



**NATIONAL  
INDIAN  
GAMING  
ASSOCIATION**



# INDIAN GAMING UPDATE

National Indian Gaming Association - On Behalf of Ernie Stevens, Jr. Chairman January 2009

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Dear Friends,

**Sagoli Swakweku** – Greetings from Washington, D.C.!

As we move the NIGA agenda forward in 2009, there is still plenty of excitement in Washington, D.C. The new Congressional leadership has taken office and the Presidency of Barack Obama is in full swing. And while we are continuing to foster a solid relationship with the new administration, we also continue to work hand in hand with our sister organizations on behalf of Indian Country to advance the critical issues facing Tribes. Indian Country must come together this year as we face the daunting challenges of rising unemployment and an economic slowdown. I am confident that together we can meet and overcome these challenges while forging a positive relationship with a new administration on Capitol Hill.

I hope you enjoy the latest edition of the Indian Gaming Update.

Ernest L. Stevens, Jr



## TRIBAL LEADERS MEET WITH INTERIOR SECRETARY

On the eve of the historic inauguration of Barack Obama as the first African American President of the United States, Secretary of the Interior designate Ken Salazar met with a group of more than 500 tribal leaders from around the Nation. Salazar assured them that in the Obama Administration, Native Americans will always have a place inside the tent.



U.S. Secretary of the Interior designate Ken Salazar joins NCAI President Joe Garcia and NIGA Chairman Ernest Stevens, Jr., after meeting with Tribal Leaders

At the time of Salazar's nomination, President-elect Obama said, "We will ensure that we finally live up to the treaty obligations owed to the First Americans. We need more than a government-to-government relationship. We need a nation-to-nation relationship. Ken and I will make sure that tribal nations have a voice in this Administration."

Salazar said, "We recognize the special relationship and trust responsibility that the United States has with Indian tribes. It is important that we meet face to face to work together with mutual respect."

The event was sponsored by the National Indian Gaming Association and the National Congress of American Indians. NIGA Chairman Ernest L. Stevens said, "Obama is a true visionary. He has shown his commitment by reaching out to Indian country from the beginning. Tribal leaders are eager to engage with the new Administration to build a strong nation-to-nation relationship." Stevens continued by encouraging the leadership, "Together, Indian country must continue to be diligent in our efforts to bring change for our people. After tomorrow, it's time to get to work."

At the meeting, tribal leaders discussed plans for a nation-to-nation meeting with President Obama at the White House and a cabinet level meeting to enhance basic government services and increase aid to tribal governments.

Salazar indicated that the first priority is to staff up the Department of the Interior and then they will get to work on Indian trust issues, Indian health care, education, economic development and energy issues.

President Joe Garcia from the National Congress of American Indians said "What a way to start 2009 and a new relationship with the incoming Obama Administration. It is encouraging that Sen. Salazar is putting Indian Country's agenda at the top of his priority list before he even takes the oath of office."

## THE VIEJAS INAUGURATION



Chairman Stevens joins Chairman Bobby Barrett at the Viejas Band of Kumeyaay Indians Inauguration ceremonies

National Indian Gaming Association Chairman (NIGA) Ernie Stevens, Jr., joined as a guest speaker in inauguration ceremonies for Chairman Bobby Barrett and rest of the Council Members of the Viejas Band of Kumeyaay Indians on Monday, January 12, 2009 at the Viejas Recreation Center in Alpine, California.

Barrett, 44 will be serving his second two-year term as Tribal Chairman. Also elected to two-year terms on the Tribal Council are Robert Welch, Jr., Vice Chairman, John Christman, Treasurer, Diana Aguilar, Secretary and Council Members Virginia Christman, Tim Bactad and Greybuck Espinoza.

Addressing the crowd at the Viejas Tribal Inauguration ceremony, Chairman Ernie Stevens, Jr. said, "Your community has place the greatest of confidence in you to serve on their behalf and I am honored to be with each of you today. With this caliber of experienced leadership, ready to take office, the Viejas people can look to continued prosperity as a tribal community and I look forward to working with you."

Stevens, continued, "In the next few days, we will all be watching as history unfolds with the historic inauguration of President-elect Barak Obama. This day signifies and confirms the power of the people throughout this country and their need to move this country in a new direction. With the economy in crisis and the many other important issue facing

us all, there will be a lot of work ahead . I am confident that Indian country is prepared to do our share."

"Indian country is looking forward with great anticipation to a new era of strong and effective leadership and partnerships that will deliver change. Obama has pledged to work with us, government-to-government and together, we can work to deliver the results needed for all of Indian country."

