affairs, Irene Martin, gave testimony to the Senate Indian Affairs in 2003 that there had been a total of 23 off-reservation gaming applications approved at that time. Are you familiar with that?

Mr. SKIBINE. Yes, I am.

The CHAIRMAN. Are you familiar with the March 21, 2005, news report entitled “Exceptions to IGRA More Common Than Often Cited,” which documents at least 38 Indian casinos operating on lands acquired after 1988?

Mr. SKIBINE. No, I am not.

The CHAIRMAN. Can you tell the Committee, as of this moment, how many tribal casinos are in operation in the United States?

Mr. SKIBINE. No, I cannot. I do not have that at the tip of my fingers.

The CHAIRMAN. The answer is 405.

According to the National Indian Gaming Commission, there are, as of today, 405 tribal casinos open in the United States. At least 38 of those are operating on lands that were not held in trust on October 17, 1988. Nearly 10 percent of the current tribal casinos

operating in the United States are doing so as a result of one exception to IGRA or another.

So we have already established that there are not three casinos operating on lands that were not part of a reservation in 1988. There are at least 28. That is a big difference, and there are over a dozen times more than what you have been publicly claiming. Can you tell the Committee with any certainty how many casinos are currently operating on post-1988 land?

Mr. SKIBINE. How many casinos are operating on land taken in trust after October 17, 1988? The only thing I can tell you is how many we have approved. We have approved 32, and I can make this list that we have part of the record. Some are on reservation, but the land was not in trust and taken into trust. Some are contiguous with the reservation, and all others qualify under one of the exceptions, whether they would be the two-part determination, the restored land exception, the initial reservation exception, or the settlement of a land claim exception.

The CHAIRMAN. I would like to focus a bit on what the future might hold were the Committee to adopt your publicly stated views that off-reservation gaming is not a problem and, thus, enact no reform.

In Mr. Cason's testimony, he indicates there are 23 pending applications to take land into trust for gaming under Section 20 exemption. Is that correct?

Mr. SKIBINE. That is correct.

The CHAIRMAN. There are 103 federally recognized tribes in the State of California. Many of those tribes are landless, making them eligible for restored land exceptions to IGRA. While some of the 23 applications on the desk are for restored lands for these tribes, many of these tribes have yet to formally apply for their restored lands and casino.

Testimony received by the Senate from a citizens' group indicated that as many as 40 applications may be in the pipeline to your office from these tribes alone. Wouldn't you agree that this means that in California alone there is significant potential for dozens more land-into-trust applications for tribal gaming in the next few years?

Mr. SKIBINE. There is the potential. If I may clarify one thing, when I said that historically the off-reservation issue has not been a problem with respect to the two-part determination, it is because we have only approved three, and the IGRA contains a very difficult standard for those tribes to meet. That is what I said.

The CHAIRMAN. Mr. Skibine, we have established that nearly 10 percent of the casinos operating today are operating on land that was not in trust as of 1988. To continue to go back to your figure of three is an inaccurate and misleading statement.

The figure of 23 pending applications only includes proposals that have reached your desk. That number of 23 would not include proposals where a tribe or developer has purchased land, or declared their intent to purchase land, and open a casino in a community but has not yet filed a formal application. So your number of 23 would not include the plans by the Eastern Shawnee to open up to eight casinos in the State of Ohio, the five potential casinos in the Catskills in New York, the three proposals for casinos in

Illinois, the three casino proposals in Nebraska, the casino proposal for Fort Smith, Arkansas; the casino proposal for Fort Payne, Alabama; or the casino proposal for up to 40,000 slot machines across the river from the City of Philadelphia, would it?

Mr. SKIBINE. That is correct.

The CHAIRMAN. The 23 applications on your desk do not include dozens and dozens of casino proposals that have been made over the last several years, as documented by countless published news reports, yet for the citizens in the communities targeted for these casinos, these proposals are very real.

Can you tell the Committee how many groups currently are petitioning the Federal government for recognition as an Indian tribe and, thus, if successful, would be eligible for tribal gaming under the current IGRA Section 20 exemptions?

Mr. SKIBINE. No. I do not have that information.

The CHAIRMAN. The answer, as of today, according to the Department of the Interior: There are 19 petitions that are active or ready for active consideration and another 232 that have been submitted but are not yet ready for evaluation, meaning that there are potentially another 251 groups that could want to exercise their right to game and, thus, one day be seeking casino gaming on land not held in trust prior to 1988. And since the majority of these petitions have been filed since 1988, I think it is safe to say that if recognized, most all of these tribes will want to pursue their right to game. Would you agree with that?

Mr. SKIBINE. I cannot agree or disagree because I am not really involved in the recognition process.

The CHAIRMAN. No, but you are involved with the gaming process and taking land into trust.

We see that far from there just being three tribes who have gotten exceptions from IGRA since 1988, there are already at least 38 existing facilities and may be more. Now, if we start adding the 23 current applications that are on your desk, 40 or more California restored lands petitions, dozens upon dozens of other proposals for off-reservation gaming over the past several years made by tribes who already have at least one casino and over 250 tribal groups seeking Federal recognition and the right to game, I see the potential for several hundred applications for new casino gaming on post-1988 lands in the coming years, yet you have stated to Congress and the press on multiple occasions that you do not feel off-reservation gaming is really a significant problem.

In light of what we have learned, would you like to revise that statement about the extent of the problem of off-reservation gaming and the problems that it may present at this time?

Mr. SKIBINE. No, I do not think so. I think that what I have said is that historically there has not been a problem with the multiplication of actual off-reservation gaming casinos under the two-part determination, and the fact that only three have been approved, I think—

The CHAIRMAN. But it has not been three. There are currently 38 that are operating in lands that were not in trust on October 17, 1988.

Mr. SKIBINE. The other ones that are operating that we have approved; I do not think it is 38. I think we have approved, as I said



before, 32. Let me see that. Yes, 32, and I think that these tribes were, as I said, either on reservation or contiguous with the reservation, or they qualified under one of the exceptions, but they qualified under one of the exceptions that you, in Congress, enacted for them, essentially those that were newly restored tribes or landless tribes or tribes that would have been restored under the—

The CHAIRMAN. And those are the exceptions that we are addressing, so it is very misleading to say that there are only three that have been approved because there have been considerably more than that.

