



## ***Iipay Nation's Battle for Tribal Sovereignty Continues***

by Dave Vialpando

For those following the Iipay Nation of Santa Ysabel's (Santa Ysabel) uphill battle in the tribe's efforts to exercise tribal sovereignty in offering interactive Class II gaming from the tribe's reservation, you've probably noticed the absence of news, leaving the impression perhaps that the tribe has acquiesced to the pressure of the state and federal government. Nothing could be further from the truth. Santa Ysabel is committed to continuing the legal battle until we prevail to the eventual benefit of all tribal nations.

After months of planning and regulatory preparation by the Santa Ysabel Tribal Gaming Commission (SYGC) pursuant to the commission's authority under federal law to conduct classification determinations of proposed games using Class II gaming systems, DesertRoseBingo.com was launched for real money play in November of 2014. The State of California sought and obtained a temporary restraining order in U.S. federal court in the Southern District of California, within days of the launch of the tribe's bingo enterprise. The Court's written decision granting the State's request indicated a complete lack of familiarity with tribal sovereignty issues or the characteristics of gaming by tribes.

In December 2014, Santa Ysabel filed a Motion to Dismiss the State's action on the grounds that, given the State's own factual allegations in its complaint, the State's action is expressly barred by the tribe's sovereign immunity pursuant to controlling federal court decisions. In March 2014, without entertaining oral arguments by the litigants, the Court summarily denied the tribe's motion. The decision was not totally unexpected by Santa Ysabel given the Court's myopic perspective of the issues and its apparent propensity to side with non-tribal governments.

Since the Court's ruling on the tribe's Motion to Dismiss, the U.S. Attorney's Office in the Southern District of California has entered the fray with its own legal action attempting to restrain Santa Ysabel from pursuing its on-reservation interactive Class II gaming enterprise. Although the legal basis for the federal prosecutor's action is slightly different from the State's, the cases are very similarly aligned. Because the cases are so similar with regard to the issues under litigation, the tribe entered into discussions with both the federal prosecutor and the State to join the cases and have all the issues heard by the federal court in one fell swoop. Part of the reason for this decision by the tribe is the confidence Santa Ysabel has in its ability to ultimately prevail and part of

the decision involves the potential cost savings in litigation for all involved.

Many tribal gaming experts believe that the Iipay Nation will ultimately prevail in any court challenge against DesertRoseBingo and that interactive Class II gaming, where the computers servers managing every aspect of the interactive gaming enterprise and ancillary processes are located on the tribe's sovereign lands, will be protected from state assault under IGRA. Since the passage of IGRA in 1988, tribes in the U.S. have had the exclusive right to conduct and regulate Class II gaming on their Indian lands. While California has extensive regulations guiding the state's oversight of poker offered in the state's non-tribal card rooms and charitable bingo conducted throughout California, the State has no authority and has never had any involvement with games of poker or bingo offered in brick and mortar tribal casinos and tribal bingo halls. The regulation of Class II gaming has always been the purview of tribal gaming agencies, and numerous tribal gaming leaders believe nothing should change when the same activity evolves into the interactive gaming space.

As stated repeatedly earlier this year through numerous public venues, the Iipay Nation is committed to fighting the blatant inequities and one-sided perspective non-tribal governments have imposed on independent tribal nations which are working hard to provide for their communities and improve the quality of life for their people. Santa Ysabel has received tremendous support from tribal nations across the country and words of encouragement from tribal gaming professionals who recognize that the Iipay Nation is intent on engaging in activity which is consistent with IGRA and within the expertise of tribes to conduct and regulate. Not any less important are Desert Rose Bingo's loyal customers, who during the enterprise's short duration, enjoyed a satisfying and entertaining interactive gaming experience.

Well-regulated tribal interactive Class II gaming, conducted on a tribe's native lands, is not only good for tribal communities, but satisfying for California gaming consumers and represents the state-of-the-art in gaming technology. ♣

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