

CALIFORNIA GAMBLING CONTROL COMMISSION  
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2399 Gateway Oaks Drive  
Sacramento, CA 95833  
September 4, 2002, 1:30 a.m.

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## MINUTES OF SEPTEMBER 4, 2002 COMMISSION MEETING

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### OPEN SESSION

Chairman Hensley called the meeting of September 4, 2002, to order at 1:35 p.m. with Chairman Hensley and Commissioners Smith, Sasaki and Palmer present.

Staff Participating: Gary Qualset, Deputy Director Licensing and Compliance; Peter Melincoe, Chief Counsel, Legal Division.

The Pledge of Allegiance was recited.

Commissioner Sasaki moved to approve the August 26, 2002, Commission Meeting Minutes. Commissioner Smith seconded the motion, which was unanimously adopted. Commissioner Sasaki moved to approve the August 27, 2002, Commission Meeting Minutes. Commissioner Smith seconded the motion, which was unanimously adopted.

### DECISION ITEMS

1. Applications for Work Permit:
  - a. Empire Sportsmen's Association:  
Seth, Charvy
  - b. Sonoma Joes:  
Lyfoung, Hauvtoj

Deputy Director Qualset indicated that both the Division of Gambling Control and Commission staff recommend approval of the applications for work permits for Charvy Seth and Hauvtoj Lyfoung. Commissioner Smith moved to approve the applications for work permits for Charvy Seth, and Hauvtoj Lyfoung. Commissioner Sasaki seconded the motion, which was unanimously adopted.

2. Application for Work Permit – Request for Withdrawal:
  - a. Empire Sportsmen’s Association:  
Bethkhouda, Fredrik

Deputy Director Qualset indicated that both the Division of Gambling Control and Commission staff recommend approval without prejudice the request for withdrawal of the application for a work permit for Fredrik Bethkhouda. Commissioner Sasaki moved to approve without prejudice the request for withdrawal of the application for a work permit for Fredrik Bethkhouda. Commissioner Smith seconded the motion, which was unanimously adopted.

3. Applications for Key Employee License:
  - a. Bicycle Casino:  
Harn, Joy  
Budds, Thomas
  - b. California Commerce Casino:  
Wong, Alan  
Gustin, Timothy
  - c. California Grand Casino:  
Farris, Shelly
  - d. Capitol Casino:  
Rosa, Pamela

Deputy Director Qualset indicated that both the Division of Gambling Control and Commission staff recommend approval of the applications for a key employee license for Joy Harn, Thomas Budds, Alan Wong, Timothy Gustin, Shelly Farris, and Pamela Rosa. Commissioner Palmer moved to approve the applications for a key employee license for Joy Harn, Thomas Budds, Alan Wong, Timothy Gustin, Shelly Farris, and Pamela Rosa. Commissioner Sasaki seconded the motion, which was unanimously adopted.

4. Applications for Key Employee – Request for Withdrawal:
  - a. Bicycle Casino:  
Segars, Adrienne
  - b. Casino San Pablo:  
Shui, Walter
  - c. Lucky Chances Casino:  
Singh, Manjit
  - d. Normandie Club:  
Green, Cheryl

Deputy Director Qualset indicated that both the Division of Gambling Control and Commission staff recommend approval without prejudice the requests for withdrawal of the applications for a key employee license for Adrienne Segars, Walter Shui, Manjit Singh, and Cheryl Green. Deputy Director Qualset further

indicated that upon approval of the requests for withdrawal the applicants would be refunded any application deposit fees not earned by the Division of Gambling Control. Commissioner Sasaki moved to approve without prejudice the requests for withdrawal of the applications for a key employee license for Adrienne Segars, Walter Shui, Manjit Singh, and Cheryl Green. Commissioner Smith seconded the motion, which was unanimously adopted.

5. Applications for Renewal of State Gambling License:
  - a. Aldo's Cardroom: Waldo Esquivel, Sole Proprietor.
  - b. Klondike Casino: Leonard Marquez, Sole Proprietor.
  - c. Palomar Club: R.L. Cloper, Lucy E. Cloper, D.M. Staats and Susan Staats, A General Partnership.
  - d. Philipine Gardens: Michael Arturo Romero, Sole Proprietor.