Mr. SKIBINE. I only said that there were three under the two-part determination process, not that there were three under any of the other exceptions, and we have made our lists of pending applications or approved applications under these other exceptions available to the Senate Committee on Indian Affairs also.

The CHAIRMAN. My time has expired. I am going to recognize Mr. Grijalva for his questions.

Mr. GRIJALVA. Thank you, Mr. Chairman, and let me, if I may, begin with Mr. Cason on a couple of questions.

I think, in your testimony, you reminded us that Interior, at this point, has no position because of the newness of the legislation.

Mr. CASON. That is correct.

Mr. GRIJALVA. But you reminded us also that under current laws, tribes can choose to submit an application for a two-part determination at any location and can seek out willing communities. Do you believe this provision of IGRA is working as it was intended?

Mr. CASON. Yes. I would suggest, Congressman, that under the two-part determination, we do take into account the views of local communities. I personally have done that, to meet with individuals from local communities, local government leaders, as well as tribal leaders, in areas where we have a gaming issue in play, and I do take seriously the views of local communities in this issue, as well as the views of the tribe.

I mentioned in my opening comments that we need to look at balance, that I did not see anything in IGRA that said 400 casinos was the right number, too low, too high, or 38 going through an exceptions process was too high or too low. I have not heard anything to suggest that the 38 that were approved should not have been approved, that they were legitimate under the exceptions.

I think Congressman Pombo makes a great point, that there is an expectation, and I agree with him, that there is an expectation that there will be a lot more requests and that it presents some difficult decisions for us in the future as to whether or not to authorize gaming.

Mr. GRIJALVA. And those decisions in the future may continue, sir.

Mr. CASON. They will.

Mr. GRIJALVA. What difficulties would landless, restored, or newly recognized tribes face if this particular legislation, as it stands, were to be enacted into law?

Mr. CASON. It is my assessment that, in large part, those categories of Indian entities wishing to game would have little, if any, real chance of doing so.

Mr. GRIJALVA. OK. Just for the information's sake, how many tribes have opened casinos under that Section 20 process, and how many has the Department rejected?

Mr. CASON. I do not know that on a tribal basis. George said we had 32 instances, but I do not know tribe by tribe.

Mr. GRIJALVA. Well, just numerically.

Mr. SKIBINE. Are you asking for the number?

Mr. GRIJALVA. Yes, number of tribes.

Mr. SKIBINE. Number of tribes. I do not think we have a repeat here, so I think it probably means that we have 32 tribes.

Mr. GRIJALVA. And rejected?

Mr. SKIBINE. That, I do not have the information right here.

Mr. GRIJALVA. Could that be forthcoming at some point?

Mr. SKIBINE. We can do that, yes.

Mr. GRIJALVA. Thank you. And how many of those that have been approved, and we do not know how many have been rejected at this point, how many of those that have been approved have been approved over, let us say, local community opposition?

Mr. CASON. While George is looking at the list, I would like to just make one comment, that in my own experience, limited to the last year of working with Indian gaming, I presently have decided not to take land into trust for a California tribe that wanted to have land into trust for gaming purposes, and because of the steadfast local opposition, the answer they got was, no, we are not going to do it. So it does happen.

George, do you have any assessment on numbers there?

Mr. SKIBINE. We would have to research our files to look at exactly what the record shows. Some of those were approved before I was—but I can say that some of these acquisitions were mandatory, so if they were mandatory—

Mr. GRIJALVA. A different issue. We will submit those questions to you, and maybe the information can come back to the Committee.

Mr. SKIBINE. OK.

Mr. GRIJALVA. My time is running out, and I wanted to ask Mr. Hogen a question. In your testimony, you stated, sir, that with the least resources available to fund the two-part determination, specifically, restored, newly acknowledged, and landless tribes, they would be susceptible to partner with unscrupulous third parties because traditional financial support is not available for the difficult process with such an uncertain outcome.

In describing the current process as difficult, what additional hurdles would tribes face if this legislation were to be enacted in law?

Mr. HOGEN. If I understand the legislation, not only would they have to make their case to the Federal family, so to speak, but within the local community there would be that advisory referendum. There would have to be expenses, I expect, to tell the story there, which maybe they would want to do anyway. They would need to persuade the state, the legislature, that it was something that they would want to agree with, and I expect that would be something of a burden for them.

Mr. GRIJALVA. You stated also that the Secretary has issued only three positive, two-part determinations. In your opinion, does this

provision need revision, and if it does, could you quickly elaborate on what that revision would look like?

Mr. HOGAN. I think that provision was designed for a tribe that wants to go off the reservation, and, therefore, the state probably ought to have a say, and the Secretary ought to have a say, is this in the best interest of the tribe and its members? That is the way it works. I think it has worked well. Certainly, it has limited application, but I think that it has been useful, and I do not know if that portion cries out to be changed.

Mr. GRIJALVA. Thank you, Mr. Chairman. My time is up. I appreciate it.

The CHAIRMAN. Mr. Gibbons?

Mr. GIBBONS. Thank you very much, Mr. Chairman, and to our panel, thank you for being here today. Your testimony is very important to us.

First, let me make it very clear that I am in opposition to off-reservation gaming. I think it creates an unfair playing field, to begin with, and goes against my belief of what the core principle of the original Indian Gaming Regulatory Act was established for. However, before we can move forward as a body on this type of legislation, I think it is important for us to understand how many tribes are currently in the process of getting approval for gaming on their land. I think we ought to know how many tribes are currently in this process. Specifically, what about those landless tribes who have been in the process of seeking land for gaming for some time and who can demonstrate that the parcel of land they are seeking for gaming purposes is in their ancestral or aboriginal territory?

So maybe I should ask Mr. Cason, can you tell me how many restored, landless tribes are in the process of getting this approval?

Mr. CASON. Congressman, I do not know off the top of my head, framing it that particular way. I know that we are trying to be very careful about the evaluation we make on any one of the exceptions, including the restored lands exception. Ten. It looks like the number is 10.