After being sworn-in Chairman Barrett said, "We are facing challenges the likes of which we really haven't seen in recent times. We face some serious decision, and we need serious, experienced people in leadership positions. I truly believe the Tribal Council that you have elected is very well-suited for these times."

"I humbly follow in the footsteps of the many other tribal leaders who have led our people for tens of thousands of years. Over that time, we have seen many challenges and much suffering, but also much opportunity and success. I am committed to leading our people further down the path of success, even as we face the current economic downturn and other uncertainties." Said Barrett.



Viejas Tribal Council L-R Treasurer John Christman, Vice Chairman Robert Welch, Jr., Chairman Bobby Barrett, Council member Virginia Christman, Secretary Diana Aguilar, Council member Tim Bactad, Council member Greybuck Espinoza

### Make Plans to Attend!

**INDIAN GAMING '09 PHOENIX** TRADE SHOW & CONVENTION  
April 13-16, 2009 - Phoenix, AZ

#### CHAIRMAN'S RECEPTION

Monday, April 13

with  
**Crystal Shawanda**

Hyatt Regency Phoenix



#### JAM ON THE REZ

Tuesday, April 14

with  
**Gladys Knight**

Wild Horse Pass at Gila River

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## NIGA LEGISLATIVE UPDATE

### 110th Congress Yearly Review

#### LEGISLATIVE

**H.J Res. 62: The Native American Heritage Day of 2008** Resolution passed both houses of Congress and signed by the President on October 8, 2008. The law establishes, November 28, 2008 as Native American Heritage Day this year. This was an important first step and paves the way for a new resolution will establish Native American Heritage Day on a continuing basis. Schools teach about commemorative days and the National Museum of the American Indian of the Smithsonian has pledged to work with Indian country to develop curriculum about tribal governments for public schools.

**H.R. 5608: Consultation and Coordination with Indian Tribes.** H.R. 5608 was introduced. This bill if enacted would mandate that the Department of Interior, Indian Health Service and National Indian Gaming Commission follow the government-to-government consultation policy. The bill was not acted on in the House, but will likely be reintroduced in the 111th Congress.

**H.R. 4081 the Prevent All Cigarette Trafficking Act (PACT Act)** would interfere with tobacco sales on Indian lands because of its overly broad terms. NIGA is working to oppose this bill and although it passed the House, it did not pass the Senate.

**H.R. 2046 Internet Gaming:** Rep. Barney Frank (D-MA) introduced H.R. 2046, the Internet Gambling Regulation and Enforcement Act that would create an exemption to the ban on online gambling for properly licensed operators, allowing Americans to lawfully bet online. This would essentially overturn the Unlawful Internet Gaming Act of 2006. The act establishes a federal regulatory framework to license companies to accept bets and wagers online from individuals in the U.S., to the extent permitted by individual states, Indian tribes and sport leagues. This bill did not pass the House.

**H.R. 3361 Tribal Pension Plans:** This is an amendment to the larger "Worker, Retiree, and Employer Recovery Act of 2008" (the "Recovery Act"). The tribal pension specific language establishes for purposes of the Internal Revenue Code and ERISA that a governmental plan is a plan established or maintained for its employees by an Indian tribal government, subdivision or agency of an Indian tribal government, or an entity established under Federal, State or tribal law which is wholly owned or controlled by an Indian tribal government, subdivision, or agency of an Indian tribal government. This bill did not pass the House but will likely be acted upon by the 111th Congress.

**H.R. 3164 Tribal Government Tax Exempt Bond Parity Act:** Congressman Devin Nunes introduced this bill in 2007 to allow Tribal Governments to issue tax-exempt bonds to help fund the infrastructure needed to allow our tribal communities to thrive.

Tribal Governments, just as State and local governments, have an enhanced need to access the various tools available to raise capital. Ambiguity in the current tax code and its implementation by the IRS chills the tribal bond market and keeps tribal governments from accessing much need capital.

The IRS' current proposed definition of "essential government function" fails to cure the ambiguity in the tax code. The IRS's interpretation of tribal tax-exempt bonding authority has also meant a substantially higher

audit risk for tribal bonds, as tribal governments are also victims of a demonstrably disproportionate number of IRS enforcement actions. Tribal governments uniformly oppose the proposed regulations promulgated by the Internal Revenue Service and the Department of Treasury relating to the sale of bonds by Indian tribal governments. A legislative fix to the internal revenue code will give Tribal Governments fair treatment and equal access to tax-free bond financing. This issue will be raised again in the 111th Congress.

