

Seneca Nation of Indians

President – Robert Odawi Porter
Clerk – Diane Kennedy Murth

**90 OHI:YO' WAY
ALLEGANY TERRITORY
SENECA NATION
SALAMANCA 14779**

**Tel. (716) 945-1790
FAX (716) 945-1565**



Treasurer – Bradley G. John

**12837 Route 438
Cattaraugus Territory
Seneca Nation
Irving 14081**

**Tel. (716) 532-4900
FAX (716) 532-6772**

PRESIDENT'S OFFICE

September 14, 2011

Honorable John Bonacic, Chair
Senate Standing Committee on Racing, Gaming and Wagering
509 Legislative Office Building
Albany, NY 12247

Dear Senator Bonacic:

I write to provide you and the Senate Racing, Gaming and Wagering Committee with some clarifying information regarding the Seneca Nation and the background and status of our "exclusivity" payments to New York State.

Some of the information that was provided to the Committee by the New York Gaming Association at the September 7th hearing in Albany was, at best, inaccurate. At worst, it was intentionally misleading.

The attached document provides specific information regarding the 2002 agreement between the Seneca Nation and the State of New York recognizing the Nation's exclusive right to offer gaming devices in Western New York. It also explains the amounts that have been paid to the State and its local governments, and the amounts currently held in escrow.

I hope this additional information assists the Committee in its understanding the nature and extent of the State's 2002 commitment to the Seneca Nation, the Seneca Nation's reliance on the State's promises, and how the Seneca Nation has been working to resolve the dispute over the exclusivity breach for nearly two years.

Please feel free to contact me if you require any additional information on this or any related issues.

Once again, thank you for the opportunity to engage in dialogue with you and the Committee on this important issue.

Sincerely,

A handwritten signature in black ink that reads "Robert Odawi Porter". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Robert Odawi Porter
President



Understanding Seneca Nation Gaming Exclusivity

September 2011

Overview

This document is intended to ensure that state lawmakers have accurate background and information regarding the Seneca Nation's "exclusivity" payments to New York State.

New York State Promised the Seneca Nation Gaming Exclusivity in 2002

In 2002, the Seneca Nation of Indians (SNI) entered into a gaming compact with New York State, under the authority of the federal Indian Gaming Regulatory Act (25 U.S.C. § 2701 *et seq.*), which is also known as IGRA. (View the [2002 NYS-SNI gaming compact](#).)

The compact authorizes "Class III" (Las Vegas-style) gaming to be conducted on Seneca lands, including the lands the Nation acquired in Niagara Falls and Buffalo. The compact governs all Class III gaming-related issues between the Nation and the State, and can be terminated upon a material breach by either party.

Federal law does not allow states to tax or otherwise impose fees on an Indian Nation for gaming activities. However, the Nation and New York State agreed that the State would grant the Seneca Nation exclusivity over "Gaming Devices" in Western New York [NYS-SNI Gaming Compact, Paragraph 12(a)], while the Nation would pay the State a portion of the "net drop" (defined as "the gross amount wagered after payouts, but before expenses") with respect to those "Gaming Devices" in increasing amounts over time [Paragraph 12(b)]:

Years	1-4	18%
	5-7	22%
	8-14	25%

The Seneca Nation has paid New York State and host municipalities \$475.2 million in exchange for "exclusivity"; this amount reflects payments made for the Nation's gaming activity on "Gaming Devices" through December 2008.

The Compact defines "Gaming Devices" as "slot machines" and "video lottery gaming devices" [NYS-SNI Gaming Compact, Appendix A]. The Compact also indicates that should the State permit any other person or entity to offer "slot machines" or "video lottery gaming devices" within the geographic zone of exclusivity, the Nation would be immediately relieved of any obligation to make exclusivity payments to the State for that category of Gaming Device.

The Seneca Nation Gaming Exclusivity Zone

The Seneca Nation Gaming Exclusivity Zone (see a map on the last page of this document) encompasses all of Western New York and part of the Finger Lakes region.

The Exclusivity Zone includes all of the state in the area west of State Route 14 – roughly from Sodus Point in the north down to the Pennsylvania border just south of Elmira. It includes all of Allegany, Chautauqua, Cattaraugus, Erie, Genesee, Livingston, Monroe, Ontario, Niagara, Schuyler, Wayne and Wyoming counties, and part of Chemung County.

