

California Gambling Control Commission  
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MINUTES OF JULY 21, 2005  
COMMISSION MEETING

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**OPEN SESSION**

Chairman Shelton called the meeting of July 21, 2005, to order at 10:01 a.m., with Commissioners Sasaki, and Williams present.

Staff Participating: Chief Counsel, Cyrus Rickards and Heather Hoganson, Staff Counsel, Legal Division.

**DECISION ITEMS**

Chairman Shelton welcomed those present and indicated that the purpose of this morning's meeting was to allow the Commissioners to participate with the industry and other interested parties in a public workshop on drafting disciplinary regulations. Chairman Shelton indicated that Commissioners and staff would be reviewing industry recommendations and urged attendance at future Commission meetings and workshops to provide further input on the draft regulations. Chairman Shelton introduced Staff Counsel Heather Hoganson as the meeting's facilitator and asked her to provide a brief history on the regulation drafting process.

1. Public Workshop – Disciplinary Regulations (10:00 a.m. – 12:00 p.m.)

Staff Counsel Hoganson provided a procedural history of the draft regulations, indicating that a draft had been sent to the rulemaking list in January 2005, and a public workshop held on February 15, 2005. From those speaking at the workshop and those who had indicated an interest, a smaller working group was formed of industry members, and additional draft language discussed. The topic of disciplinary regulations was brought to the Commissioners at the July 7, 2005 meeting, and the Commissioners indicated that they would like another public workshop, bringing everyone to the current meeting.

Comments on the proposed regulations at the workshop, and those written comments received by the Commission in advance of the workshop, will be incorporated into a revised draft, which will be brought before the Commission at a future date. Once the Commission approves the future draft for purposes of Administrative Procedure Act (APA) Comment, a formal notice and comment period of 45 days, followed by a formal APA hearing, will be held. Everyone will have an opportunity to comment on the revised draft and any changes made to that draft at either the upcoming Commission meeting or during the APA comment period or hearing. Finally, once a final draft is prepared, it will be placed on the agenda for Commission adoption at a noticed meeting, and anyone may address the Commissioners regarding the draft at that point as well.

Commissioner Cruz arrived at the meeting at 10:10 A.M.

A copy of the staff proposed draft of California Code of Regulations, Title 4, Division 18, Chapter 10 – Discipline; Decisions, is incorporated into the minutes as Attachment A.

## **PUBLIC COMMENTS**

Kermit Schayltz, President of the Golden State Gaming Association, stated that David Fried and Steve Simas will be representing the industry and presenting their recommendations at this meeting.

Mr. Fried, Attorney for the Golden State Gambling Association, complimented the Commission on the process used in working with the industry on drafting the disciplinary regulations. Mr. Fried gave a PowerPoint presentation concerning disciplinary regulations addressing the following four issues: 1) basic purpose and structure of the regulations; 2) civil penalty fines structure; 3) process for license revocation; and 4) application of the standard of proof in situations involving suspension or revocation of an owner's license. A copy of the PowerPoint presentation Mr. Fried presented is incorporated into the minutes as Attachment B. Mr. Fried submitted written comments from the Golden State Gaming Association, which are incorporated into the minutes as Attachment C.

Mr. Steve Simas, Attorney representing Golden State Gaming Association, commented on the Commission's duties under the Administrative Procedure Act and the importance of an adequate record to support findings and penalties. Mr. Simas advised that the current draft regulations try to anticipate every possible violation, which may be problematic for an administrative law judge and, ultimately, the Commission, in exercising discretion. Mr. Simas congratulated staff on having very thorough factors in mitigation and aggravation, and added that the Nevada mitigation factors proposed by the Golden State Gaming Association would be a good addition.

John Sustatia, Gaming Consultant, commented on the revocations of Diamonds Casino and Outpost Casino's state gambling license indicating the complications of license revocations involving bankruptcy that are not addressed in the draft regulations.

Leonard Chaidez, Mayor, City of Hawaiian Gardens, commented on the impact that a license revocation has on a city and its citizens, stressing that many cities rely on revenue from gambling establishments. Mr. Chaidez suggested that the Commission consider establishing a procedure for temporary licensure to allow for continuation of the business rather than permanent closure.

Tracy Buck-Walsh, Attorney representing Network Management, thanked the staff for their hard work, and by holding this workshop providing opportunity for industry input. She also thanked Mr. Fried for his logical and thoughtful presentation and stated it was worthy of serious consideration. Ms. Buck-Walsh stated Network's principle concern is that the Third-Party Proposition Player Services (TPPPS) regulation fails to address law enforcement concerns. Ms. Buck-Walsh suggested separate disciplinary regulations for TPPPS. Ms. Buck-Walsh submitted written comments regarding disciplinary regulations for TPPPS that are incorporated into the minutes as Attachment D.