Deputy Director Qualset indicated that both the Division of Gambling Control and Commission staff recommend approval of the application for renewal of a state gambling license for Item 5a, Aldo's Cardroom. Commissioner Palmer moved to approve the application for renewal of a state gambling license for Item 5a, Aldo's Cardroom. Commissioner Sasaki seconded the motion, which was unanimously adopted.

Deputy Director Qualset indicated that both the Division of Gambling Control and Commission staff recommend approval of the application for renewal of a state gambling license for Item 5b, Klondike Casino. Commissioner Smith moved to approve the application for renewal of a state gambling license for Item 5b, Klondike Casino. Commissioner Palmer seconded the motion, which was unanimously adopted.

Deputy Director Qualset indicated that both the Division of Gambling Control and Commission staff recommend approval of the application for renewal of a state gambling license for Item 5c, Palomar Club. Commissioner Palmer moved to approve the application for renewal of a state gambling license for Item 5c, Palomar Club. Commissioner Smith seconded the motion, which was unanimously adopted.

Deputy Director Qualset indicated that both the Division of Gambling Control and Commission staff recommend approval of the application for renewal of a state gambling license for Item 5d, Philipine Gardens. Commissioner Sasaki moved to approve the application for renewal of a state gambling license for Item 5d, Philipine Gardens. Commissioner Smith seconded the motion, which was unanimously adopted.

6. Application for State Gambling License – Request for Withdrawal:
  - a. Rumors: Lonnie Lemons, Sole Proprietor.

Deputy Director Qualset indicated that both the Division of Gambling Control and Commission staff recommend approval without prejudice the request for withdrawal for the application for a state gambling license for Item 6a, Rumors. Commissioner Palmer moved to approve without prejudice the request for withdrawal for the application for a state gambling license for Item 6a, Rumors. Commissioner Sasaki seconded the motion, which was unanimously adopted.

7. Tribal-State Gaming Compact Gaming Device License Draw.  
Tribal-State Gaming Compact Section 4.3.2.2.

Deputy Director Qualset presented to the Commission for its consideration the draw priority categories in Compact section 4.3.2.2(a)(3) for the gaming device license draws to be conducted September 5, 2002. Commissioner Smith moved to approve the draw priority categories in Compact section 4.3.2.2(a)(3) as presented by Deputy Director Qualset. Commissioner Sasaki seconded the motion, which was unanimously adopted. A copy of the staff reports titled Explanation of the Draw Process and Explanation of Draw Priority Categories in Compact section 4.3.2.2(a)(3) are incorporated into the minutes as Attachment A.

8. Emergency Regulations – Registration of Manufacturers and Distributors of Gambling Equipment. B&P Code §19834A(r).

Item 8 was tabled until the September 25, 2002, Commission meeting.

- \*9. Finding of Necessity for the Addition of an Item (Item 10) to a Previously Posted Agenda (Government Code Section 11125.3.)

Commissioner Sasaki indicated that the Commission finds: (1) that there is a need to take immediate action concerning the matter of "Commission policy and interpretation of Tribal-State Gaming Compact sections 5.1, 5.2, and 5.3" due to implementation of the Compact provisions this year, and, (2) that the need for action came to the attention of the Commission subsequent to the distribution of the agenda as specified in Government Code sec. 11125. Commissioner Smith moved to approve the finding of necessity for the addition of Item 10. Commissioner Palmer seconded the motion. The motion was unanimously adopted with Chairman Hensley and Commissioners Palmer, Smith and Sasaki all voting to approve the finding of necessity.

\*10. Commission Policy and Interpretation of Tribal-State Gaming Compact Sections 5.1, 5.2, and 5.3.

Deputy Director Qualset presented to the Commission for its consideration staff recommendations concerning Commission Policy and Interpretation of Tribal State Gaming Compact sections 5.1, 5.2, and 5.3.

Kathy Hatch, City of Coachella, asked that the Commission consider the first calendar quarter ending on June 30, 2002, when it adopts its policy concerning Compact Sections 5.1, 5.2, and 5.3.

Robert Rossette, Attorney, Monteau & Peebles presented written comments to the Commission on behalf of Monteau & Peebles, The Palace Indian Gaming Center, and Table Mountain Rancheria. A copy of these written comments is incorporation into the minutes as Attachment B.

