

Outcome of Proposition 48 may have no bearing on North Fork casino project

By Marc Benjamin



Vice-chairwoman Maryann McGovran, left, with tribal council member Patrick Beihn, right, stand alongside a house with a pro-Proposition 48 message, talking about the land that belongs to the North Fork Rancheria of Mono Indians of California west of Highway 99 and north of Avenue 17 just north of Madera.

ERIC PAUL ZAMORA — Fresno Bee Staff Photo | [Buy Photo](#)

-
-

MADERA — The North Fork Mono Indians, whose casino project in Madera is up for voter approval or rejection on Election Day, say they aren't worried that opponents have outspent them 45-to-1.

If voters reject Proposition 48, they say it will only delay — not kill — the \$250 million project, which already has obtained required state and federal approvals.

Should the state or others try to block the casino based on a Prop. 48 defeat, the North Fork Indians likely would sue — and probably would prevail — experts say.

No on 48 campaigners, which include other Valley Indian casinos, clearly have deep pockets.



Table Mountain rancheria in Friant has spent nearly \$12 million. Brigade Financial, a New York-based financial backer of Chukchansi Gold Resort & Casino, has spent \$3.7 million, and the Chukchansi Economic Development Authority has chipped in \$525,000. The United Auburn Community, which has a Northern California casino and is opposing another tribe's casino effort in Yuba County, has donated \$500,000.

The Pechanga tribe in Temecula, which operates one of California's largest casinos, last week started a campaign committee opposing the Madera casino. Pechanga and Table Mountain each donated \$1 million to the committee on Wednesday.

"Prop. 48 is not about Indian gaming, it is about off-reservation gaming and the Nevada gaming corporation trying to locate a casino in an urban area," said Jacob Mejia, spokesman for the Pechanga Band of Luiseno Indians.

By contrast, supporters of Prop. 48, which include unions and North Fork project developer Station Casinos of Las Vegas, have raised just over \$400,000.

Spending by No on 48 forces will be "hard to beat," said Madera County Supervisor Tom Wheeler, who supports the project. "But I've been calling everybody I can."

"This is our land"

The site proposed for the casino is a 305-acre dirt field, two miles north of Madera along a frontage road next to Highway 99. Truckers occasionally honk toward visitors outside a dilapidated house with a large Yes on Proposition 48 sign painted on its northern wall. About 1,000 feet to the south is a tall billboard where opponents' message greets travelers.

The casino and hotel resort would have 40 gaming tables, a bingo hall and 2,000 slot machines, about the same size as Chukchansi Gold Resort & Casino.

Land for the tribe's project was placed into trust by the federal government and is 36 miles from the North Fork rancheria. For opponents, that's the main problem.

Richard Verri, a lawyer for Chukchansi, said a judge in Washington, D.C., has said that land placed into trust by the federal government for Indians can be reversed. He said approval of the North Fork project violates the spirit of California's Proposition 1-A, which voters passed in 2000 with the understanding that Indian gaming would occur only on Indian lands.

Verri predicts that statewide opposition to the compact will end the North Fork tribe's casino project.

North Fork itself is not a viable location for a casino. The rancheria consists of 80 acres and is held by five tribal families, not the tribe collectively. The federal government prohibited a casino there because it is adjacent to the Sierra National Forest and is sensitive both environmentally and archaeologically. Another 61 acres the tribe owns is dedicated to housing programs under a federal contract.

But North Fork officials say the rancheria is not the tribe's only land. Officials documented the tribe's historic travels and showed state and federal officials that the Madera area also has been a home to tribal members.

"This is our land, and nothing in this election will take it away," said Maryann McGovran, North Fork tribal council vice chairwoman.

After the governor, state Legislature and federal Department of the Interior approved the tribal gaming compact, the tribe had a green light to begin construction. But work was halted when a voter initiative gathered enough signatures to put Prop. 48 on the ballot, letting voters have a say on the compact.

Opponents to the Madera casino include Cheryl Schmit, who has directed the No on 48 campaign for Placer County-

based Stand Up For California. They say casino projects such as North Fork's are "off-reservation" and aren't covered by Prop. 1-A.

Dan Casas, Table Mountain Rancheria's lawyer, said his tribe thinks the North Fork Mono went "reservation shopping" — looking for the best place to buy land to make their casino more profitable — when it chose the Madera site. Prop. 1-A was a promise from gaming tribes to keep their casinos on rancherias or reservation land. Table Mountain was among those tribes, but the North Fork Mono was not, he said.

"We wanted the voters to weigh in on this issue," Casas said.

But John Maier, North Fork's lawyer, said tribes aren't opposing Prop. 48 because of promises made in Prop. 1-A or traditional tribal land usage. It's about competition for gambling dollars, he said.

A study commissioned by Chukchansi's tribal council predicted at least a 38% drop in Chukchansi Gold Resort & Casino's profits if the North Fork rancheria project is built along Highway 99. Experts estimate that the Chukchansi resort brings in about \$100 million in annual revenue. To compensate for Chukchansi's losses, the North Fork tribe promised not to open a hotel until 2018 and to pay \$3 million annually to the Chukchansi if they didn't oppose the compact.