Mr. GIBBONS. Could you get us the specifics of every tribe currently in the process of applying of getting this approval, whether they be a restored, landless tribe, an off-reservation or an on-reservation tribe? Would you provide that information for the Committee?

Mr. CASON. Sure, sure.

Mr. GIBBONS. Is it your understanding that IGRA, the Indian Gaming Regulatory Act, under that Act, that those restored, landless tribes seeking to establish a reservation within their ancestral homelands should be treated differently than those seeking a two-part determination to establish gaming on lands where there is no nexus to their reservation land?

Mr. CASON. Well, I think my reaction to it is the original IGRA, in providing the various categories of exceptions to enable us to deal flexibly with Indian Country, is an important thing to consider, that there is no one size fits all, and, unfortunately, we have a very complicated environment where if you pick any one exception, it will not satisfy the need for all parties.

So that is why we have some flexibility in the process, and flexibility introduces the prospect that we will have more applications, as Chairman Pombo said. We will have more applications.

But one of the other things I think we need to be mindful of, as well as the prospect for applications and the need to make decisions on those, is there is also still an underlying need for economic development in Indian Country and that one of the things we have to discuss in framing a bill or framing the Administration's support is how we try to be cognizant of the need for economic development and what the impacts are on local communities and how we find a reasonable balance between those.

Mr. GIBBONS. Let me see if I can restate my question.

Mr. CASON. OK. I am sorry.

Mr. GIBBONS. Perhaps what I should have asked is, is it your understanding that under the rules, the current, existing IGRA rules, that landless or restored landless tribes have a difference of a process by which, for example, they are treated different than an on-reservation tribe seeking gaming within that under IGRA. Is there, throughout this whole process, an opportunity leading to some kind of discrimination between reservation tribes applying for gaming and those restored tribes, landless tribes?

Mr. CASON. Congressman, it is my view that there is some discrimination involved already. The burden for on-reservation gaming is much less than the burden for off-reservation, whether it be through an initial reservation determination or a restored lands determination or a land settlement determination or a two-part determination, that if you are attempting to enter into a gaming arrangement on reservation, the hurdle is less than the other options.

Mr. GIBBONS. So the answer to your question, then, would be that there should be a difference in the treatment between those restored, landless tribes seeking gaming and those tribes seeking gaming on their own reservation. You would say, then, that there should be a discrimination problem.

Mr. CASON. Well, rather than should be, I would say there is and that the threshold right now is different and harder if you are trying to get in the game if you do not have preexisting 1988-and-before reservation land on which to try to game on.

Mr. GIBBONS. Thank you, Mr. Chairman.

The CHAIRMAN. I recognize Mr. Costa.

Mr. COSTA. Thank you very much, Mr. Chairman.

The gentlemen from Interior, how many states would you classify throughout the country that have what we in California refer to as "Class 3 gaming" under the tribal law?

Mr. CASON. Twenty-four.

Mr. COSTA. Twenty-four states. How would you describe the policy among those states with the Department in terms of how gambling, Class 3 gaming, has been implemented over the period of the last 15 years? Could you describe to the members of the Committee what the policy is among the 24 states that have—

Mr. CASON. I will take a stab at it, Congressman. George is probably more knowledgeable about it than I am. The generic policy is we basically authorize Indians to game. Where we authorize them to game, we authorize them to engage in gambling activities that

are permitted in the state. So as a general policy, we basically follow the lead of the state in what we authorize them to do.

Mr. COSTA. Would you indicate that it is a fair statement that the policy overall among the 24 states that have Class 3 gaming has been uneven, at best, in terms of the implementation and what the rules have been for application?

Mr. CASON. Yes. I think the reality of it is, on a state-by-state basis, state legislatures make different decisions about what they think is acceptable, so it is not a homogenous playing field. Within the general rubric of gaming, you have various opportunities for games of chance, but the games may differ, and the Administration may be different.

Mr. COSTA. Where I am going with this, it just seems, having spent many years in the California State Legislature and watched this process more from the late 1980s into the 1990s and seeing what has developed, which has been at least three different sets of policies between three different Governors, that, frankly, it would be, I think, helpful for the 24 states that do have Class 3 gaming for there to be some sort of criteria on how the Department handles.

We have this issue on landless, for example, that was asked about landless tribes that are petitioning, and they have obviously a point. But the fact is we have granted compacts in California, 64 of them at this point out of 107 recognized sovereign nations, that are based upon their existing lands. Now, we have a new set of rules coming in that, in essence, is going to be allowing for franchises to be developed along very major transportation artery in California among those that are landless, if they can, in effect, make this work. That seems to be inherently unfair for those that were required to develop their facilities in their existing tribal lands.

Mr. CASON. Well, Congressman, I agree that there is a difference. I find it an interesting irony that the concern is one of good businessmen finding a way to utilize opportunity within the statute because if I were an Indian businessman, and I was a landless tribe, and I had the distinction as a federally recognized tribe, I would go shopping for the best property I could find.

Mr. COSTA. Absolutely. It is let us-make-a-deal time.

Mr. CASON. Well, it is just being smart about the process. So there is a concern with venue shopping, and certainly that is going to cause all of us, both Congress and the Administration, some challenges in making decisions about how we balance those interests of local communities versus the need to promote economic development in Indian Country. It is not going to be easy.

Mr. COSTA. Well, that is why I think there ought to be a call for some sort of a state-Federal policy with certain criteria defined for the 24 states that, in fact, do have Class 3 gaming. I think, within certain parameters, that guidance and that direction might be helpful.

Let me ask you one other question before my time is up. We have 64 that have compacts, as I said. We have 107 sovereign, recognized nations in California, I believe. Forty-three of them, many of them have lands in areas that are just not suitable for such facilities because they are so remote.

Now, the new deal is, as I understand it, to try to take their ability to establish a compact and establish that compact and then relocate that facility next door to an existing tribal land facility and put them on their land to kind of create the kinds of situations that you have in Las Vegas or in Tahoe or others where you have clusters of casinos. Does the Department have a policy on that?