New York State Has Broken Its Promise of Gaming Exclusivity to the Seneca Nation

In 2004, Finger Lakes and Hamburg began to offer “video lottery terminal” games at their facilities. In 2005, Batavia followed suit. All three racinos are in the Nation’s zone of exclusivity and this activity relieved the Nation of any obligation to make an exclusivity payment to the State from revenues generated by video lottery gaming devices under the compact.

In 2008, two further events occurred that precipitated the current dispute over the Nation’s exclusive rights to offer slot machines in Western New York.

First, the Nation discovered that an illegal slot-machine game called Moxie Mania was being offered in various taverns in our exclusivity zone with the full knowledge and concurrence of State Liquor Authority officials. And second, the three racinos in our exclusivity zone – Hamburg, Batavia, and Finger Lakes – were renamed as “casinos” that offered “slot machines.”

As a result, the Nation has held back the exclusivity payments that otherwise would be due to the State for slot machine activity since January 2009. To date, approximately \$310 million is currently being held in escrow by the Nation pending resolution of this dispute.

The Seneca Nation Has Been Trying to Resolve this Dispute for Nearly Two Years

In January 2010, the Nation sent a letter to Governor Paterson informing the State of its breach of the Nation’s exclusivity rights for slot machines under the compact and asking for a meeting to discuss the issue. The State did not respond.

While awaiting a reply, the Nation held back the semi-annual payments that would have otherwise been due for 2009 and for the first half of 2010. Finally, with no reply from the State, in August 2010, the Nation Council formally suspended all payments.

Only then – long after the Nation informed the State of their breach – did the State respond.

Governor Paterson’s Counsel accused the Nation of violating the Compact in retaliation for the State’s efforts to impose taxation on cigarettes and demanding immediate payment. *In fact, this dispute is solely about the state’s violation of the 2002 gaming compact – it has nothing to do with the state’s efforts to tax tobacco products on Indian lands.*

The result was that there was no meaningful dialogue to resolve this issue during the Paterson Administration.

Current Status of the Exclusivity Dispute

The Seneca Nation is currently holding approximately \$310 million in escrow pending resolution of this dispute.

The Seneca leadership recently met with representatives of Governor Cuomo – Lt. Governor Duffy, Director of State Operations Howard Glaser, Deputy Secretary Bennett Liebman and Chief Counsel Mylan Denerstein – to address this and other issues. We are engaged in active conversations with the Cuomo Administration in a good faith effort to resolve this dispute.

The New York Gaming Association is Spreading Inaccurate and Misleading Information

At the September 7th joint hearing of the Senate Racing, Gaming and Wagering Committee and the Senate Judiciary Committee on the state’s possible expansion of commercial casino gambling, the New York Gaming Association (NYGA) presented inaccurate information on the proceeds the state has receive from Indian gaming.

