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No Longer Land of Enchantment

By **Dave Palermo** *Fri, Dec 19, 2014*

New Mexico tribal gaming industry faces challenges



Few states stood to benefit more from the birth and 30-year evolution of the \$28 billion American Indian casino industry than New Mexico.

State tourism officials have long promoted New Mexico's culturally rich pueblos and tribes in luring visitors who in 2013 spent \$4.6 billion on hotel accommodations, restaurants, park fees, souvenirs and other goods and services, according to a recent report.

"Visitor studies consistently list tribes as the second reason people come to New Mexico," says Governor George Rivera of the Pojoaque Pueblo.

"The scenic beauty and outdoor recreation is first on the list, followed by Indian culture, Indian art—the

experience people get when they visit a tribal reservation or pueblo.”

But it wasn't until the emergence of Indian casinos, hotels and related amenities, including golf courses, that the state's indigenous communities began to truly share in the wealth generated by some 32 million visitors a year.

From the Buffalo Thunder resort outside of scenic Santa Fe to casino-hotels operated by Sandia, Laguna, Santa Ana and Isleta pueblos in panoramic Albuquerque, to the Mescalero Apache Inn of the Mountain Gods in the picturesque southern mountains, New Mexico soon became the gambling industry's Land of Enchantment.

Twenty-four licensed casinos operated by 14 indigenous governments last year generated net revenues of \$758 million, according to the New Mexico Gaming Control Board, creating jobs and economic development and easing poverty and despair on pueblos and reservations. (A 25th facility, the Flowing Water Casino near Ship Rock, is a Class II, bingo-style gambling hall operated by the Navajo Nation that is not licensed, taxed or subject to state regulatory oversight.)

Nearly 10 percent of the net Indian casino revenue is funneled annually into the state's general fund, helping generate a \$250 million budget surplus in the last fiscal year.

Changes in the Wind

Unfortunately, disenchantment is brewing beneath the surface of what is perhaps the most beautiful of the 28 Indian gambling states.

Maturation of the state's casino market is seriously constricting industry growth. There has been no significant expansion of New Mexico's casino industry since the market collapse of 2008, and the likelihood of future growth is debatable.

While gross gaming revenue jumped 7 percent in 2012, according to the Indian Gaming Industry Report, most of the increase was attributed to the opening that year of the Navajo Nation's Northern Edge Casino near Farmington.

“I wouldn't put it that these numbers contradict what the tribes are saying,” economist Alan Meister, author of the report, says of tribal operators complaining of market saturation. Growth in the two previous years measured 0.4 percent and 2.2 percent, Meister says.

Statewide casino revenue for the first six months of 2014 fell 4.8 percent compared to the previous year, according to state figures. And the revenue drop in the Albuquerque area was 6.3 percent.

“The New Mexico market is in stagnation,” says a tribal official who requested anonymity. “It may even be going backwards.”

Casino operators are finding it difficult to come up with funds to reinvest in their properties. And intense competition for the gambling dollar has resulted in an almost excessive use of free play and comps, which are eating into bottom-line

profits.

“The market has been pretty stable for the last two or three years. It certainly hasn't been growing,” says

Skip Sayre, director of sales and marketing for Laguna Pueblo's Laguna Development Corporation.

"We're looking at the same group of customers going from place to place. It's very competitive. The offers can be very aggressive, which is to the benefit of the guests.

"I don't think anybody is not making money," Sayre says. "But there certainly hasn't been much growth."

Compact Talks Growing Tense

Meanwhile, a looming June 2015 expiration of tribal-state regulatory compacts with the Navajo Nation, Pojoaque Pueblo and three other tribes and pueblos is posing challenges for Governor Susan Martinez and the state legislature.

The remaining nine tribes and pueblos have compacts that expire in 2037. New Mexico legislators in 2007 convinced those tribes to sign compacts requiring them to pay the state up to 10.75 percent of their net gambling revenue in exchange for the right to operate casinos in what has become a crowded market.

Along with the tribal casinos, New Mexico also has four racetracks with a fifth in the planning stages, each legally able to offer up to 750 slot machines.

The competitive climate makes it difficult for the five tribes facing the June deadline to accept what they perceive to be an onerous revenue-sharing agreement with a state boasting a budget surplus.