Verri, the lawyer for Chukchansi, said the money proposed in the North Fork compact was offered without consultation.

"It's a gratuitous amount," he said.

Revenue projections in the compact for the Madera casino indicate annual net revenues of \$53.8 million by its seventh year. Other studies show that the Madera project is expected to bring in annual revenues of about \$100 million. A third study projects annual revenues of \$225 million.

Casino construction would create about 1,200 jobs, and the casino — when built out in three phases — would employ more than 1,400. Under the compact, Madera County and the cities of Madera and Chowchilla get about \$5 million annually to upgrade public services. Millions of dollars also will be provided for transportation projects, water conservation and public safety.

Wheeler, the Madera County supervisor, supports the North Fork Mono casino because of the financial windfall for the county and local cities .

He said the agreement is more lucrative than any other for local governments in California. The state [Legislative Analyst's Office](#) said state and local governments would receive \$16 million to \$35 million in one-time payments and also \$10 million in annual payments during the compact's 20-year life.

And the construction and casino jobs would help lower Madera County's jobless rate, which typically hovers around 15%.

Madera County Supervisor David Rogers, the only board member opposing the project, says the casino is not good for the community because it will bring increased gambling and also reduce tax revenues from businesses that pay state taxes and lose customers to Indian tribes, which are tax exempt. It could also lead to businesses closing, such as restaurants and gas stations, because casinos and gaming properties frequently offer services at lower prices, he said.

Next moves

If Proposition 48 does fail, then North Fork will have several options. The tribe could follow the lead of the Enterprise rancheria of Maidu Indians in Yuba County. The Enterprise compact for an off-reservation casino, which was approved by the governor and Department of the Interior but opposed by the United Auburn Community and other

Northern California tribes — and rejected by the state Legislature — is not subject to Proposition 48.

Enterprise subsequently sued the state for bad-faith bargaining, a path that North Fork would be likely to take.

“The notion of bad faith based on a public vote after a compact has been negotiated and ratified by a legislature has never come up before, so this would be a precedent-setting situation,” said Dave Palermo, a freelance writer for Gambling Compliance, an online trade magazine. “It appears they have several legal avenues to take that have the potential to be fruitful. It also appears they have several avenues to take through the Department of the Interior.”

Once a suit is filed, the judge would then move the compact into a 60-day negotiation process between the state and the tribe. If an agreement isn’t reached, a mediator would be brought in, which starts the clock on another 60-day negotiation process. It would then move to the state Legislature, where a decision must be reached on the compact within 60 days. If no deal is reached, the tribe could take its proposal to the federal Secretary of the Interior, which has already supported a compact, for a final decision. Within a year, the process would likely be completed and the tribe could move ahead with the project, said Maier, the tribe’s lawyer.

Bryan Newland, a Michigan lawyer who worked for the federal Department of the Interior’s assistant secretary when the North Fork application for federal trust land on the 305 acres was approved, said ultimate approval is left to the Department of the Interior.

Newland was among those who evaluated the North Fork tribe’s application for the Madera land and has been observing media reports about it.

“If the voters override that compact they are committing the state to another year or two of litigation to get to the same place where everyone is at right now, and possibly the compact that comes out of that is worse for the state,” Newland said.

He said a number of tribes were approved through this process, although none had the will of state voters against them, but he said the Indian Gaming Regulatory Act is clear.

“The tribe can sue the state for bad faith negotiations because they are entitled to negotiate for Class 3 gaming under federal law,” Newland said. “California can defend against the lawsuit, go to the mediator and try to work out an agreement or select a proposal that best fits the law. Then that (compact) gets submitted to the Secretary of the Interior for approval and once it’s approved it’s federal law.

“The notion that this project is going to be stopped is misguided.”

Kenneth Hansen, a Fresno State political science professor and co-author of “The New Politics of Indian Gaming,” described the efforts by Madera casino opponents as “a delay tactic” and expects that “the casino is going to get built anyway.”

The tribe’s other option is a “Class 2” gaming facility, which has machines that are similar to the slot machines in so-called “Class 3” facilities — and which doesn’t require a tribal compact.

“You can get rich doing that,” Hansen said. “The Seminole tribe did that and then got a \$1 billion loan and bought the Hard Rock Cafe hotel and restaurant chain.”

But he suspects the North Fork tribe will go back to the state and get the same compact or a similar one approved by the governor.

Even if the main backer of the project, Station Casinos drops out, the lion’s share of the work already is done, Newland said.

“Any number of investors would jump at it,” he said. “It’s a near certainty that North Fork rancheria will be doing

gaming at that site regardless of what happens with Proposition 48.”

No matter what the tribe does, opponents will continue efforts to halt it.

“They are going to get a fight the whole way,” said Rogers, the Madera County supervisor.

Contact Marc Benjamin: mbenjamin@fresnobee.com, (559) 441-6166 or [@beebenjamin](https://twitter.com/beebenjamin) on Twitter.

Copyright

© 2014 www.fresnobee.com and wire service sources. All Rights Reserved.

<http://www.fresnobee.com>