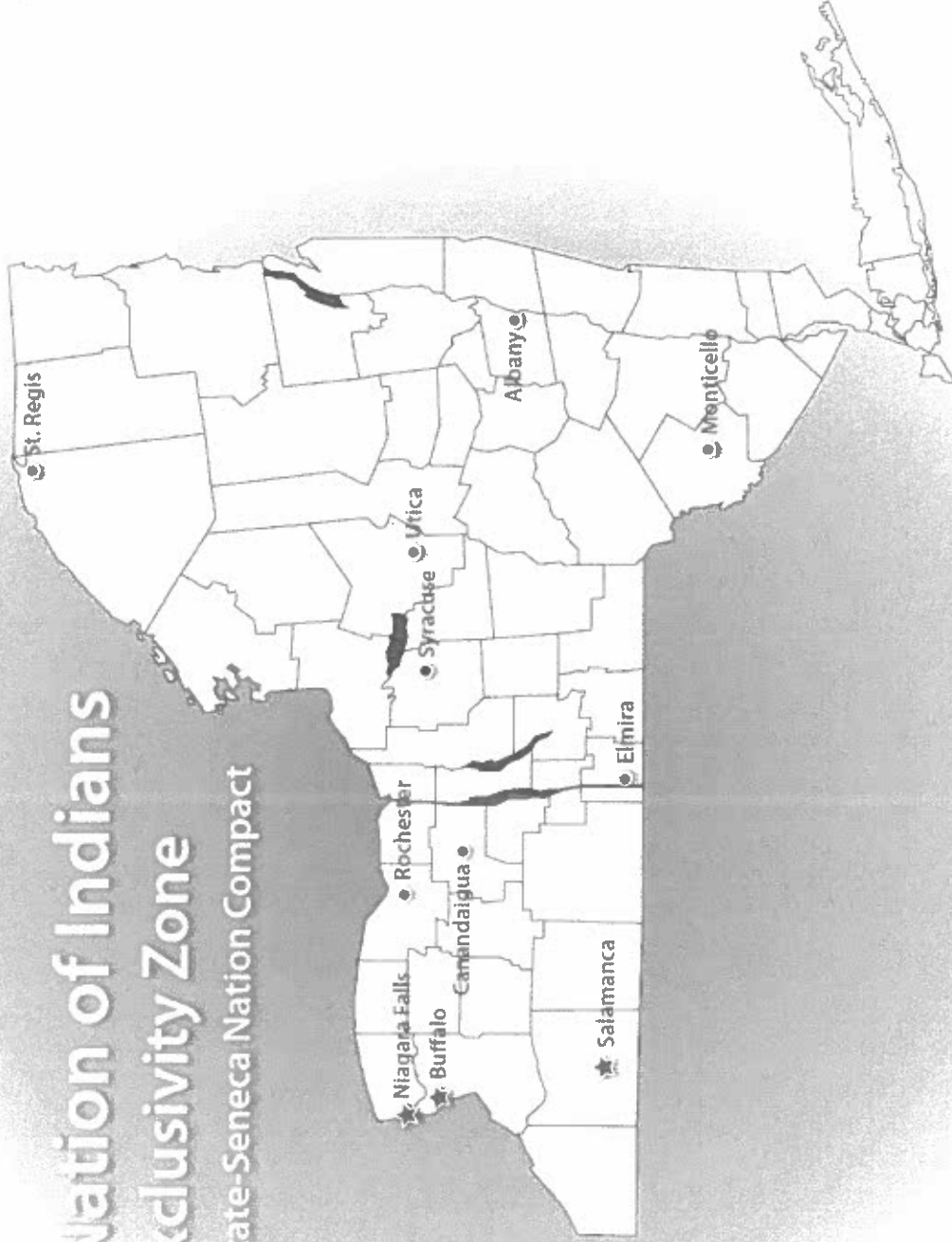
NYGA President James Featherstonough presented testimony stating that Native American casinos have provided “\$0 in Aid to New York” – this is clearly, demonstrably false.

As explained above, the Seneca Nation has provided almost half a billion dollars in aid to New York State, and an additional \$310 million remains in escrow pending the resolution of our exclusivity dispute with New York State. The escrow account balance will continue to grow while the dispute is pending.

APPENDIX

Seneca Nation of Indians Gaming Exclusivity Zone

2002 New York State-Seneca Nation Compact





TESTIMONY OF ROBERT ODAWI PORTER
PRESIDENT OF THE SENECA NATION OF INDIANS
BEFORE THE NEW YORK STATE SENATE COMMITTEE ON RACING, GAMING AND
WAGERING
SEPTEMBER 6, 2011

I. Introduction and Background.

Nya:weh Ske:no. Greetings to Chairman Bonacic and members of the Committee, and to the other Senators in attendance. I am thankful that you are well, and appreciate the opportunity to address you today.

I am here today on behalf of the Seneca Nation of Indians – and on behalf of those New Yorkers who are employed by the Nation’s enterprises, some of whom have joined us today – to share with you our perspective on the question of whether the state constitution should be amended to permit commercialized gambling in New York State.

A constitutional amendment allowing commercial casino gambling in Western New York would undermine the Seneca’s billion dollar investment in Western New York. It would also threaten the thousands of jobs we have created since 2002.

But before I address these specific issues, I would like to share with you some relevant historical information that will help you to fully understand the Seneca Nation’s key role in the modern Western New York economy.