#### REGULATORY

**Class II Gaming Regulation --** With the assistance of our Member Tribes and regional associations, NIGA opposed the NIGC's overreaching Class II Definition and Class II Classification regulatory proposals. The NIGC withdrew those regulations in October and that was a big victory for Indian country. The NIGC published Class II Technical Standards and MICS and NIGA is now working with our Member Tribes to address the remaining issues, including autodaub, prize structure, etc. When the new Administration names the new NIGC Chairman, these issues must be brought back to Indian country for further consultation.

**Section 20 Regulations: Off-Reservation Gaming.** Interior's Office of Indian Gaming Management published final section 20 regulations. This avoided the need to amend the IGRA while preserving the essential section 20 rules that provide for consideration of Indian gaming on contiguous lands, land for newly recognized tribes, land for restored tribes, and land claim settlement lands. This leaves off-reservation gaming initiatives to be resolved on a case by case basis with clear rules.

#### OIGM Proposed Tribal Revenue Allocation Plan Regulation:

The Bureau of Indian Affairs, Office of Indian Gaming Management ("OIGM") continues to consult on their proposed Tribal Revenue Allocation Plan regulation. Substantively, we are concerned about the amount and type of information required to be collected and submitted prior to approval or renewal of a revenue allocation plan. Further, the regulation does not include any protections from Freedom of Information Act (FOIA) requests for the information submitted. IGRA specifically treats information submitted to the National Indian Gaming Commission as confidential under FOIA. OIGM will continue to consult on this issue before issuing a revised proposal.

**NIGC Facility Licensing Regulation:** This regulation was finalized at the end of 2007. The NIGC finalized this regulation with a short comment period and no opportunity for meaningful tribal consultation. The consultation process behind this proposed rule falls far short of prior agency consultations where tribal representatives were active participants not only in providing advice and input, but also in the drafting process itself.

NIGA objected to the regulation because Tribal governments have their own processes and procedures that are more than sufficient to meet the concerns underlying facility licensing on the reservation. NIGA will call upon the NIGC to re-open these regulations for revision consistent with the IGRA.

### The Employee Free Choice Act (EFCA) "Card Check" Bill

Unions are dissatisfied with the NLRA because they believe that it does not fairly support fair efforts to unionize the labor force. Accordingly, unions seek to change the status quo through the EFCA. EFCA would do several things, chief among them:

\* **Card Check:** If 50% +1 employee signs card checks seeking to unionize, EFCA would eliminate the right of employers to call for a secret ballot and recognize the union as the representative of the bargaining unit triggering a requirement for the employer to begin labor contract negotiations;

\* **Mandatory Arbitration:** If no labor contract is reached within 90 days, EFCA would permit the union to call in FCMS for 30 days of mediation, and if no labor contract is reached then, EFCA provides for mandatory arbitration to conclude a labor contract.

Mandatory arbitration fundamentally changes the existing law by empowering Federal arbitrators to determine employee wage scales, without employer consent.

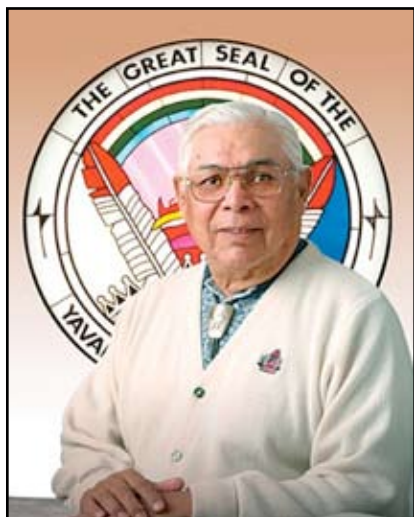
#### NIGA Position

NIGA has always maintained that Indian tribes should be treated as governments under the Federal labor and tax laws. For example, in 2000, NIGA worked to secure treatment of Indian tribes as governments for purposes of the Federal Unemployment Tax Act. We are also seeking treatment of Indian tribes as governments under the Federal pension law. Naturally, as government employers, Indian tribes continue to support employee rights and interests and tribal governments have established tribal pension protections.

Many Native Americans are union members. For example, through the Iron Workers Union, Native Americans have participated in raising the high rise towers that are the foundation of city skylines. Many tribes have worked out agreements with the building trades in constructing gaming and hotel facilities. Through tribal-state compacts in California, tribes have adopted tribal labor relations ordinances to provide a tribal law basis for working with labor, so Indian tribes support employee rights.

