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Should tribes be allowed in Joint Powers Agreements?

By [Malcolm Maclachlan](#) (published Thursday, September 25, 2008)

Several groups in Santa Barbara County are urging Governor Arnold Schwarzenegger to veto a water bill due to sections dealing with a local gaming tribe. Of particular issue to opponents was a request from the Santa Ynez Band of Chumash Indians that they be allowed to participate in joint powers agreements (JPAs), something sponsors say never made it into the final bill.

But the effort raises a question—how should local governments deal with tribes? According to a 1996 opinion from the Attorney General's office, tribes are not eligible to participate in JPAs, according to their interpretation of California's 1947 Joint Exercise of Powers Act.

Of course, in 1947, most tribes in California were so impoverished that this was a moot point. These days, casino tribes are building new businesses that have an affect on the communities around them. Several legislators have carried bills in recent years that would allow certain tribes to participate in particular JPAs. They've argued that JPAs are a good way to bring tribes into some kind of intergovernmental structure that would define their rights and responsibilities when it came to dealings with local governments.

But the Schwarzenegger Administration has generally been hostile to tribes taking part in JPAs—a point the opposition is emphasizing in their effort to get him to veto AB 2686. But the dispute around the bill also shows how hostility between some tribes and local communities have complicated the issue.

The bill by Assemblyman Pedro Nava, D-Santa Barbara, originally set out to clarify the relationship between the Santa Ynez Valley Water District and a sub-district, the Santa Ynez River Water Conservation District Improvement District #1, more commonly known as ID1.

The Chumash tribe has been buying water from the District for 40 years. This time has seen them transform from a nearly penniless group whose own wells had been poisoned by faulty septic systems to a growing economic powerhouse. The tribe has increasingly come into conflict with other residents of the Santa Ynez area, including a pair of anti-casino groups and a local newspaper.

"There is certainly a lack of trust between the community and the tribal leadership, and honestly the community and the county leadership," said Steve Pappas, a candidate for third district Supervisor in Santa Barbara County in November. Pappas has been critical of the bill.

References to "tribal governments" were written into the bill after an April 30 letter from tribal chairman Vincent Armenta and tribal attorney Sam Cohen was sent to Nava. Pappas and other opponents then objected to several references that appeared to give "tribal governments" the same status as government agencies. This set off fears that the tribe might use such powers to engage in eminent domain or other practices feared by the local communities.

Representatives with Nava's office, the tribe and the water districts all said that these fears were completely unfounded. The tribal government language was taken out, but then several references were added back in. In each case, the tribe was actually giving up powers, not gaining them, said Chris Dahlstrom, general manager of ID1, waiving their sovereign immunity in order to enter into water contracts. This relationship is merely clarified in the bill, he said, and the tribe is just a customer like any other.



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"They follow our rules and demands just like anyone else," Dahlstrom said.
"Actually, better than most. They pay their bills."
"This is a recognition of the district trying to maintain the status quo," said attorney Gary Kvistad, who represents ID1 via the firm Brownstein Hyatt Farber & Schreck. "Literally nothing more and nothing less."

Schwarzenegger has vetoed past bills that would have allowed tribes to participate in JPAs—mostly recently AB 1747 in 2005. This bill by Assemblywoman Lois Wolk, D-Vacaville, would have let the Rumsey Band of Wintun Indians in Yolo enter into JPAs with local government agencies. Another tribal JPA bill currently sits on his desk. AB 1884 by Assemblyman Bill Maze, R-Visalia, would allow the Tule River Tribal Council to enter into a JPA with the nearby city of Porterville.



Opponents of AB 2686 cite numerous reasons for their objections—including what they say was intervention by the tribe and "ambiguous language." The opposition is coming mainly from the anti-casino groups—Preservation of Los Olivos and Preservation of Santa Ynez, known as POLO and POSY—as well as several local private water districts. These groups started sending opposition letters to the governor shortly after the bill passed the Assembly on a 78-0 vote on August 18.

These groups used the California Public Records Act to obtain the April 30 letter from Chumash attorney Cohen to Nava's office. It warns "The cooperation of the District would greatly assist the tribe in quantifying its federally reserved water rights. A requirement of cooperation would go a long way towards fostering a negotiated resolution instead of forcing the issue into the courts."

This aggressive language set some people off, Pappas said, leading to a contentious ID1 board meeting on Sept. 16 that was packed with opponents. He noted there is good deal of concern in the community about the tribe's large bank account and claims to thousands of acres of ancestral lands, covering the California Coast from just south of Monterey to just north of Malibu.

Assurances that the bill does not give expanded rights to the tribe do not satisfy critics, who say the Chumash or other tribes could test the boundaries of a new law with lawsuits.

"I'm concerned about the tribe exercising more and more powers," said Mike Hadley, president of the private Meadowlark Ranches Mutual Water Company, which has sent two letters to the governor requesting a veto. "The slightest possibility they could partner with the water company for eminent domain is scary. They've got unlimited funds."

Doug Herthel, a representative of POLO, called the language of AB 2686 "very ambiguous and very threatening." He said there had been little communication with the local community about the bill. The community has been particularly on edge for a year now—ever since a bill from Assemblyman Joe Coto renamed the area Highway 154 "The Chumash Highway" without any input from locals. However, representatives from both ID1 and the tribe said that opponents participated in negotiations about the bill.

"Frankly, we are puzzled by Polo/Posy's concern about AB2686," said tribal spokeswoman Frances Snyder. "After all, it was their attorney who helped negotiate the bill. Perhaps they should have a talk with their own attorney rather than send out an email blast that criticizes the tribe. We can only assume that they have run out of complaints so they are attacking their own bill."

Bob Braitman, executive officer of the Santa Barbara County LAFCO, agreed that unrelated disputes seemed to be spilling over into what should be a debate about water.

"There are some people I think who are opposed to any recognition of the casino or the tribe itself," Braitman said.

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