Bonnie Shaft presented comments to the Commission concerning Compact Sections 5.1, 5.2, and 5.3, stating the California Nations Indian Gaming Association (CNIGA) has taken the position that the Commission has no authority to interpret Section 5 of the Compact.

Robert Rossette, Attorney, Monteau & Peebles, commented for the record that CNIGA has taken no position regarding who has the authority to interpret Section 5 of the Compact.

Deputy Director Qualset indicated that staff recommends that the Commission adhere to the American Institute of Certified Public Accountants (AICPA) definition of "net win" set forth in the AICPA Audit and Accounting Guide, Audits of Casinos with Conforming Changes as of May 1, 2000, which uses the term synonymously with "win" and "gross gaming revenue."

Commissioner Sasaki moved to adopt the staff recommendation. Commissioner Palmer seconded the motion, which was unanimously adopted.

Deputy Director Qualset indicated that staff recommends that the Commission adopt, as its policy, that the Quarterly Device Base is the sum total of the number of Gaming Devices in operation for each day of the calendar quarter divided by the number of days in the calendar quarter that the Gaming Operation operates any Gaming Devices during the given calendar quarter.

Commissioner Smith moved to adopt the staff recommendation. Commissioner Sasaki seconded the motion, which was unanimously adopted.

Deputy Director Qualset indicated that staff recommends that the Commission adopt, as its policy, that the calendar quarter ending September 30, 2002, is the first calendar quarter subject to quarterly contributions, and the due date for the

first contribution into the Special Distribution Fund is, therefore, October 30, 2002, and each subsequent due date for the transfer of contributions is 30 days after the end of each subsequent calendar quarter consistent with the language of the Compact.

Commissioner Sasaki moved to adopt the staff recommendation. Commissioner Smith seconded the motion, which was unanimously adopted.

A copy of the staff report titled Special Distribution Fund Reporting Under Compact Section 5.0 is incorporated into the minutes as Attachment C.

### **PUBLIC COMMENT**

Incorporated into the minutes as Attachment D is written comments from John A. James, Tribal Chairman, Cabazon Band of Mission Indians.

Incorporated into the minutes as Attachment E is written comments from Anthony Cohen, Attorney, Clement, Fitzpatrick & Kenworthy.

### **CONSENT CALENDAR ITEMS**

None.

### **CLOSED SESSION**

Chairman Hensley announced that the Commission would be going into closed session. At 2:43 p.m. the Commission adjourned to closed session after Commission Counsel stated that discussions concerning personnel issues would take place under Government Code Section 11126(a)(1).

### **RECONVENE OPEN SESSION**

Chairman Hensley reconvened the open session at 3:10 p.m. and indicated there were no announcements from the closed session. Chairman Hensley moved to adjourn the meeting. Commissioner Sasaki seconded the motion, which was adopted unanimously; the meeting was adjourned at 3:12 p.m.

## Explanation of the Draw Process

Compact section 4.3.2.2(a)(3)(i)-(v) states five categories of priority for each gaming device license draw. The first priority category is entitled to draw up to 150 gaming device licenses. The second priority category is entitled to draw up to 500 licenses. The third priority category is entitled to draw up to 750 licenses. The fourth priority category is entitled to draw up to 500 licenses. The fifth priority category is entitled to draw up to 500 licenses, not to exceed 2000 total authorized gaming devices.

Drawing gaming device licenses in a priority category moves the drawing Tribe at least one priority category lower. For example, a Tribe that draws licenses in priority category #1 can only participate in the next round of draws in priority category #2. As another example, a Tribe that draws licenses in priority category #3 will participate in the next round of draws in priority category #4, unless the Tribe's authorized number of gaming devices exceeds 1500, in which case the Tribe would participate in the next round of draws in priority category #5.

Under Compact section 4.3.2.2(a)(3)(vi), the draw process consists of consecutive rounds of draws, which are each conducted using the above-described priorities. The rounds of draws are continued until Tribes cease making draws or there are no more licenses available for draw. If the draws are discontinued due to Tribes ceasing to draw, then the draws are discontinued for one month or until a Tribe requests a draw. If the draws are discontinued because there are no more licenses available for draw, the draws cannot be resumed until more licenses become available for draw.