Matt Campoy, Division of Gambling Control, addressed Business and Professions Code section 19801(g), indicating that the Division will oppose the proposed penalty of ten-percent of average daily gross revenue and recommends a minimum of fifty-percent. Mr. Campoy stated the Division was very happy with the regulations, specifically, Section 12554(c) which states that a preponderance of the evidence standard be used (as opposed to the Golden State Gaming Association's suggestion of clear and convincing evidence).

Chairman Shelton thanked everyone and requested that the industry and Division would continue to work with Commission staff on drafting disciplinary regulations.

Upon motion to adjourn the morning session by Commissioner Cruz, seconded by Chairman Shelton and unanimously carried in a roll-call vote with Chairman Shelton and Commissioners Cruz, Sasaki, and Williams voting yes, the morning session adjourned at 11:09 a.m.

## RECONVENE

Chairman Shelton reconvened with the afternoon session at 1:00 p.m., with Commissioners Cruz, Sasaki, and Williams present.

Staff Participating: Eugene Balonon, Executive Director, Cyrus Rickards, Chief Counsel, and Heather Hoganson, Staff Counsel, Legal Division, Cara Podesto, Manager, Licensing Division, and Frank Lechner, Manager, Compliance Division.

### 2. Applications for Work Permits:

- a. Club San Rafael  
Massetti, Ronald
- b. Empire Sportsmen Association

- Men, Sokhamara
- Nguyen, Hai
- c. Sundowner Cardroom
- Blackmon, Billy
- d. The 101 Casino
- Chavez, Michelle
- Ramus, Shawn
- Scott, Trevor
- Tuaua, Matea
- Ward, Dominic

Manager Podesto indicated that both the Division of Gambling Control and Commission staff recommend approval of the applications for a work permit for Ronald Massetti, Item 2.a., Sokhamara Men and Hai Nguyen, Item 2.b., Billy Blackmon, Item 2.c., Michelle Chavez, Shawn Ramus, Trevor Scott, Matea Tuaua, and Dominic Ward, Item 2.d. Upon motion of Commissioner Sasaki, seconded by Commissioner Williams and unanimously carried in the call for a vote, with Chairman Shelton and Commissioners Cruz, Sasaki, and Williams voting yes, the Commission approved the applications for a work permit for Ronald Massetti, Sokhamara Men, Billy Blackmon, Michelle Chavez, Shawn Ramus, Trevor Scott, Matea Tuaua, and Dominic Ward.

3. Application for Renewal Work Permit:

- a. The 101 Casino
- Charp, Marsha

Manager Podesto indicated that both the Division of Gambling Control and Commission staff recommend approval of the application for the renewal of a work permit for Marsha Charp, Item 3.a. Upon motion of Commissioner Williams, seconded by Commissioner Cruz and unanimously carried in the call for a vote, with Chairman Shelton, and Commissioners Cruz, Sasaki, and Williams voting yes, the Commission approved the application for renewal of a work permit for Marsha Charp.

4. Application for Key Employee License:

- a. Normandie Casino
- Renn, Paul

Manager Podesto indicated that both the Division of Gambling Control and Commission staff recommend denial of the application for a key employee license for Paul Renn, Item 4.a. Manager Podesto further indicated that staff had received a communication from the Normandie Casino requesting that matter be tabled, however staff is recommending that the Commission move forward with its decision.

Chief Counsel, Rickards interjected that Keith Sharp, Attorney for Paul Renn had contacted him to ask that the item be tabled for one meeting because he just became aware of the situation, and this would allow him time to address the issue personally.

Upon motion of Commissioner Williams, seconded by Commissioner Cruz and unanimously carried in the call for a vote, with Chairman Shelton, and Commissioners Cruz, Sasaki, and Williams voting yes, the Commission denied the application for key employee license for Paul Renn.

5. Request for Additional Authorized Tables:

a. Lake Bowl Cardroom: Waldemar Dreher – Sole Proprietor

Manager Podesto indicated that both the Division of Gambling Control and Commission staff recommend approval of the request for one additional table, for a total of six tables authorized on the license for the Lake Bowl Cardroom, Item 5.a. Upon motion of Commissioner Sasaki, seconded by Commissioner Cruz and unanimously carried in the call for a vote, with Chairman Shelton, and Commissioners Cruz, Sasaki, and Williams voting yes, the Commission approved the request for one additional table for a total of six tables authorized on the license for the Lake Bowl Cardroom.

b. Rogelio's: Rogelio's Inc. - Corporation

Manager Podesto indicated that both the Division of Gambling Control and Commission staff recommend approval of the request for two additional tables, for a total of four tables, contingent on payment of fees, authorized on the license for the Rogelio's, Item 5.b. Upon motion of Commissioner Cruz, seconded by Commissioner Sasaki and unanimously carried in the call for a vote, with Chairman Shelton, and Commissioners Cruz, Sasaki, and Williams voting yes, the Commission approved the request for two additional tables for a total of four tables, contingent on payment of fees, authorized on the license for Rogelio's.