The large and politically powerful Navajo Nation is for the third year seeking approval of a tribal-state compact that would allow the nation to operate five licensed casinos, including a potentially lucrative facility on the tribe's To-Hajiilee Reservation near Albuquerque.

The nation currently operates Fire Rock Casino near Gallup along with the Northern Edge and Flowing Water gambling facilities.

Many elected officials, tribes and pueblos are opposed to the nation's ambitious growth strategy.

"We're saturated enough," state Senator Clemente Sanchez says. "We don't need any more. Additional properties, particularly in the Albuquerque area, would just cannibalize existing operations."

Pojoaque Pueblo, owner of the upscale Buffalo Thunder Resort, is struggling with a bond debt in excess of \$245 million and is seeking major concessions in its tribal-state agreement.

Pojoaque is suing the state for "bad faith" negotiations and is asking the federal Department of the Interior for a compact that would free the pueblo government from its obligation to share revenues with the state.

Tribal-state compacts with Acoma Pueblo and the Mescalero and Jicarilla Apache tribes are also scheduled to expire in June.

Meanwhile, efforts by the Zuni and Jemez pueblos to launch gambling operations were at least temporarily halted in September when identical compacts negotiated with Governor Martinez were rejected by Interior.

And the newly recognized Fort Sill Apache Tribe is suing Interior, the National Indian Gaming Commission and state officials over the right to operate a bingo casino on trust land in southern New Mexico.

These and other gambling issues will be formally debated or lobbied in capital hallways in Santa Fe later this month when the state legislature is gaveled to order.

“You’ve got five tribes negotiating five very different compacts,” Sayre says. “It’s going to be a fascinating legislative session.”

“It’s certainly a fluid situation in New Mexico,” says Pojoaque attorney Scott Crowell, a master of the understatement.

Navajo Muscling In

Navajo—the country’s largest Indian tribe with 300,000 citizens and a 24,000-square-mile reservation that spans New Mexico, Arizona and Utah—was late getting into the casino business, opening Fire Rock in 2008.

Its delayed entry into an already-maturing market poses problems for the nation. But with more than 130,000 largely impoverished Navajos in New Mexico, the tribe has little choice but to be aggressive in pursuing ventures that create jobs and economic growth.

“We need the ability to expand to five facilities over the next 25 years,” says Derrick Watchman, CEO of the Navajo Nation Gaming Enterprise. “Whether that pans out depends on the market and demographics.”

The enterprise employs 900 workers in New Mexico, 85 percent of them Navajo, and is creating a ripple of economic growth on the massive reservation. The enterprise also operates the Twin Arrow hotel-casino on Interstate 40 near Flagstaff, Arizona, which employs another 400 workers.

“We’re using a lot of Navajo vendors,” Watchman says. “We’re using Navajo beef.”

A compact negotiated by Martinez but rejected by legislators last year would have allowed Navajo to operate five licensed casinos. It also required the nation to pay nearly 10 percent of net revenues to the state, a percentage roughly equal to the nine tribes that signed onto a 2007 agreement but higher than what the Navajos currently pay.

Each of the nine tribes with 2007 compacts is limited to two casinos. Under the failed agreement, Navajo could have opened a third licensed casino within five years with two more casinos opening at least three years apart.

The politically powerful Navajo Nation did not react kindly to the Senate’s rejection in February of the tentative compact that a day earlier had passed the House 36-30.

“They showed disrespect to the nation,” Navajo Delegate Lorenzo Bates says of a negotiations process that eventually led to a 31-10 Senate vote to defeat the compact.

State negotiators often kept Navajo officials, including President Ben Shelly, waiting in an outer office, Bates says, and a legislative committee stalled in pushing the proposed agreement to a floor vote.

Many tribes lobbied against the Navajo proposal, particularly the Laguna Pueblo, which operates the Route 66 and Dancing Eagle casinos on the Interstate 40 corridor through Albuquerque.

“We support the Navajo Nation’s effort to achieve a new gaming compact with the state,” Sayre says. But until the Albuquerque area grows in population, he says, another casino would hurt existing operations.

Indigenous opposition to the Navajo deal strained tribal relations.

“I thought we were unified in everything we do; I don’t know what happened to them,” Navajo President Shelly told the Associated Press. “I guess greed and business is what happened.”

