

Few Clues Of Obama Policy On Off-Reservation Casinos

Previous **Next**

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Four U.S. Department of Interior decisions announced last week give tribal leaders little guidance about future Obama administration rulings on off-reservation gambling proposals.

"I don't think we see clear policy guidance out of this at all, frankly," said Joe Valandra, former chief of staff for the National Indian Gaming Commission and a tribal consultant.

Interior Assistant Secretary for Indian affairs Larry Echo Hawk approved off-reservation casino applications from the Enterprise Rancheria of Maidu Indians and North Fork Rancheria of Mono Indians, two California tribes. Both projects are about 40 miles from existing tribal lands.

But Echo Hawk rejected off-reservation proposals by the Jemez Pueblo, near Albuquerque, N.M., and the Guidiville Band of Pomo Indians, a California tribe which is seeking to develop a casino on restored lands 108 miles from its existing reservation. The Jemez project site is on the Texas border, nearly 300 miles from the pueblo.

The decisions came after the Department of Interior earlier this summer [rescinded previous guidance on off-reservation gaming](#).

"[The Department of Interior] said they're going to follow the law," said a Capitol Hill lobbyist who requested anonymity. "They're just kind of picking and choosing as they go along. There's no consistency at all."

The Guidiville and Jemez proposals "do not meet the requirements under the law necessary for approval," Echo Hawk said in a prepared statement. Such requirements include approval from state and local jurisdictions, modern and ancestral connection to the proposed casino site and proof of economic benefits to the indigenous community.

"The Guidiville Band's application did not satisfy many of the requirements to develop a gaming facility at that particular site," Echo Hawk said. "With the Pueblo of Jemez, we had significant concerns about the tribe's ability to effectively exercise jurisdiction over a parcel nearly 300 miles from its existing reservation."

The Department of Interior under the Bush Administration issued a "commutability" memorandum indicating it would reject off-reservation casino applications far from existing reservations. Echo Hawk in July rescinded that memo but indicated distance would still be a factor in reviewing applications.

Interior spokesman Adam Fetcher said future applications for off-reservation casino projects "are under review under the criteria we consider for each individual application on a case-by-case basis."

Fetcher and Bureau of Indian Affairs spokeswoman Nedra Darling would not disclose how many land/trust applications are pending and how many of the applications involve casinos.

The agency previously said there are 1,600 to 1,900 applications to have land placed in trust and about 30 involve casinos.

The issue has proven **extremely divisive** for the 230 tribal governments that operate casinos. Many are opposed to new casinos off existing reservations, particularly when they generate competition for existing casinos or encroach on the ancestral lands of other Indian tribes.

Others believe existing, landless and newly recognized tribes should have the opportunity to establish casinos off existing reservations and reject any proposed amendments to the Indian Gaming Regulatory Act that would make the process more difficult.

Many off-reservation casino proposals for existing, restored and landless tribes are being promoted and financed by non-Indian development companies. Others are driven by state and local officials seeking additional tax revenue.

Sens. John McCain and John Kyl of Arizona and Dianne Feinstein of California have **proposed legislation to limit off-reservation casinos**, without which

Feinstein and others are threatening to block any effort to get a congressional "fix" to a 2009 U.S. Supreme Court ruling hindering the ability of Interior to place land in trust for Indian governments.

Tribes are looking to Interior to establish a clear policy.

John Tahsuda, principal for Navigators Global, a Washington, D.C. tribal affairs firm, applauded Interior's decision to rescind the "commutability" memo, which was drafted without consultation with the tribes.

But he remains concerned that it was not replaced by a firm policy, generating renewed interest in a number of developer-backed off-reservation projects that stand little chance of success.

"My beef isn't so much rescinding the memo," Tahsuda said, "but to pull it back and not replace it with anything creates the impression there's no rules again. It's like the Wild West."

The San Manuel Band of Mission Indians of San Bernardino County, Calif., one of several tribes opposed to off-reservation casinos that encroach on the ancestral lands of other tribes, took solace in the latest round of Interior rulings.

"There are certainly some encouraging signs coming through those determinations," said Jacob Coin, San Manuel's executive director for public affairs. "Even though the commutability memo was rescinded, some of the reasons cited for rejecting at least two of those proposals had to do with commutability.

"Secondly, demonstrating historical and modern-day connections to the land is still very much a factor. I'm encouraged by that."

It would be preferable, Coin said, if the criteria for approving or rejecting off-reservation casinos were etched in law and not Interior department policy subject to political pressures.

"There is some comfort in knowing that the agency is going to try to stick very closely to their regulations," Valandra, the former National Indian Gaming Commission chief of staff, said.

"The only thing that is undefined is...what is the new definition and new policy about commutability. That may create some uncertainty. It's clearly a factor but it's not clear how much a factor."

The Capitol Hill lobbyist quoted earlier said it is not likely the 365 federally recognized Indian tribes in the lower 48 states will agree to a national policy on off-reservation casinos.

"As long as there are tribes looking to go off the reservation – and there's 20, 30, a bunch of them out there in Michigan, Wisconsin, California, Arizona, New Mexico, New York – will there remain a dark cloud over the issue? Absolutely."