6. Application for State Gambling License:

a. Bicycle Casino: Bell Gardens Bicycle Club, Joint Venture  
Longaker, Melinda  
Pierson, Patricia Ann  
Pierson, Stacey

Manager Podesto indicated that both the Division of Gambling Control and Commission staff recommend approval of the application for state gambling license for Bicycle Casino: Melinda Longaker, Patricia Ann Pierson, and Stacy Pierson, Item 6.a. The three applicants previously owned shares in a trust and were licensed in the beneficiary category, with Commission approval; applicants will be licensed as limited partners in the owner category. All limited partners are listed in on the license.

Commissioner Sasaki requested clarification regarding Melinda Longaker's limited partnership status and whether it was necessary to register as an individual.

Chief Counsel Rickards stated that "limited partner" is the correct status and Manager Podesto stated that Melinda Longaker would be listed on the state gambling license as a limited partner.

Commissioner Cruz expressed concern that Melinda Longaker is the only married partner and inquired as to the procedures for married stakeholders.

Deb DeRosier, Special Agent in Charge, Division of Gambling Control addressed the Commission and advised that the Division conducts a background investigation on all spouses unless they sign a release or waiver that the property is sole and separate. Melinda Longaker's spouse did indeed sign a waiver that the casino is her sole and separate property.

Upon motion of Commissioner Sasaki, seconded by Chairman Shelton and unanimously carried in the call for a vote, with Chairman Shelton, and Commissioners Cruz, Sasaki, and Williams voting yes, the Commission approved the applications for state gambling license for Melinda Longaker, Patricia Ann Pierson, and Stacey Pierson.

7. Applications for Renewal of State Gambling License:

a. Artichoke Joe's Casino: Artichoke Joe's Incorporated – Corporation

Manager Podesto indicated that both the Division of Gambling Control and Commission staff recommend approval of the application for renewal of a conditional state gambling license, effective August 1, 2005 through October 31, 2005, for Artichoke Joe's Casino, Item 7.a., to include the following conditions:

1. *The Licensee will ensure that no Third Party Proposition Player Services (TPPPS), or employee of a TPPPS operates on the premises, unless pursuant to Title 4, California Code of Regulations (CCR), Chapter 2.1.*
2. *The Licensee will exclude any player/supervisor wearing TPPPS badge unless that player/supervisor is employed by a TPPPS with a contract with the Licensee approved pursuant to Title 4, CCR, Chapter 2.1.*
3. *The Licensee will exclude any player/supervisor who the licensee reasonably believes is an employee of or independent contract with any Gambling Business not registered pursuant to Title 4, CCR, Chapter 2.1.*

Commissioner Williams expressed concerns that TPPPS badges were not being used correctly and perhaps should be seized.

Mr. Al Edelstein, spokesperson for Artichoke Joe's, advised the Commission that Alan Titus, Counsel for Artichoke Joe's, had forwarded to the Division a letter of explanation of the incident involving TPPPS badge use. He stated that the TPPPS provider is

registered with the Commission and employees were mistakenly wearing the wrong badge. To avoid further misunderstanding Mr. Edelstein stated that Artichoke Joe's recently signed a TPPPS contract with Network Management, Inc., which he believed would soon come before the Commission for approval.

Commissioner Cruz questioned Mr. Edelstein on the cause of action for Artichoke Joe's pending litigation.

Mr. Edelstein further indicated that the pending litigation was concerning the practice of tip pooling. He believed that supervisors and managers are not permitted to be included in the tip pool process and felt it was an issue to be addressed by the courts.

Commissioner Sasaki requested a follow up on whether employees continue to wear the TPPPS badges.

Chairman Shelton voiced his concerns regarding Artichoke Joe's being uncooperative with document requests. Mr. Edelstein disagreed stating their only concern was that documents requested by the Division and Commission could possibly present a privacy issue regarding their employees and patrons.