In 1794, the Seneca Nation, along with the other nations of the Six Nations Haudenosaunee Confederacy, signed a treaty with the newly established United States of America that recognized the sovereignty of the Seneca Nation and established peace between our nations. This treaty also recognized the Seneca Nation’s aboriginal title to what is now known as Western New York State and promised that we would be secure in the “free use and enjoyment” of those lands. This treaty is one of the earliest and

most significant treaties in American history as it unified our peoples in a military alliance that proved critical to repelling the last British effort to threaten the United States during the War of 1812.

This treaty was signed right here in Canandaigua, and so it is especially significant that the Committee is conducting its first hearing here on the subject of legalizing commercial gambling in the State. In the history of the Seneca and American people, this is a sacred place – a place where solemn commitments were made to respect and honor one another and to live together in peace.

While there have been challenges in our relationship during the last 216 years, our treaty relationship with the United States has endured. Most recently, the United States fulfilled one of its obligations under the Canandaigua Treaty by sending our share of \$4,500 worth of cloth that is distributed annually to the Haudenosaunee people. This annuity payment, although small by today's standards, clearly demonstrates that our treaty relationship is alive and well.

Unfortunately, many of the promises made to us by the United States remain unfulfilled, or have been broken. Most notably, the United States has inconsistently protected our Nation from the predatory behavior of New York State and its officials. From the time the Canandaigua Treaty was signed, the Seneca Nation has confronted repeated efforts by the State to take title and assert jurisdiction over our lands, to impose taxation in our lands, and even to take control over our children and our identity as a distinct indigenous people.

These threats have continued to the present day. Nearly 60 years ago, the State pressured us into signing an illegal right-of-way agreement for the New York State Thruway through our Cattaraugus Territory. 50 years ago, the State actively supported the taking of 10,000 acres of our Allegany Territory by the United States for the Allegheny Reservoir and Kinzua Dam, as well as our termination as a sovereign nation. 35 years ago, the State induced us into allowing the Southern Tier Expressway to cross our Allegany Territory with promises that to this day have not been satisfied.

Despite this long history of predatory behavior, the Nation and the State came together in 2002 to enter into a Class III Gaming Compact that recognized the Nation's exclusive right to offer slot machines and other gaming devices in Western New York. While recently a disagreement has emerged – which I will address later in my testimony – the fact remains that the Nation and the State have created thousands of jobs and billions of dollars in economic benefit for our two governments and the people of Western New York through Indian gaming.

The question I have for the Committee is this: Will New York State head down the same old path of telling lies to Indians and breaking our agreements by allowing commercial gambling in Western New York in violation of our 2002 Class III gaming Compact?

II. The Seneca Nation and its Economy.

The Seneca Nation of Indians is the largest of the indigenous nations that comprise the Six Nations Haudenosaunee (Iroquois) Confederacy. We have a rich history that extends back hundreds of years with origins in this very location. According to oral history, our birthplace as a people is at Ganondagan, near present day Victor, New York, which ironically is now controlled by New York State as a designated historic site. Our ancestors formed a powerful union with the other indigenous nations in what is now upstate New York and southern Ontario. We became known as the “Keepers of the Western Door” and extended our influence far into what is now Western Pennsylvania and Ohio, and beyond.

Following the American Revolutionary War, we lost most of our aboriginal lands in a land-for-peace deal that secured the title to the lands we now occupy. Most of our 8,000 citizens live on or near our Allegany and Cattaraugus Territories in Western New York. Combined with our Oil Spring, Buffalo Creek, and Niagara Falls Territories, we own and retain full jurisdiction over 50,000 acres.

The loss of most of our lands 200 years ago changed life significantly for the Seneca people. Foremost, the loss of our lands constituted a loss of our national wealth and we began a period of chronic poverty and underdevelopment that only recently has begun to subside.

The Seneca Nation's economic revitalization began in the 1970s based upon economic support from the United States in the form of health care and job training assistance. Later in the decade, a tobacco trade emerged as a few Seneca entrepreneurs and the Nation government began selling tax-free cigarettes to non-Indians in our territory. It is important to note that, based upon the Canandaigua Treaty and the Treaty of Buffalo Creek in 1842, the Seneca Nation and the Seneca people have always been immune from State taxes. It was only when New York State began to heavily tax cigarette sales that the business opportunity was created. Over the years, the tobacco trade has allowed for the Nation government and many Seneca people to start businesses and generate needed revenue for the services we provide our people. It would not have happened if the State had not raised its cigarette taxes to what is now the highest rate in the United States.