Mr. CASON. I am familiar with one circumstance where that is occurring in California, and it is my understanding that we have not found a way under current law to make that work. And I notice a provision in 4893 to attempt to address that issue, to allow, through jurisdictional findings, for one or more tribes to operate on the same piece of property, hosted by another Indian tribe.

So if we are going to try to make that work, there would need to be some additional legislation to allow that to happen.

Mr. COSTA. Do you think that is a good policy?

Mr. CASON. I think there are certain circumstances in which it would be prudent for Indian tribes to partner on similar property, and where there is not a critical mass for an Indian tribe, enough resources and members and stuff, that it makes some sense in some cases. I think the distinct issue is whether it is compelled, or it is a choice.

Mr. COSTA. Thank you, Mr. Chairman. My time has expired, but I do want to pursue this, and you and I have discussed it in the past about the issue of trying to develop a broad, national framework for states that do have Class 3 gaming, and we will continue that conversation.

The CHAIRMAN. Mr. Walden?

Mr. WALDEN. Thank you very much, Mr. Chairman. I appreciate all of your work on this issue.

Mr. Cason, does the Department support a provision like that in Section 10 of Senator McCain's bill that allows the limited number of tribes already engaged in the Secretary's two-part determination, tribes that have, in some cases, spent significant amounts of time and money to follow the current law? Would you support a fair and equitable opportunity to conclude that process without changing the rules mid course on them?

Mr. CASON. Congressman, if you are referring to a basic grandfathering approach, I believe that would be a prudent thing to do.

Where we are right now is we have a number of tribes—I think George referred to 23—in the mix right now who have expended considerable resources in preparing applications under the current law, and it seems to me it would be a prudent thing to have some sort of grandfathering clause to enable them to finish the process and make good on the investment they made in the process, notwithstanding that at the end of the process, the answer may be no, but at least be able to go through the process to conclusion.

Mr. WALDEN. And I appreciate knowing that because that is an issue I have raised here and raised in prior hearings with the Chairman. This process, some other process? I think Americans get really tired of being told to follow a process by the government, and when it looks like they are doing so and may succeed, and somebody does not like it, they try and pull the rug out from under

them and stop the process. I just do not like that, whether it is tax law or this or something else.

The two-part determination process has been there since the law was passed. There have been very few that have met the test, and some are trying. Now, obviously, there is an issue in my district, which others, including guests on the Committee, have had a lot of strong comments about, and they are going through that two-part process. I think it is only fair that they be allowed to at least continue the work they have started and not be upended, not have a sort of bait and switch occur to them.

Mr. Skibine, on March 3, my colleague, Mr. Wu, wrote a letter to you, including a copy to Secretary Norton, and issued a press release in which he stated that at a Senate Indian Affairs Committee hearing on February 28, he asked you, and I quote, "if on-reservation alternatives would be explored in the scope of the environmental impact statement" now underway for the Warm Springs Resort and Gaming Project. Representative Wu's letter also accused you of violating a "commitment" he says you made that such alternatives would be considered.

Mr. Skibine, have you had a chance to review what was said at that hearing?

Mr. SKIBINE. Yes, I have.

Mr. WALDEN. Can you tell me, yes or no, did Representative Wu specifically and clearly ask you to explore on-reservation alternatives?

Mr. SKIBINE. Well, Congressman, I think those yes-and-no questions are very tricky, and I think, from past experiences, it is not necessarily the way I want to answer that. Let me just tell you what it is that I did commit, and what I did, I think, commit is that we were aware of the issues that Congressman Wu raised because of a letter from Friends of the Gorge, and we would be looking into this matter because we have concerns with the issues that were raised, and we are doing that.

Mr. WALDEN. So you did say you would explore the issue on reservation alternatives.

Mr. SKIBINE. I would say that we would look into the matter, and what we are doing now is looking into that issue, on the issue of whether the EIS process was being not done properly, and we are in the process of doing that.

Mr. WALDEN. OK. Now, I have a copy of the official scoping record conducted for the Warm Springs Project, and I want to note for the record the report lists 13 various alternative sites that were evaluated at a wide array of different locations. The report includes consideration of two specific, non-reservation sites, and the report concludes that based on economic analyses, these two on-reservation locations will not meet the financial requirements of the tribe.

Now, I have one last question, Mr. Skibine. Have you been encouraged to disregard the scoping report and to interject your office into the EIS process to reconsider onsite, on-reservation sites, even though those sites do not meet the tribe's financial requirements?

Mr. SKIBINE. It is our job to look into these questions because eventually a draft EIS would be submitted to my office, eventually down the road. We would look at those issues then for sure, and if we find then that the process was flawed and that these

alternatives were excluded improperly, then the regional office would have to go all the way back and redo it over.

So I think that when the scoping report was issued the day after our February 28 hearing, that was unfortunate. It does not detract from our commitment to look into that matter, and that is what we are doing right now.

I think that the question is we will look at whether on-reservation alternatives were excluded and for what reason, and we will try to see whether, in fact, that was the right thing to do.

Mr. CASON. Congressman, if I could add something.

Mr. WALDEN. Yes.

Mr. CASON. I just saw the scoping report like two days ago.

Mr. WALDEN. Right.

Mr. CASON. And I have asked our solicitor's office and the gaming office to take a look at it to see if it represents a reasonably complete set of alternatives to look at. So if it does, then great, we go forward. If it does not, then we will send it back to the regional office and say, we would like you to look at the following other alternatives as well. I do not know what the answer to that is because we just got it to take a look at.

Mr. WALDEN. Is that what you do with each of the scoping reports?

Mr. CASON. It depends on relatively how controversial the issue is. There may be some that are not terribly controversial, and in each case what we try to do is get a reasonable set of alternatives to evaluate because the prospect is, if you do not, and you go through and spend the hundreds of thousands of dollars to do an EIS with an improperly set number of alternatives or type of alternatives, you have to go back and redo it. What we try to do as a uniform practice is make sure that the alternatives that are laid out up front are reasonable, can pass the red-face test at the end of the NEPA process, so we do not have to go back and redo work.

Mr. WALDEN. What I want to make sure of is that we do not end up with a casino on the east side of the Hood River on land already in trust when IGRA was passed.

Mr. CASON. Yes.