In each round of draws, each participating Tribe may draw up to the maximum number of licenses allowed for its priority category in that draw. Upon completion of a round of draws, Compact section 4.3.2.2(a)(3)(vi) requires commencement of another round until the draws are discontinued as described above.

If there are insufficient licenses to meet all requests of participant Tribes in the final round of draws, the Compacts do not specify how the remaining licenses are to be apportioned. Commission staff recommends that the round continue until reaching the priority category for which there are insufficient licenses and that, if there is more than one Tribe in that priority category, the remaining licenses should be apportioned equally to those Tribes. If after that apportionment any licenses remain undistributed, those licenses should be distributed by drawing lots among the Tribes in that priority category.

Explanation of Draw Priority Categories in Compact section 4.3.2.2(a)(3)

First Draw Priority goes to Tribes that have drawn no licenses and operated no gaming devices as of 9/1/99.

Second Draw Priority goes to Tribes that have either operated 500 or fewer gaming devices on 9/1/99 or that have drawn any licenses under the First Draw Priority.

Third Draw Priority goes to Tribes that have either operated 501 through 1000 gaming devices on 9/1/99 or that have drawn any licenses under the Second Draw Priority.

Fourth Draw Priority goes to Tribes authorized to operate up to and including 1500 gaming devices and that either have drawn any licenses under the Third Draw Priority or fail to meet the criteria for the First, Second, or Third Draw Priority.

Fifth Draw Priority goes to Tribes authorized to operate more than 1500 gaming devices or that have drawn any licenses under the Fourth Draw Priority.

Number of Gaming Device Licenses Requested

Cabazon	700
Colusa	250
Hopland	475
Jackson	575
Paskenta	25
Picayune	200
Robinson	220
Rumsey	894
Shingle Springs	1,650
Tule River	750
United Auburn	<u>1,000</u>
Total	6,739

<b>Tribe</b>	<b>Priority</b>	<b>License Draw Amount</b>	<b>Total Licenses Awarded</b>
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First Round Draw Priorities

Shingle Springs	(i)	150	
Robinson	(ii)	220	
Colusa	(iii)	250	
Hopland	(iii)	475	
Jackson	(iii)	575	
Paskenta	(iii)	25	
Tule River	(iii)	750	
United Auburn	(iii)	750	
Cabazon	(iv)	500	
Rumsey	(iv)	500	
Picayune	(v)	200	

Second Round Draw Priorities

Shingle Springs	(ii)	500	650
Cabazon	(v)	156	656
Rumsey	(v)	156	656
United Auburn	(v)	156	906
Colusa	(draws only in the first round)		250
Hopland	(draws only in the first round)		475
Jackson	(draws only in the first round)		575
Paskenta	(draws only in the first round)		25
Picayune	(draws only in the first round)		200
Robinson	(draws only in the first round)		220
Tule River	(draws only in the first round)		<u>750</u>
Total			5,363

Number of Gaming Device Licenses Available

Total Returned Putative Sides Licenses = 2,610  
 Additional Licenses Available for Draw = 2,753  
 Total Number of Licenses Available for Draw = 5,363

Number of License Requests Exceeding Number Available for Draw = 1,376

SPECIAL DISTRIBUTION FUND REPORTING UNDER  
COMPACT SECTION 5.0

REPORT OF THE STAFF  
CALIFORNIA GAMBLING CONTROL COMMISSION  
SEPTEMBER 4, 2002 HEARING

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INTRODUCTION

Tribal-State Gaming Compact (Compact) section 5.0 provides the terms and conditions for submission of quarterly reports and contributions to the Special Distribution Fund (SDF).

Starting in December 2001, Commission staff began meeting with those tribes subject to Compact section 5.0 SDF reporting and contribution requirements<sup>1</sup> to obtain input regarding the quarterly reporting requirements under Compact section 5.3(c) and the calculation of "net win" as defined in Compact section 2.15 (see Attachment A for the language of Compact sections 2.15 and 5.0). Additionally, a letter dated August 1, 2002, was sent to all other Compacted Tribes soliciting their input as parties to a Compact. As of August 8, 2002, meetings with 26 of the 28 tribes subject to the contribution requirement have been held. Numerous efforts were made to meet with all Tribes.

