

# GAMING LEGALNEWS

## THE GRATON GODZILLA INVADES SAN FRANCISCO BAY

by Dennis J. Whittlesey

The Federated Indians of Graton Rancheria Tribe is on track to soon open its huge casino and resort in Rohnert Park, California, at a site adjacent to U.S. 101 in Sonoma County. The best information available is that this will occur prior to December 31, and the project is expected to dwarf the competition throughout Northern California. As discussed below, the casino will be massive with a wide range of collateral attractions, including dining and live entertainment, and is destined to cash in on the fact that it will be the closest casino to San Francisco.

The Tribe has worked with Station Casinos of Las Vegas for years to finally gain the necessary approvals for the location, and Station, in turn, has been unwavering in its support for the Tribe and the project. Together, these two business partners have overcome many obstacles that included two relocations from the originally proposed site and widespread opposition to any project from various anti-gaming groups.

As the headline above suggests, this project is enormous and will indeed be the Godzilla of the Highway 101 corridor. Moreover, it promises major financial returns for the Tribe, its 1,300 members, and Station Casinos. Station has been the developer and soon will be operating the casino project pursuant to a management contract and is certain to realize substantial profits from the Graton Resort & Casino.

The location and project scope are stunning.

As for location, the site ultimately selected is less than an hour's drive from the Golden Gate Bridge through prosperous Marin County and into idyllic Sonoma County. Pursuant to the Tribe's Compact with the State and local agreements with Rohnert Park and Sonoma County, traffic flow into the casino from the four-lane Highway 101 promises to be seamless.

Project scope is beyond anything anticipated when it was first proposed. For example, the project financing was an \$850 million package, which reportedly is the largest financing in the 25-year history of Indian gaming. The casino will open with 3,000 slot machines and 200 table games, and it will employ approximately 2,000 people. The dining services will include multiple outlets, including four fine-dining venues. The facilities will include multiple lounges and bars and facilities to house concerts and other live entertainment.

The facility is projected to generate some \$420 million in annual gaming revenue by its seventh year, from which Sonoma County will receive annual payments of \$9 million. While there is no projection as to the number of visitors per year, at least one analyst estimates



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2.5 million visits as “on the low end” of what is probably projected by the casino team.

With all of this anticipation, the question quickly becomes where these customers will come from and how existing Northern California casinos will be affected. The obvious answer is that Graton will adversely affect all of its casino neighbors, and the closest already is predicting at least a 30 percent drop in revenue. That facility is operated in the Alexander Valley to the north by the Dry Creek Rancheria, and it has enjoyed a 10-year monopoly in Indian gaming in the North Bay Area. However, its tent-like structure at the top of a steep hill will not compare with the modern facilities being constructed at Graton, nor can its 1,200 slots and 20 table games. Dry Creek Chairman Harvey Hopkins recently predicted the 30 percent loss in revenue, which would be a decrease of some \$37 million a year on the basis of the Dry Creek performance for 2010.

Further up Highway 101 are six casinos in Mendocino County and four in Lake County, and their remote locations definitely will suffer at the hands of the new competition. The Colusa Resort in Colusa County also has stated its recognition that Graton will negatively impact its business.

Moreover, many analysts are predicting the Graton casino could even negatively impact two major casinos in the Sacramento area some 100 miles to the east: Thunder Valley near Roseville and Jackson Rancheria Casino in Jackson. A recent financial offering circular for a casino in a rural section of Amador County (which also is home to the Jackson Rancheria) was recently withdrawn, and several gaming experts suggested that the potential financial impact of the Graton project probably contributed to the failure of that financing.

Graton is taking a powerhouse project into an area where there is no comparable competitor. Moreover, the size and sophistication of the project has the already-identified potential to draw customers from as far away as Sacramento and Amador County. The negative financial impacts suffered by various casinos will spill over to employees and business partners, as well as any local governments with local services agreements, since any provisions for revenue sharing likely would have to be modified.

Godzilla has arrived, and the stakes have been raised.

## **RULING ON LEASED SLOTS OPENS DOOR TO ON-RESERVATION PERSONAL PROPERTY TAXES**

by Patrick Sullivan

In *Mashantucket Pequot Tribe v. Town of Ledyard*, an opinion certain to echo throughout Indian Country, the Second Circuit Court of Appeals recently decided that Ledyard, Connecticut, home to Foxwoods Resort & Casino, may assess the state property tax on slot machines owned by non-Indians and leased to the casino on the reservation.

Connecticut's personal property tax, assessed for the purpose of funding the operations of local municipalities, does not apply to tribal

property located on tribal land. However, many tribal casinos lease a large portion of their slot inventory, and non-Indian business owners locate substantial personal property on leased Indian land, so the ramifications of the decision could be far-reaching.

The Tribe challenged the Town's imposition of the property tax on the owners of slot machines leased by the Tribe and installed at Foxwoods. The owners, AC Coin and WMS, had been paying the Connecticut tax, totaling about \$300,000 per year, without protest and without passing the tax on to the Tribe, until the Tribe asked them to cease tax payments to the Town and indemnified them from any resulting liability.

Ledyard Mayor Rodolico expects the Town to receive approximately \$500,000 in back taxes and penalties and \$300,000 per year in the future. Those numbers are *de minimus* relative to the Tribe's revenue-sharing payments, in which the Tribe pays 25% of slot revenue to Connecticut. Revenue-sharing payments totaled more than \$1.5 billion from 2003 to 2011. However, any taxes ultimately will come out of gaming proceeds that Indian tribes utilize to fund tribal government and social programs, so this decision could directly affect those programs, particularly for smaller tribes.

The Second Circuit's decision reversed a district court's decision barring the taxes, holding that the tax was not preempted by the Indian Trader statutes, the Indian Gaming Regulatory Act, or the Supreme Court's *Bracker* preemption test. In *White Mountain Apache Tribe v. Bracker*, the Supreme Court announced that the determination of state authority over non-Indians on Indian land requires “a particularized inquiry into the nature of the state, federal, and tribal interests at stake,” including the preemptive effect of federal law, interference with tribal sovereignty, and the state's regulatory interest in the matter. The *Bracker* test thus shifted the court's task from the uncompromising dictates of sovereign immunity and preemption law, which apply to solely tribal matters, to one of balancing interests when non-Indians are involved.

In *Town of Ledyard*, the court admitted that the tax “impinges upon the Tribe's ability to regulate its affairs and to be the sole governmental organ influencing activities,” which, under a pure sovereign immunity inquiry, would have ended the matter. Applying the *Bracker* test, however, the Second Circuit balanced the Tribe's sovereignty against the Town's interest in the “integrity and uniform application of their tax system,” and decided that the latter outweighed the federal and tribal interests.

The court drew a distinction between personal property taxes, which fall on the non-Indian ownership of property, and taxes on transactions between Tribes and non-Indians. This key distinction should limit the application of the opinion and preclude taxes on revenues generated by non-Indian property on the reservation. However, the decision applies to other non-tribal businesses operating on Indian land, such as restaurants and retail outlets. The decision will have no effect on Connecticut's Mohegan Sun casino, whose vendors had been paying the tax pursuant to a memorandum of understanding between the Mohegan Tribe and the Town of Montville.

Jurisdictions that have not been collecting this tax are now on notice that it is an option. At the very least, this is a major backfire for the Tribe, as its litigating a *de minimus* tax that *wasn't even being passed on to the Tribe by its vendors* has opened the door to state personal property taxes on all leased slot machines now operating on Indian casino floors, as well as any other non-Indian personal property in retail outlets and restaurants. This miscalculation by the Mashantucket Pequot Tribe could have negative consequences for many others.

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