Mr. WALDEN. So I hope whatever steps you are taking will not cause that to be the end result because that would be a real scar on the gorge.

Mr. CASON. What we are trying to do is get probably, if anything, more alternatives than less to take a look at.

The CHAIRMAN. Mr. Kildee?

Mr. KILDEE. Thank you, Mr. Chairman. Again, thank you for the hearing and your work on this bill.

I would like to ask Mr. Cason or Mr. Skibine, either one of you or both, how generally has the BIA helped tribes acquire land pre-IGRA and post-IGRA? Has there been any change of attitude, procedure in the Department pre-IGRA or post-IGRA?

Mr. CASON. Congressman, my tenure at Interior has not been—

Mr. KILDEE. That is why I said either you or Mr. Skibine.

Mr. CASON. We will have George comment. It is my understanding that there has been a longstanding process to bring land into trust over time, that that process has been around, I think,



since 1934. We currently refer to it as the "151 process," which is the 25 C.F.R. §151, which is our land-into-trust rules or regulations, and that we take land into trust in a variety of circumstances for a variety of purposes.

In this particular case, the reason that it is important is for some of the restored tribes, the new tribes, the ones that do not have land, landless tribes, we use basically the 151 process to bring land into trust, and that is the first part of the gaming issue, and then the second part of it is to actually authorize or not authorize gaming on the property.

So the 151 rules for bringing land into trust have been there for a long time, and we still have that in play.

Mr. KILDEE. George, do you have a comment on that?

Mr. SKIBINE. I just want to point out that, of course, before IGRA in 1988, all applications, I think, to take land into trust, the authority was delegated to regional directors, at the time, BIA area directors. When IGRA came about, I know that Secretary Lujan, in 1990, required all gaming acquisitions to be processed not only at the regional office, but they have to come to the central office. So with respect to gaming acquisitions, the Department has been much more concerned and has really taken a close look at what we are doing at the central office, so they take a lot longer.

Mr. KILDEE. So closer and more centralized scrutiny, then. Is that so you would have the same policies throughout the country rather than—

Mr. SKIBINE. Yes. That is the reason, essentially, yes.

Mr. KILDEE. Has the concept of historical connection changed any during that period, of that land having some historical connection with the tribe? Is there any change of policy or attitude in the Department?

Mr. SKIBINE. You are talking about the historical connection for restored lands?

Mr. KILDEE. Yes, for that tribe.

Mr. SKIBINE. It seems to me that we have required, when we decide whether an acquisition would qualify under the restored-land-for-restored-tribe exception, we have always required an historical connection to the area. I know that the NIGC has done work in this area, so if you disagree with me, then—

Mr. KILDEE. OK. Fine.

Mr. CASON. Congressman, I might add, I think there is a growing body of law with respect to this area, and perhaps gaming has fostered that. There have been more cases that have delved into this, and for that reason, a little more guidance or a little more specificity may have come to the process, but I think, generally, the idea is the same.

Mr. KILDEE. Is that usually raised by someone objecting to gaming, saying this is not a historical connection to this land, or is it within the Department?

Mr. CASON. In some instances, states, for example, have been the proponents of those positions, yes.

Mr. KILDEE. The state? OK. They would argue that there is no historical connection.

Mr. CASON. Yes.

Mr. KILDEE. All right. First of all, also, Mr. Chairman, I would like to associate myself with Mr. Walden's remarks on grandfathering and on the two-step process because I do know many tribes have entered in good faith, gone through a rather difficult process, and to have them say they changed the rules, if we can do anything to address that, I would like to work with both of you on that and see how we can be helpful.

If I have time, in your statement, Mr. Cason, you mentioned you would like to work with the Committee on issues relating to liability, sovereignty, jurisdictional, and would you elaborate on those issues of liability, sovereignty, and jurisdictional problems?

Mr. CASON. Sure, Congressman. I think Congressman Pombo, the Chairman, laid out clearly the prospect for lots and lots of applications into the future for additional gaming opportunity, and within the framework of that, we have to take a look at jurisdictional issues like in the case of the California congressman that I mentioned a while ago, we have 64 approved compacts in the State of California. There are prospects for dozens more, and as you take a look at the mix between Indian Country, where you have to have Indian jurisdiction in order to have gaming, and local jurisdictions, from counties and cities, you end up being neighbors.

One of the things I talk about often when I visit with tribes and local community government representatives is the need to basically be good neighbors in the process because they do co-exist, and in both cases, both parties are trying to do the best they can for their constituencies. Inevitably, no matter who you mix together, there are always conflicts that have to be managed.

So, one of the things I think we have to find ways to address in the prospect of additional gaming, and even the current gaming, is how you manage jurisdictions, who gets to do what, how you manage service agreements between jurisdictions because often an Indian tribe who wants to conduct gaming activities or housing activities needs to have a relationship with the local service providers that are there from local government like fire, sewer, ambulance, water, electricity, et cetera. So we need to take a look at all of those issues and figure out how to manage those in a cooperative way.

Mr. KILDEE. I thank you very much. I thank all of you for your responses.

The CHAIRMAN. Mr. Pearce?

Mr. PEARCE. Thank you, Mr. Chairman. You may have answered these. I apologize for being late. When we discussed with nearby Indian tribes, in other words, what would constitute a problem with a nearby tribe if you are looking at an off-reservation gaming facility?

Mr. CASON. Well, let me make sure I understand the question. When you are saying a problem with a nearby tribe, are you talking about between a local jurisdiction and the tribe, or are you talking about a tribe-to-tribe?

Mr. PEARCE. I am talking about in the case of approving an off-reservation facility in the legislation that is proposed by the Chairman, one of the hurdles that has to be gotten over is not to cause damage to any nearby tribe, and we have a situation developing in our state.

Mr. CASON. OK. So tribe to tribe.

Mr. PEARCE. Yes.

Mr. CASON. OK. Just as an initial reaction, since the bill is relatively new, and we have not taken any firm administrative position on it, but just as an initial reaction, I think one of the issues that we have to address is the role of competition between tribes who both want to gaming and that we end up in a position or a concern on our part that if you have a certain geographically defined area, and there is an Indian tribe in that area that has gaming opportunity and another Indian tribe that would like to, to be in a position that essentially the one who has veto power over the one that has not potentially is an issue.