**DEFINITION OF NET WIN**

Compact section 2.15 states, "Net Win" means "net win" as defined by the American Institute of Certified Public Accountants.

Referring to the *AICPA Audit and Accounting Guide, Audits of Casinos with Conforming Changes as of May 1, 2000 (AICPA Audit Guide)*, for guidance, paragraph 1.40 reads as follows:

Win or Loss is normally computed by machine, by denomination, and in total. Slot machine win or loss is equal to the drop less the fills and less any hand-paid jackpots.

Further, the *AICPA Audit Guide's* glossary defines "gross gaming revenue (win)" as "*The net win from gaming activities, which is the difference between gaming wins and losses before deducting costs and expenses.*" (emphasis added).

In the *AICPA Audit Guide*, the AICPA uses the term "Gross Gaming Revenue (win)" to refer to the concept of gross revenue in the gaming industry. This terminology is used to distinguish it from the total amount wagered in the games being played and is synonymous with net win. Net win is a revenue accounting concept and, therefore, does not include any operating cost or expense items associated with the gaming operations.

In determining the definition of "net win" the California Gambling Control Commission has received expert opinion from Mr. John Mills, Ph. D., MBA, CPA, and full professor of accounting at the University of Nevada, Reno that the term "net win" is recognized by the

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<sup>1</sup> Tribes operating gaming devices on September 1, 1999 are subject to Compact section 5.0. Commission staff has determined that there were 38 Tribes meeting this criterion based upon the number of gaming devices reported in operation on September 1, 1999 in individual Compacts. Staff has also determined that 10 of the Tribes subject to Compact section 5.0 would not have to contribute to the Fund because the first 200 gaming devices are in a 0% contribution tier according to the table in Compact section 5.1(a).

AICPA as included in their *AICPA Audit Guide*, and is synonymous with the terms “gross gaming revenue” and “win”. Staff has also received direct guidance from the AICPA and California Society of Certified Public Accountants technical assistance sections that the term “net win” is defined by the AICPA in the *AICPA Audit Guide*.

Some tribes have raised objection to the staff application of the definition of “net win” to the terms in section 5.0 of the Compact. These objections fall into three primary categories, all of which would require renegotiation of the Compacts. Some tribes took the position that the *AICPA Audit Guide* and hence the AICPA did not have a definition of net win, and therefore, the terms of Compact section 2.15 and 5.0 cannot be given effect in accordance with the Compact language. However, if the proponents of this view were correct, the Compacts would presumably require renegotiation rather than interpretation. The Governor is the only official empowered by law to negotiate Compacts on behalf of the State.

Others propose alternatives to the AICPA definition without providing any authoritative accounting standards basis or other compelling supporting explanation for any reason to deviate from the Compact language. However, the Compacts must be applied in accordance with their terms and the Commission cannot perform ad hoc renegotiation under the guise of interpretation.

Finally, there are those that believe the AICPA definition is out of date (although it was republished with conforming changes as of May 1, 2000). Again, the suggestion is that the terms of the Compacts be renegotiated, which the Commission is powerless to do.

### **Recommendation**

The Commission adhere to the AICPA definition of “net win” set forth in the *AICPA Audit and Accounting Guide, Audits of Casinos with Conforming Changes as of May 1, 2000*, which uses the term synonymously with “win” and “gross gaming revenue.”

### QUARTERLY DEVICE BASE

Compact section 5.3(a) sets forth the formula for computing quarterly contributions to the SDF as follows:

Section 5.3. (a) The quarterly contributions due under section 5.1 shall be determined and made not later than the thirtieth (30<sup>th</sup>) day following the end of each calendar quarter by first determining the total number of all Gaming Devices operated by a Tribe during a given quarter (“Quarterly Device Base”). The “Average Device Net Win” is calculated by dividing the total Net Win from all terminals during the quarter by the Quarterly Terminal Base.<sup>1</sup>

Under these provisions, the quarterly contribution to the SDF is computed based on the percentages of “Average Device Net Win” specified in the table in Compact section 5.1. “Average Device Net Win” is calculated by dividing the total Net Win from all Gaming Devices during the quarter by the Quarterly Device Base (aka Quarterly Terminal Base).