Chairman Shelton made a motion to issue a 30-day temporary state gaming license, pending a report from the Division regarding Artichoke Joe's cooperation with Division and Commission's document requests. Commissioner Williams seconded the motion, which unanimously carried in the call for a vote, with Chairman Shelton and Commissioners Cruz, Sasaki, and Williams voting yes, the Commission approved a 30-day temporary renewal of the state gambling license from August 1, 2005 to August 31, 2005, for Artichoke Joe's, with the conditions recommended by staff applied to the license.

b. Kelly's: Albert Cianfichi, Sole Proprietor

Manager Podesto indicated that both the Division of Gambling Control and Commission staff recommend approval of the application for renewal of a three-month conditional state gambling license effective August 1, 2005 through October 31, 2005, for Kelly's, Item 7.b., with the following condition:

- 1. Prior approval is required from the Division of Gambling of Control for any advertisement and/or operations of promotions at the licensed gambling establishment.*

Upon motion of Chairman Shelton, seconded by Commissioner Sasaki and unanimously carried in the call for a vote, with Chairman Shelton and Commissioners Cruz, Sasaki, and Williams voting yes, the Commission approved the application for

renewal of a three-month conditional state gambling license for Kelly's, with the condition recommended by staff applied to the license.

c. La Primavera Pool Hall and Café: Candelario Salas

Manager Podesto indicated that both the Division of Gambling Control and Commission staff recommend approval of the application for renewal of a conditional state gambling license effective May 1, 2005 through April 30, 2006 for La Primavera Pool Hall and Café, Item 7.c., with the following conditions:

1. *Provide the Commission with a contact person/interpreter for licensing purposes. The contact person/interpreter will be available, by phone, daily to Commission staff between the hours of 8:00 a.m. and 5:00 p.m. or respond within one working day.*
2. *Letters from the Commission or Division will be appropriately responded to within three working days.*
3. *All future applications and/or renewals shall be submitted within the statutory time requirements.*

Chairman Shelton made a motion to approve a 60-day temporary conditional license, pending review of Mr. Salas' financial status and cash flow issues. Commissioner Cruz seconded the motion, which was unanimously carried in the call for a vote, with Chairman Shelton and Commissioners Cruz, Sasaki, and Williams voting yes, the Commission approved a 60-day temporary conditional state gambling license, from August 1, 2005 through September 30, 2005, for La Primavera Pool Hall and Café, with the conditions recommended by staff applied to the license.

d. Lucky Derby Casino: Point – Walker, Incorporated – Corporation

Manager Podesto indicated that both the Division of Gambling Control and Commission staff recommend approval of the application for renewal of a state gambling license effective August 1, 2005 through July 31, 2006, for Lucky Derby Casino, Item 7.d. Upon motion of Commissioner Sasaki, seconded by Chairman Shelton and unanimously carried in the call for a vote, with Chairman Shelton and Commissioners Cruz, Sasaki, and Williams voting yes, the Commission approved the application for renewal of state gambling license for Lucky Derby Casino.

e. River Cardroom: The River Cardroom, Inc., Corporation

Manager Podesto indicated that both the Division of Gambling Control and Commission staff recommend approval of the application for renewal of a state gambling license effective May 1, 2005 through April 30, 2006, for The River Cardroom, Item 7.e. Upon motion of Commissioner Sasaki, seconded by Commissioner Williams and unanimously

carried in the call for the vote, with Chairman Shelton and Commissioners Cruz, Sasaki, and Williams voting yes, the Commission approved the application for renewal of a state gambling license for River Cardroom.

f. Silver Fox Cardroom: Silver Fox, Inc., Corporation

Manager Podesto indicated that both the Division of Gambling Control and Commission staff recommend approval of the application for renewal of a state gambling license effective August 1, 2005 through July 31, 2006, for the Silver Fox, Inc., Item 7.f. Upon motion of Commissioner Williams, seconded by Commissioner Cruz and unanimously carried in the call for the vote, with Chairman Shelton and Commissioners Cruz, Sasaki, and Williams voting yes, the Commission approved the application for renewal of a state gambling license for the Silver Fox.

g. Tommy's Casino and Saloon: Tommie Wayne Buck Inc., Corporation

Manager Podesto indicated that both the Division of Gambling Control and Commission staff recommend approval of the application for renewal of a conditional state gambling license for the remainder of the licensing period which expires on December 31, 2005, for Tommy's Casino and Saloon, Item 7.g., with the following condition:

1. *Licensee must provide the Commission with a status in writing of the pending settlement of file number TAX01-1316, State of Arizona, Office of the Attorney General, or any action taken in California related to the Arizona action, no later than November 30, 2005.*

Commissioner Cruz expressed concerns about the Arizona judgment against Tommie Wayne Buck and questioned his plan for resolution of this matter.