So we would like to be mindful of the overall purpose of why Congress authorized gaming and that was to enable economic development of Indian tribes, and in this particular scenario, it is how do we fairly address the issues of the ones who do not to have that tool available to them in a marketplace of those who do?

Mr. PEARCE. If we are going to be aware of the role of competition, let us say that you approve the off-reservation casino to come into the area where the tribe currently has a casino. Are you going to allow that tribe in Ruidosa now to go up into Albuquerque and provide competition up in there, or is it going to be one-way competition, that is, we will let people come into your district, but we will not let you go out and compete with other tribe?

Mr. CASON. Well, I think that is a difficult question to answer in the hypothetical. What I have found so far in my tenure dealing with Indian gaming is no two applications are the same, no two fact sets are the same, and that we have varying degrees of public support or opposition and various complications associated with it, and that is why I think one of the things we need to discuss is, is there a way to sharpen up the administrative decisionmaking process that will address materially the concern, or is it a matter of we need to have basically a very firm statutory position that gives no flexibility?

So I think we need to take a look at that and see if there is a better way to get balance, and maybe it is a mixture of the two, that we have some issues that are addressed in the statute and some that are done by regulation.

Mr. PEARCE. Now, as you consider the role of competition in the balancing veto power, which of those has the greater value in the determination?

Mr. CASON. Well, my sense of it, Congressman, is that what we are trying to accomplish is not fostering competition in the normal sense of the word, which is, gee, if I have one casino here, I need to place another in for competition, like grocery stores. It is not that. It is more of a monopoly competition situation: If I have one in the area, it prohibits anyone else from coming into the area.

So I think that is one of the things that we have to take a look at, and in terms of the veto process, I have concerns, as we look at this, to either place an absolute veto with local authorities so it is basically the Indian tribe who is interested in doing gaming has no option if a local authority says, well, I am opposed, or if a nearby tribe says, I am opposed, or anybody else says, I am opposed, that anybody in the process has an absolute veto because that

places the Indian tribe in a position where they have nobody to be an advocate.

So I think we have to be mindful of the various players and try to make good-quality, objective, balanced decisions, and in some cases, it will end up being a situation where we would make a decision that the overall good is enough to say yes or a situation where we think the negatives are too high, and the answer is going to be no, and that is the role that we are placed in. It is a difficult one because on both sides there are strong feelings on these that say, yes, you should do it and, no, you should not, and ultimately you can only have one side of that.

Mr. PEARCE. Mr. Chairman, I have just got one more question.

Now, in the case that is existing in the district that I represent, you make an observation that there are tribes without casinos.

Mr. CASON. Yes.

Mr. PEARCE. Now, they have the land to put the casino on; they just choose not to put it there. They would rather come into another market. Wouldn't we all rather have the best market available? I mean, that is, to me, a very serious consideration that we would all like to be in New Mexico in Albuquerque, but, frankly, I did not grow up there, and I do not have a house here, and I doubt that I will move. But to say that one tribe can declare their place not as economically suitable in allowing them to move around and establish one seems to be a fairly significant decision for us to be making and kind of arbitrarily making at that.

Mr. CASON. I think there is some concern about that, Congressman. I would say, in my opinion, there are two pieces of an answer. The first is that is the manifestation of smart businessmen who are saying, under law, I have the opportunity to look for an off-reservation venue that is better than the venue I have, because if we remember the history of how we got to where we were, we, as a country, chose places for Indians to reside and have reserved reservations that basically prioritized the relative interests at the time, and some of those venues are not very economically desirable.

And I would suggest that what we are seeing is a lot of smart people saying, hey, there is a better place I can go under law than where I have as the reservation, and I think that the balance in the check-and-balance system that Congress placed into IGRA in 1988 is to say, if that is where you want to go, you need to use a two-part determination process that balances the interests of the state through having the Governor endorse the deal, as well as the balancing act that the Secretary is placed under to say this is in the best interest of the tribe and is not an undo detriment to the local community, and we have to have the endorsement and concurrence of the Governor.

So a check-and-balance option was put into place to be able to address that situation, and as George says, in that particular area, the two-part determination has not been used broadly.

Mr. PEARCE. Thank you, Mr. Chairman.

Mr. UDALL OF NEW MEXICO. Thank you, Mr. Chairman.

Mr. Cason, in your testimony, you voice concern that requiring tribal applicants to pay for advisory referendums would force heavy reliance on the financial resources of third parties. Two questions. What role have third parties played throughout the development of

Indian gaming, and would you say there are both positive and negative examples?

Mr. CASON. Congressman, I think third parties do play a role, and, in large part, at least my understanding of the process is it gets to the root of some of the problems that we are looking at, and what I mean by that is part of the reason Congress authorized gaming is because there is little economic opportunity for some Indian tribes across the country, and this was an opportunity to develop economic opportunity. And when you start with very little, then if you want to get into the game, you have to find a partner to help because you do not have the capital wherewithal to start.

So I think there is a role that is currently being played by third parties, and it is a role that we take a look at and NIGC takes a look at in the process. So I think it is there, and it has the potential to be bad, but it also has the potential to be good, and that is some of the things that we look at, both on the authorization side and the regulatory side.

Mr. UDALL OF NEW MEXICO. Would the Chairman like to comment on that also?

Mr. HOGEN. Well, I think Mr. Cason very well described the situation, and I agree with what he said. We have seen instances where tribes without the wherewithal to get started have partnered with folks that, at the end of the day, ended up with the lion's share of the profit, and we are not real pleased with that. On the other hand, they might have ended up with nothing if those folks had not come along, so which is the lesser of those two evils?

The way we get involved in this process with some specificity is when we review and approve management contracts, and that is kind of a limited universe. There are other instances where developers come along, and we are not privy to all of those details. But I think there is a role for investors, developers to assist folks who are pursuing an opportunity. You just have to be careful that it does not reach the point where [a] they were nefarious folks—they should not have been doing business with them in the first place—or the tribe is not getting their fair share of the take when it is all done.