From the 1970s to 2000, NLRB took the position that Indian tribes should be treated as governments under the NLRA. In the San Manuel Bingo case, the Hotel and Restaurant union (HERE) sued the San Manuel Band for working with a different union to represent their employees, the Communications Workers of America (CWA) and not providing the same access to HERE. In 2004, NLRB changed its longstanding position and applied the NLRA to San Manuel's Indian gaming activities. In 2007, the Federal Court of Appeals for the District of Columbia held that the NLRA applies to Indian gaming in the San Manuel case because Indian gaming is commercial in nature. NIGA rejects this characterization. State lotteries are not treated as governmental activities and Indian gaming should likewise be treated as governmental activity. Indian tribes must be treated as governments for all purposes under Federal labor laws, including Indian gaming activities. Yet, the proposed EFCA would, in effect, ratify the Federal Court of Appeals decision in San Manuel Bingo v. NLRB. Therefore, NIGA opposes the EFCA unless and until it is amended to include Indian tribes as governments.

## FORMER ARIZONA TRIBAL LEADER PASSES AWAY



National Indian Gaming Association (NIGA) Chairman Ernie Stevens, Jr., was saddened to learn of the recent death of former Yavapai Apache Tribal Chairman, Theodore "Ted" Smith.

Smith, 86 who passed away on January 9, 2009 in Middle Verde, Arizona, served as Yavapai Apache Tribal Chairman for more than two decades during the 1970's and 1980's shaped the tribe from a economically and financially deprived tribe to becoming one of Arizona's most successful tribes.

NIGA Chairman Ernie Stevens, Jr.. Said, "What a great loss for not only the Yavapai Apache Nation but for all of Indian country. Ted comes from an era where his legacy is portrayed in several generations, from that of a young determined man early on in Arizona to a distinguished World War II decorated Veteran to returning home from war, beginning his service to the Yavapai Apache people as their Tribal Chairman who was dedicated to working hard to move the tribe towards economic prosperity. He will be sorely missed."

Stevens continued, "Ted was one of my mentors. He always let me know he valued the work he did with my father [Ernest Stevens, Sr.] and always embraced me like his own son. He came from a great time of leadership that is reflective of people like the late Wendell Chino [former Chairman of the Mescalero Apache tribe], the late Roger Jordain, [former Chairman of the Red Lake Band of Ojibwe Nation] and Clinton Pattea [President of the Fort McDowell Yavapai Nation.]"

During his tenure as Chairman, Smith led in the Yavapai Apache land trade and acquisition of the land into trust, making way for construction of the Cliff Castle Casino which operates today as the most successful casino in Arizona. He was also instrumental in the initial negotiations for the Tribe's first gaming compact with the State of Arizona.

Jamie Fullmer, former Yavapai Apache Chairman and a clan nephew to Smith said, "There is no doubt that Theodore Smith loved the Yavapai Apache Nation community. He exhibited many of the traits and actions of leadership, some were inherent and some were learned from a lifetime of experiences and lessons. He was a never-ending advocate for our people and was always willing to listen and was never afraid to make decisions. He left a legacy of leadership and service that is insurmountable. As I learned to be a leader in my own role as Chairman, Ted was one of the people that I would confide in."

Smith was born on January 19, 1923 in Middle Verde, Arizona. As a child, Smith attended Clemenceau Public School and later attended the Truxton Canyon Indian School, Phoenix Indian School and finally the Bacone High School and College in Oklahoma. After

graduating from high school, Smith attended Arizona State University and later attended the Eastern American University, where he received a Bachelor of Science Degree in Business Administration.

In 1939 while attending Bacone School, Smith enlisted in the U.S. National Guard and in 1940, Smith was inducted into the U.S. Army, where he served in Company I, 180th Infantry, 45th Division. While serving in the armed forces, Smith and his company were sent to Europe to fight in World War II.

After completing five years of service, Smith was honorably discharged and returned home. For his bravery and service to his country Smith was presented with many medals and honors, including the Purple Heart, Bronze Star, Medial of Good Conduct, American Defense Service Medal, American Campaign Medal, European-African-Middle Eastern Campaign Medal, World War II Victory Medal and the Honorable Service WWII Button.

Smith is survived by his wife of 63 years, Rose Smith. Together they raised four children, Theodore Smith Jr., Penny Smith, Virginia Johnson and Melvina Duoha.

*"If we don't stay close as people and continue to ensure that our children know their culture, traditions and language, we will eventually lose our sovereignty.*

*We must preserve the culture and our language, because that is what makes us who we are.*

*Without our culture and language we will be lost."*

*-Theodore Smith Sr., former Chairman  
Yavapai-Apache Nation.*

### NIGA CALENDAR OF EVENTS

#### NCAI

State of the Indian Nations

WASHINGTON, D.C.

February 10, 2009

#### NCAI

Executive Council Winter Session

WASHINGTON, D.C.

MARCH 2-4, 2009

#### NIGA

Winter Legislative Summit

WASHINGTON, D.C.

MARCH 4-5, 2009

#### RES2009

Las Vegas, NV.

MARCH 9-12, 2009

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