While the tobacco trade has been lucrative, the most recent economic success for the Nation has been through gaming. In the early 1980s, the Nation commenced high-stakes bingo operations, which later expanded to include electronic gaming. On January 1, 2003, the Nation opened our Class III casino in Niagara Falls and we have been growing ever since.

Today, the Seneca economy generates a little over \$1 billion annually, employing approximately 6,000 people, including thousands of non-Indians in New York, Pennsylvania and Canada who work at our gaming businesses, our tobacco businesses, and in our government. Our economy has both public and entrepreneurial sectors making the Seneca Nation the fifth largest employer in Western New York.

The Seneca Gaming Corporation has some 3,600 employees – 3,200 of whom are non-Indians -- and the Nation government has 1,300 employees. The Seneca Gaming Corporation generated \$95.4 million in

payroll over the last year, plus \$30 million in taxes, insurance and benefits. Seneca Gaming Corporation spent a total of \$165.6 million with 1,380 vendors during the August 2010 – July 2011 time period. Our construction projects over the last nine years – which includes casino construction and public works projects – total approximately \$900 million.

As Seneca Nation leaders, we will do everything that we can to fight the erosion of our treaty rights and to protect the Seneca economy and its positive impact on the regional and state economy. But the numbers make clear that our fight for economic sovereignty is also a fight that protects the livelihoods of thousands of non-Indians, their families, their businesses and their communities throughout our region. I can say with confidence that no other organization or government during the last ten years has made an economic contribution to Western New York like the Seneca Nation.

III. The Seneca Nation's Gaming Interests.

A. Seneca Gaming Corporation.

Because of its relevance to the question before the Committee, I would like to share with you some specific information regarding our Class III gaming operations.

Pursuant to the 2002 Compact with the New York State, the Seneca Nation owns and operates three Class III casinos:

- in Niagara County, known as Seneca Niagara Casino and Hotel on our Niagara Falls Territory,
- in Cattaraugus County, known as the Seneca Allegany Casino and Hotel on our Allegany Territory in Salamanca; and
- in Erie County, known as the Seneca Buffalo Creek Casino on our Buffalo Creek Territory.

B. Seneca Gaming Exclusivity.

The 2002 agreement provides that in exchange for the exclusive right to offer slot machines in our region – which is the area west of State Route 14 near Seneca Lake – we will pay the State up to 25% of the “net drop” on those machines. Pursuant to State law, 25% of the monies received by the State are then paid to the “host communities” to mitigate impacts associated with casino operations. To date, the Nation has paid New York State and local municipalities \$475.2 million in exchange for this “exclusivity,” while an additional \$310 million is currently being held in escrow.

C. The NYS/SNI Exclusivity Dispute.

It is important to keep in mind that the 2002 Compact reflects a union of two historic adversaries and that disagreements and disputes over minor issues are inevitable. So, too, are agreements and the Compact appendices have been amended repeatedly to reflect the addition of new games over the years. Two significant disputes, however, have arisen and serve as the basis for the Nation withholding significant amounts of monies otherwise due to the State.

The first relates to reimbursements of monies invoiced for State Police and state Racing and Wagering Board expenses at the casino facility. Under the Compact, the Nation agreed to reimburse the State for certain regulatory expenses, including the salaries of State personnel assigned to casino-related work. Since gaming commenced at Niagara Falls, the State Police has ostensibly provided law enforcement services at that facility and the Nation has been billed for these expenses. Additionally, the State Police has billed the Nation for expenses associated with background check investigations related to licensing under the Compact. Almost from the beginning, the Nation – through our regulatory arm the Seneca Gaming Authority – confirmed unsupported and exorbitant charges by the State Police that were invoiced to the Nation. Because these charges were not defensible – and because the State Police has refused to provide any explanation – the Nation has denied paying these charges for years. To a much

lesser extent, we have also disputed charges assessed by the State Racing and Wagering Division. The current unpaid balance of State Police assessed charges is approximately \$48 million.