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<sup>1</sup> For purposes of the above formula, it appears that the terms “gaming device” and “terminal,” as well as the terms “quarterly device base” and quarterly terminal base are used interchangeably. Previously approved Compacts, from which these provisions were apparently adapted, used the term “terminal” rather than “gaming device” to designate slot-machine-like devices. “Terminal” is used in various locations in the Compacts and there is no indication that the use of the term was intended to designate anything other than a gaming device.

As clearly suggested by the term "Average Device Net Win," the use of the formula is designed to produce an average. The formula of Compact section 5.3(a) used to derive that average directs use of the "Quarterly Device Base," which is defined as the total number of all Gaming Devices operated by a Tribe during a given quarter.

Assuming that a Tribe operates a constant number of Gaming Devices during a calendar quarter, the application of the formula to derive the "Average Device Net Win" is straightforward. However, the derivation of an average net win becomes complex if the number of Gaming Devices operated during a calendar quarter fluctuates.

**Commission staff believes that the scheme of Compact section 5.3(a) dictates the use of averaging techniques to define the "Quarterly Device Base" for a calendar quarter, where there is a significant fluctuation in the number of gaming devices operated by the Tribe during the quarter (see the July 2, 2002, Commission staff report). This average can be easily computed by dividing the sum total of the number of Gaming Devices in operation for each day of the calendar quarter by the number of days in the calendar quarter that the Gaming Operation operates any Gaming Devices during the given calendar quarter.**

#### Recommendation

The Commission adopt, as its policy, that the Quarterly Device Base is the sum total of the number of Gaming Devices in operation for each day of the calendar quarter divided by the number of days in the calendar quarter that the Gaming Operation operates any Gaming Devices during the given calendar quarter.

#### FIRST CALENDAR QUARTER SUBJECT TO QUARTERLY CONTRIBUTIONS AND DUE DATE FOR CONTRIBUTIONS INTO THE SPECIAL DISTRIBUTION FUND

The Compact states in section 5.1(b) that "[t]he first transfer to the Special Distribution Fund of its share of the gaming revenue shall made [sic] at the conclusion of the first calendar quarter following the second anniversary date of the effective date of this Compact." This language raises interpretive questions because it does not specify whether it refers to the conclusion of the first full calendar quarter or the conclusion of the partial calendar quarter following the second anniversary date of the effective date of the Compact when the first transfer becomes due. The Commission requested legal analysis of this Compact language by the Attorney General's Office. Upon review of the language, the Attorney General's Office concluded and advised the Commission, in an opinion dated May 23, 2002, that the first transfer to the Special Distribution Fund was due following the end of the quarter ended June 30, 2002, and the due date for the transfer would accordingly be July 30, 2002.

Many Tribes subject to the SDF contribution requirement disagree with this conclusion reached by the Attorney General's Office. These Tribes take the view that the Compact intended the contributions to commence at the conclusion of the first full calendar quarter following the second anniversary date of the effective date of the Compact.

The Commission has previously resolved Compact ambiguities concerning payments to the Revenue Sharing Trust Fund in favor of the payors, where intent was not otherwise discernable with reasonable certainty. Although Commission staff believes that the Attorney General's view reflects the probable intent of this Compact language, the inherent ambiguity of the language in the Compact suggests the application of the interpretation favoring the payor, consistent with past Commission actions.

## Recommendation

The Commission adopt, as its policy, that the calendar quarter ending September 30, 2002, is the first calendar quarter subject to quarterly contributions, and the due date for the first contribution into the Special Distribution Fund is, therefore, October 30, 2002, and each subsequent due date for the transfer of contributions is 30 days after the end of each subsequent calendar quarter consistent with the language of the Compact.

### **QUARTERLY CONTRIBUTION REPORT REQUIREMENTS**

California Compact Tribes that operated more than 200 Class III gaming devices on September 1, 1999 are required to contribute to the SDF. In addition, Compact section 5.3(c) requires these Tribes to “submit to the State a report (the “Quarterly Contribution Report”) certified by an authorized representative of the Tribe reflecting [1] the Quarterly Device Base, [2] the Net Win from all terminals in the Quarterly Device Base (**broken down by Gaming Device**) (emphasis added), and [3] the Average Device Net Win”.