Mr. UDALL OF NEW MEXICO. Do you think this advisory referendum part of the legislation could cause those kinds of problems?

Mr. HOGEN. Well, it is certainly going to mean that whoever pursues this path is going to have to be well funded. There will be a lot of dollars required to do all of the things that need to be done, and it may have some tribes shopping around where we would wish they were not shopping in terms of those investors.

Mr. UDALL OF NEW MEXICO. Thank you very much. I yield back, Mr. Chairman.

The CHAIRMAN. Ms. Herseth?

Ms. HERSETH. Thank you, Mr. Chairman. I was in a subcommittee hearing for the Agriculture Committee earlier, so I apologize for not being here for your opening statement, Mr. Cason, but I just reviewed again your opening statement that you had submitted, but during your opening statement or perhaps in response to another question, did you express an interest at all in pursuing

other mechanisms, either regulatory or statutory, to address reservation shopping?

Mr. CASON. Yes.

Ms. HERSETH. Do you mean mechanisms that do not appear in Chairman Pombo's legislation, or could you just elaborate in a bit more detail what you might be suggesting there?

Mr. CASON. Overall, what I suggested is some additional dialog to address the twin concerns of venue shopping and reservation shopping and the concern about providing opportunity for economic development in Indian Country. Those two are co-existing, and they push against each other, and what we are basically looking at is, is there opportunity for us to work with Congress to get a clearer picture of exactly what the concern is in venue shopping and reservation shopping? We know it is there, and we deal with it in the Administration as well, but we are also trying to find a way to be thoughtful and receptive and respectful of the concerns of the local community when we are looking at a casino authorization or a gaming authorization.

So we are trying to be mindful of that, and we are trying to be mindful of the needs of the tribe that is involved, and we have a variety of circumstances and a basic approach that says there is no opportunity to even be in the game, which is of concern. And so what I have proffered is we would like to work together with the Committee to see if there is a better way that we can meet our mutual needs.

Ms. HERSETH. I appreciate that. In the context in which some of this tension has arisen, has there been some consideration given, from your perspective, about differently situated tribes? Obviously, when you make reference to each individual tribe and the economic development needs and some of what has happened in certain parts of the country or what has not, and certainly we see a level of competition among tribal gaming operations in certain parts of the country that you do not necessarily see in geographically rural areas with some of the tribes that I represent from South Dakota. So is that some of what you would consider in that ongoing dialog as well?

Mr. CASON. Yes. We have a very broad array of circumstances that we try to manage, and we are trying to be mindful to look at them on a case-by-case basis, looking at all of the facts that are involved. And I know from personal experience, having just been to the State of Washington about three weeks ago, one of the things that I did was sat down and held two nights of public hearings for individuals in the area of Locenter, Washington, to come in and express themselves on what their concerns were, both I want this proposal to go through, or I do not want this proposal to go through, and give people an opportunity to do that. And in some cases, the feelings are very strong on both sides of the issue in the same area.

But we also have circumstances where we have an unnamed tribe in New Mexico where they have found that their pueblo is one that is not very suitable for gaming and actual economic development who have found a town in New Mexico that wants them as a partner because they also need economic development.

So there are opportunities here for good things to happen, and there are opportunities for wanted or undesirable consequences, and the issue for all of us basically is to find that happy middle where we get as much positive out of the process while containing the negative.

Ms. HERSETH. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Wu?

Mr. WU. Thank you very much, Mr. Chairman, and thank you both for your very hard work on this issue of this bill and having me participate in this committee hearing today.

Mr. Hogen, in his testimony, referred to some sections of H.R. 4893 as potentially not clear, and, Mr. Chairman, I was struck by the exchange between you and Mr. Skibine because, depending on definitions, you have three casinos or 38 casinos that have either gone through the two-part test or are on post-1988 land, and so the definitions are very, very important to the question of is there a problem?

So I would like to enter into a colloquy, if I may, Mr. Chairman, with the witnesses, you, and Committee Counsel about one section of this particular bill, H.R. 4893, which I hope to have clarified in one manner or another because I am focused like a laser beam on one particular casino and one particular issue, and that is the proposed casino in the Columbia River Gorge National Scenic Area. It would draw 3 million visitors per year, a million extra car trips. This, ladies and gentlemen, would be like building a casino on the floor of Yosemite Valley.

You need to look at the Columbia River Gorge and check this site out, and it is very, very important to me that this national scenic area, which is a national treasure and a treasure of the State of Oregon, that it be protected, and what happens with the other applications under this process, that can be resolved in any which way.

The section that I am referring to is Section 2 on page 6 of the draft bill, and Committee staff explained to our staff that it was not the intention of the Committee staff or the Chairman to grandfather any applications but that it was the intention of the drafters to protect existing casinos. Does Committee Counsel have an answer to that? Is that the Chairman's intent, to protect existing casinos?

The CHAIRMAN. You can just ask me. The purpose of that particular section of the bill was dealing with a couple of states that have existing compacts and existing situations, and what my intention was with that section was to make sure that we did not undo existing compacts and structures within states that are working within those states, and that was the purpose for doing that. That does not affect the taking-land-into-trust provisions.

Mr. WU. So if a compact has been signed by the Governor of a state, but there is no existing casino, and the language here says, "The amendment made by paragraph 1 of this section shall be applied prospectively," does the bill apply to that situation where the compact has been signed by the Governor, and the compact exists? There are other agreements which are also—

The CHAIRMAN. It does not undo an existing compact that any tribe has with the state. It does not affect whether or not land is

being taken into trust. With your specific situation, it does not allow land to be taken into trust. It does not address that issue at all. This is more geared toward a couple of states that have somewhat unique compacts, and we were concerned that the language would somehow undo a system that is working.

Mr. WU. If that is the case, I would dearly like an opportunity to work with both the Chairman and the Counsel, Committee Counsel, to make sure that if the intent is to not grandfather this casino in the Columbia River Gorge, that the language be so drafted so it does not grandfather the casino in the Columbia River Gorge, because apparently, as Mr. Walden referred to, there is language on the Senate side to specifically grandfather that casino and others, and I—

The CHAIRMAN. That is a completely different issue. The issue of grandfathering in tribes that are already working their way through the system is a different issue. It is something that has been raised by a number of members of the Committee, and I believe it is something that ultimately the Committee will have to deal with when we get to the markup stage. This provision of the underlying bill does not grandfather in in terms of what you are talking about. What it does is grandfather in existing compacts specifically because there are a couple of states with unique systems in terms of the way their compacts work, and we were trying to address that.