At the end of the Paterson Administration, some progress was made in resolving this outstanding dispute. Currently, we have been in discussion with representatives of Governor Cuomo and believe that we are on a productive path that may lead to the resolution of this issue in the near future.

The second major dispute involves the Nation's assertion that the State has grossly violated the exclusivity requirement of the 2002 Compact. In 2008, two events occurred that precipitated the current dispute over the Nation's exclusive rights to offer slot machines in Western New York. First, the Nation discovered that an illegal slot-machine game called Moxie Mania was being offered in various taverns in our exclusivity zone. And second, the three racinos in our exclusivity zone – Hamburg, Batavia, and Finger Lakes – were renamed as “casinos” that offered “slot machines.”

The Compact is very clear that a breach of exclusivity by the State completely relieves the Nation of its exclusivity payment to the State from the time of the breach into the future. In this way, the Compact creates a strict liability scheme. The Nation does not have to prove intent or damages – only that the State violated the Compact in allowing others to offer slot machines or video lottery terminals in the Nation's zone of geographic exclusivity.

Once the breach was discovered, the Nation held back the semi-annual exclusivity payment due for gaming activity through the end of June 2009. The State did not respond. The Nation then held back the next semi-annual payment due for gaming activity through the end of December 2009. Again the State did not respond. In January 2010, the Nation sent a letter to Governor Paterson informing the State of its breach, expressing our legal reasoning why the Nation's exclusivity payment obligation was breached, and asking for a meeting to discuss the issue. Again, the State did not respond. In August 2010, the Nation Council formally suspended all payments for the breach.

Only then did the State respond. We received an audacious response from Governor Paterson's Counsel accusing the Nation of violating the Compact in retaliation for the State's efforts to impose taxation on cigarettes and demanding immediate payment. While there was a very limited effort at the end of the Paterson Administration to address our concerns about exclusivity, there was no meaningful dialogue to resolve this issue.

We recently met with representatives of Governor Cuomo – Lt. Governor Duffy, Director of State Operations Howard Glaser, Deputy Secretary Bennett Liebman and Chief Counsel Mylan Denerstein. While there are many issues outstanding between the Nation and the State, it is our hope that we will be able to resolve this dispute and others in the near future.

D. The Seneca Nation Opposes Commercial Casinos Expansion in Western New York.

It should come as no surprise that the Seneca Nation is opposed to the expansion of commercial gambling in New York where our interests are affected. In our view, authorizing commercial casinos in Western New York would represent yet another injustice by the State to violate its written agreements with our Nation.

In 2002, we were promised slot machine exclusivity and we used that exclusivity to invest \$1 billion in Western New York. We made those investments – borrowing and spending hundreds of millions of dollars, employing thousands of construction workers, and hiring thousands of new employees. The future remains just as bright as the past. Most recently, the Seneca Gaming Corporation announced plans to construct a \$53 million addition to the hotel at the Seneca Allegany Casino & Hotel. Plans are also in the works right now for designing our Buffalo Creek Casino and commencing construction next year.

Will the 2002 gaming compact become just another of the state's broken promises to the Nation?

Amending the state constitution to allow commercial casino gaming in Western New York will not improve the Western New York economy. In fact, it will undermine the Seneca Nation's important economic contribution to the region and jeopardize the investment plans currently underway.

E. The Seneca Nation in the Catskills?

We believe that Indian gaming can and should play an important role in gaming expansion in the State, if that is what is desired. Recently, the United States Department of the Interior lifted restrictions on the ability of Indian nations and tribes to have lands taken into trust for gaming purposes.

We believe that the great things that the Nation and the State have done in Western New York can be replicated in the Catskills region. We have re-established our Catskills development committee and begun the search for a development partner. We have also met with local officials and re-affirmed that our previously negotiated local mitigation agreement remains in effect.

IV. Conclusion

On behalf of the more nearly 14,000 citizens and employees of the Seneca Nation of Indians and the Seneca Gaming Corporation, thank you for conducting this important hearing and for inviting the Nation to testify on our economic development and job partnership and accomplishments in Western New York.

We hope to continue our economic and job development efforts in Western New York and beyond, and we look forward to continuing our dialogue with you on this important issue.