To aid in the consistent and uniform reporting and contribution, Commission staff will be compiling a reporting form and supporting schedules with instructions allowing for net win per device to be reported as prescribed by the Compact. Although several Tribes have requested contributions be reported on a one-page summary report form, Commission staff recommends that the report contain detail of net win by gaming device in order to comply with the Compact requirements. Use of a standard report form by all Tribes will allow for more expeditious initial review of and subsequent auditing of report amounts should that be necessary. The use of standard reporting forms should help to reduce the time needed to conduct any audit performed and may substantially reduce the amount of time that the Commission staff is in the field conducting audits.

**Sec. 2.0. DEFINITIONS.**

**Sec. 2.15.** "Net Win" means "net win" as defined by American Institute of Certified Public Accountants.

**SEC. 5.0 REVENUE DISTRIBUTION**

**Sec. 5.1.** (a) The Tribe shall make contributions to the Special Distribution Fund created by the Legislature, in accordance with the following schedule, but only with respect to the number of Gaming Devices operated by the Tribe on September 1, 1999:

<u>Number of Terminals in Quarterly Device Base</u>	<u>Percent of Average Gaming Device Net Win</u>
1 - 200	0%
201 – 500	7%
501 – 1000	7% applied to the excess over 200 terminals, up to 500 terminals, plus 10% applied to terminals over 500 terminals, up to 1000 terminals.
1000+	7% applied to excess over 200, up to 500 terminals, plus 10% applied to terminals over 500, up to 1000 terminals, plus 13% applied to the excess above 1000 terminals.

(b) The first transfer to the Special Distribution Fund of its share of the gaming revenue shall made at the conclusion of the first calendar quarter following the second anniversary date of the effective date of this Compact.

**Sec. 5.2. Use of funds.** The State's share of the Gaming Device revenue shall be placed in the Special Distribution Fund, available for appropriation by the Legislature for the following purposes: (a) grants, including any administrative costs, for programs designed to address gambling addiction; (b) grants, including any administrative costs, for the support of state and local government agencies impacted by tribal government gaming; (c) compensation for regulatory costs incurred by the State Gaming Agency and the state Department of Justice in connection with the implementation and administration of the Compact; (d) payment of shortfalls that may occur in the Revenue Sharing Trust Fund; and (e) any other purposes specified by the Legislature. It is the intent of the parties that Compact Tribes will be consulted in the process of identifying purposes for grants made to local governments.

**Sec. 5.3.** (a) The quarterly contributions due under Section 5.1 shall be determined and made not later than the thirtieth (30<sup>th</sup>) day following the end of each calendar quarter by first determining the total number of all Gaming Devices operated by a Tribe during a given quarter ("Quarterly Device Base"). The "Average Device Net Win" is calculated by dividing the total Net Win from all terminals during the quarter by the Quarterly Terminal Base.

(b) Any quarterly contribution not paid on or before the date on which such amount is due shall be deemed overdue. If any quarterly contribution under Section 5.1 is overdue to the Special Distribution Fund, the Tribe shall pay to the Special Distribution Fund, in addition to the overdue quarterly contribution, interest on such amount from the date the quarterly contribution was due until the date such quarterly contribution (together with interest thereon) was actually paid at the rate of 1.0% per month or the maximum rate permitted by state law, whichever is less. Entitlement to such interest shall be in addition to any other remedies the State may have.

(c) At the time each quarterly contribution is made, the Tribe shall submit to the State a report (the "Quarterly Contribution Report") certified by an authorized representative of the Tribe reflecting the Quarterly Device Base, the Net Win from all terminals in the Quarterly Device Base (broken down by Gaming Device), and the Average Device Net Win.

(d) If the State causes an audit to be made pursuant to subdivision (c), and the Average Device Net Win for any quarter as reflected on such quarter's Quarterly Contribution Reports is found to be understated, the State will promptly notify the Tribe, and the Tribe will either accept the difference or provide a reconciliation satisfactory to the State. If the Tribe accepts the difference or does not provide a reconciliation satisfactory to the State, the Tribe must immediately pay the amount of the resulting deficiencies in the quarterly contribution plus interest on such amounts from the date they were due at the rate of 1.0% per month or the maximum rate permitted by applicable law, whichever is less.

(e) The Tribe shall not conduct Class III gaming if more than two quarterly contributions to the Special Distribution Fund are overdue.