Mr. WU. Understood, Mr. Chairman. With great respect to the Committee's work, I have consulted some private attorneys and some government attorneys, and there is some concern about—

The CHAIRMAN. It sounds like you are spending too much time with attorneys.

Mr. WU. Well, I wish I did not have to, but, gee, sometimes I live with one. There seems to be some concern about the clarity of this particular provision.

The CHAIRMAN. It is pretty clear to me. That is what my intent is, and if the gentleman still has questions, we will continue to talk to him about what the intentions are of this particular provision, and as this moves forward, obviously we will make it perfectly clear what this provision is geared toward.

Mr. WU. Terrific. Thank you very much, Mr. Chairman. I look forward to working with you, both on that issue and on whether grandfathering of applications is appropriate or not. Thank you.

The CHAIRMAN. I will say, in terms of grandfathering provisions, this entire process has been an open process. I put out two drafts that were out for discussion. We received hundreds of comments on both of those drafts. We have gone through this process in a very open and transparent way. I intend on proceeding in an open and transparent way and, in a bipartisan manner, working with the members of this committee so that we produce the best possible legislation that we can. I am sure if you had the opportunity to talk to Mr. Kildee or Rahall or any of the members of this committee, they will tell you that that is the way I run this committee, and that is the way I am going to continue to do it.

Mr. WU. Well, I thank you for the opportunity to be here today. I look forward to working with you and the other members of this committee on this very important legislation.



The CHAIRMAN. Thank you.

I have a number of other questions, but most of those I will just submit to our witnesses.

I do have a question, Mr. Cason, that I want to bring up with you, and that is that, under the current system, obviously there are issues that have not only been raised by Members of Congress and members of the public, questions, concerns about interpretations, expanded gaming throughout the country, but it appears to me that the Administration is taking a position that they can fix whatever problems that exist through the regulatory process through administrative changes and is not and has not been open to suggestions from Members of Congress. Can you comment on that?

Mr. CASON. Sure, Mr. Chairman. I would not characterize my testimony or George's or the rest of the panel as being the Administration's position because clearly we have not taken one. We have not done a SAP yet.

The purpose of the dialogue from the panel here is basically to suggest that we have some competing interests, and we recognize, and I am sure the Committee does, too, that there are some benefits associated with Indian gaming, and there are some down sides associated with Indian gaming, and that within the environment we have, there are some in Indian Country who already enjoy those benefits, and there are some who do not but could.

The suggestion back is we are very willing to work with the Committee to take a look at statutory adjustments to more carefully define the direction to the Department of the Interior and Indian Country about how we want to execute a gaming program, and as I said earlier, Congress has the plenary authority to set the rules. So we are very willing to work with the Committee on that, and depending on what the objectives are, there may need be some statutory adjustment, but I think that it is also possible that in the regulatory environment we can also make differences that are helpful.

So I think there is room for accommodation, and it is not the testimony on our part to say there is no role for Congress, or there is no role for Interior. We can work together and maybe come out with a better balance.

The CHAIRMAN. Well, I appreciate your answer to that because sometimes when I read things that have come out of the Department, it makes me believe that some believe that some within the agency believe that they are the ones who should be making the rules and that Congress should shut up and go away, and I do not take that very kindly.

I also say, in response to your comment that some have been able to take advantage and some have not, I agree, some have and some have not. I have tribes within California that have invested millions of dollars in a remote location and, as a result of that, have developed a successful business, and they have been able to take advantage of that, and I think it is great because they are doing good things with it.

I have others that are not in a position that they could take advantage of gaming and have to look at other economic development. Some tribes have timber resources; some do not. Some have fisheries resources; some do not. Congress has done a horrible job in

allowing tribes, and I believe the Department has done a horrible job in allowing tribes, to look at other economic-development opportunities other than gaming. If you put them in a box, and you tell them the only way that they can succeed is by gaming, that is the only way they are going to look.

There are a lot of other issues that we have to deal with to allow economic development on tribal lands other than gaming, and I think it is a mistake to try to put them in the position that that is the only way that they can create jobs and create economic development on their reservations.

We have a lot of work to do in order to fulfill that obligation that I believe we have.

Mr. CASON. Mr. Chairman, I agree with you. We have 56 million acres of land in trust, and there are lots of resources on those lands, and gaming is a tool, not the tool. There are other things that we are doing to assist tribes in looking at economic development, and what we ought to be looking at is how can we put as many tools into the basket as we can so we do not depend on just one?

The CHAIRMAN. Well, I appreciate that, and I know that in the three years that I have been Chairman of this committee, there are a number of things I have tried to do, and I would appreciate the—how to nicely say this, but I would appreciate it if we had more support and more help on some of the other ideas that we have put out there. When it comes to energy issues and forestry issues and the ability to take advantage of resources that they have, sometimes the support for those has been lacking, and that makes it more difficult.

Mr. Kildee, do you have any additional questions?

Mr. KILDEE. No additional questions. Again, Mr. Chairman, I do appreciate the process you have used in this. You and I still have some major differences, but no one can fault you on the process you have used all the way through this, and I may be working with you on certain amendments that may address some of my problems, and hopefully if we move a bill, my problems can be resolved. But I do commend you on the process, and I thank again the witnesses for their testimony.

The CHAIRMAN. Thank you. Ms. Herseth? Mr. Wu?

Well, thank you. I want to thank the panel for their testimony and for answering the questions. I do know that there will be additional questions that will be submitted to the panel, and those will be submitted in writing. If you could answer those in a timely manner so that they can be included as part of the hearing record, I would appreciate it. So thank you for being here.

Mr. CASON. Thank you, Mr. Chairman.

Mr. HOGAN. Thank you.

The CHAIRMAN. The Committee is adjourned.

[Whereupon, at 4:35 p.m., the Committee was adjourned.]