There is speculation Navajo is willing to lower to four the number of licensed casinos it hopes to operate in New Mexico. But Watchman said the nation will continue to pursue an Albuquerque-area casino once the metropolitan market improves.

“My projections are that between five and 10 years—considering how the population grows and the market improves—will be an opportune time to look at locating a casino there,” Watchman says.

Any increased revenue share with the state will have to deduct the amount of free play and comps Navajo is forced to issue in an effort to compete in the saturated market, Watchman says.

While there have been “informal talks” on a new compact, Bates says formal negotiations have not yet resumed. The tribe is waiting for some sign the state is willing to give the nation an offer worth considering.

“The state knows our position,” Bates says. “The ball is in their court to bring something to the table that the nation will accept.”

Enrique Knell, spokesman for Martinez, did not respond to requests for comment.

Industry insiders contend it is unlikely the National Indian Gaming Commission (NIGC) would move to shut down the Navajo operations should the tribe fail to reach agreement on a new compact before the June expiration.

“Can you imagine the NIGC moving against the largest Indian tribe in the country?” a New Mexico pueblo official rhetorically asks.

Bates calls the situation “serious.” “That’s why we’re meeting informally,” he says.

“Am I optimistic we will have a compact? Yes,” Bates says. “But the governor’s office and those responsible for negotiating a compact have to understand the needs of the Navajo, and not lump us into one bucket with other tribes.”

Pojoaque Struggles

The failed promise of Pojoaque’s Buffalo Thunder, the state’s largest casino resort with nearly 400

luxury rooms, was evident soon after its August 2008 opening, celebrated by the Flying Elvi skydiving team.

The property was simply too large and ambitious, industry insiders say. And the market collapse left the pueblo defaulting on a \$245 million bond debt, the first payment of which almost buried the operation.

“We didn’t have enough for payroll,” Rivera says.

Both Pojoaque and the Mescalero’s Inn of the Mountain Gods have had to restructure and delay repayment of their debt.

They now face the challenge of negotiating a new compact with state officials seeking an increase in revenue-sharing payments.

Pojoaque has filed suit against the state, claiming its revenue-sharing demands constitute bad-faith negotiations and violate Indian Gaming Regulatory Act prohibitions against taxation of gambling revenues.

The pueblo is seeking a compact through Interior Department secretarial procedures that would not require revenue-sharing payments to the state. The pueblo also wants to serve alcohol on the casino floor and lower the gambling age from 21 to 18, provisions not allowed under other tribal-state compacts.

Although a federal judge in November ruled against Pojoaque, the pueblo is appealing the decision.

Attorney Crowell is confident NIGC and Interior under the tribal-friendly Obama administration will not close the casino in the event it is operating without a valid compact when the current agreement expires in June.

“No tribe has ever been ordered to shut down because it has been unable to resolve a meritorious dispute with a state,” Crowell says. “We will not now and not ever walk away from the negotiating table if the state is willing to discuss the issues.”

“It’s incredibly unfortunate that Pojoaque has chosen to litigate, not negotiate,” Knell told the New Mexican newspaper.

Risks associated with Pojoaque’s legal action and a potential shutdown pale in comparison to the tribe’s bond debt. Industry analysts do not believe the resort can operate profitably under the state’s revenue-sharing demands.

“Pojoaque has some serious challenges,” says a tribal gaming attorney who requested anonymity.

“The course of action we’re on now is about the only course we can take to get relief,” Rivera says.

Rivera believes the state would benefit by reducing its revenue-sharing demands, allowing tribes and pueblos the ability to reinvest and grow their properties.

“The problem is not so much the market, but the fact the tribes are not growing with the industry,” Rivera says. “If tribes don’t have the revenue to reinvest, modernize and update their facilities, they’re obviously going to have problems.”

“If you overtax an industry you run it into the ground. There has to be the opportunity to reinvest, improve and modernize, especially in a market like this.

“If the state is taking large revenue-sharing payments, not enough is coming back to the tribes but a few nickels. They can’t reinvest with that.

“What the state is demanding is just unreasonable. We’ve tried to get the state to understand the tribe needs the revenue,” Rivera says.

“We’ve gotten nowhere.”

By Dave Palermo



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