Rodney Blonien, representing Mr. Buck, explained the judgment history and provided Commissioners with letters from the State of California Alcoholic Beverage Control and the City Manager of El Centro verifying that there are no records of disciplinary actions against Mr. Buck, which are incorporated into the minutes as Attachments E and F. Incorporated into the minutes as Attachment G and H respectively are letters from Mr. Buck's attorney Ted Bowen dated July 27, 1987 and March 2, 2000.

Commissioner Williams stated that Mr. Buck's issues do not stem from any California gambling license and recommended that the Commission renew his license without restriction.

Chairman Shelton cautioned that without the Arizona issue being resolved, the issue might continue to arise with future renewals.

Commissioner Williams moved to approve the renewal of the state gambling license for Tommy's Casino and Saloon. Commissioner Sasaki seconded the motion, which failed

to carry in the call for the vote with Commissioner Williams and Sasaki voting yes and Chairman Shelton and Commissioner Cruz voting no.

A new motion made by Chairman Shelton and seconded by Commissioner Cruz to issue a temporary 60-day license to Tommie's Casino and Saloon from August 1, 2005 to September 30, 2005, to allow the Division to complete a partial investigation of the Arizona action unanimously carried in the call for a vote, with Chairman Shelton and Commissioners Cruz, Sasaki, and Williams voting yes, the Commission approved the application for renewal of a temporary state gambling license for Tommy's Casino and Saloon, with the conditions recommended by staff applied to the license.

8. Applications for Tribal-State Compact Gaming Resource Supplier (Vendor)  
Finding of Suitability – Request for Withdrawal:

- a. Cole Gaming Technologies, Inc.
  - i. Cole Gaming Technologies, Inc.
  - ii. Cole, Joseph
  - iii. Cole, Patricia

Manager Podesto indicated that both the Division of Gambling Control and Commission staff recommend approval of the request for withdrawal, without prejudice, of the application for Tribal-State Compact Gaming Resource Supplier, Finding of Suitability, for Cole Gaming Technologies, Inc. Upon motion of Chairman Shelton, seconded by Commissioner Sasaki and unanimously carried in the call for the vote, with Chairman Shelton and Commissioners Cruz, Sasaki, and Williams voting yes. The Commission approved the request for withdrawal, without prejudice, for Tribal-State Compact Gaming Resource Supplier, Finding of Suitability, for Cole Gaming Technologies, Inc.

9. Application for Tribal State Compact Key Employee Finding of Suitability:

- a. Twenty-Nine Palms Band of Mission Indians of California – Trump 29 Casino  
Jefferson, Joseph

Manager Podesto indicated that staff requests Commission consideration of the application for Tribal Key Employee Finding of Suitability for Joseph Jefferson, Item 9.a., be tabled and brought back before the Commission at a later date.

Chairman Shelton tabled Item 9.a. with no objections from Commissioners Cruz, Sasaki, and Williams.

10. Revenue Sharing Trust Fund Report of Distribution to Non-Compact Tribes:

Frank Lechner, Manager, Compliance Division presented for Commission consideration the following staff recommendation concerning the Revenue Sharing Trust Fund Report of Distribution of Funds to Non-Compact Tribes for the Quarter Ended June 30, 2005:

*It is recommended that:*

- 1) *The Commission approve distribution of the current full quarterly amount of approximately \$6.68 million of all payments made by tribes and any interest income received by the Indian Gaming Revenue Sharing Trust Fund during the most recent quarter ended June 30, 2005, to the listed tribes that are determined to be eligible Non-Compact Tribes in accordance with the Commission's identified methodology for determining a Non-Compact Tribe as shown in Exhibit 1 attached to this report, and any interest accrued for previously approved distributions held in abeyance in the Indian Gaming Revenue Sharing Trust Fund but not immediately disbursed, and*
- 2) *approval of distributions shall be made on a conditional basis subject to receipt of any required eligibility certification of the maximum number of gaming devices operated during the quarter by each tribe that is required to submit a completed certification form.*

Commissioner Sasaki requested clarification on the quarterly interest payments, and in response Manager Lechner stated the interest payments are paid quarterly with the current interest rate being 2.851%.

Anna Kimber, Attorney, asked if the Commission withholds all distribution payments if an eligible tribe fails to submit the required certification form. In response Manager Lechner advised that payments are withheld from tribes failing to submit a certification form.

Upon motion of Chairman Shelton, seconded by Commissioner Cruz and unanimously carried in a roll call vote, with Chairman Shelton and Commissioners Cruz, Sasaki, and Williams voting yes, the Commission adopted the staff recommendation. A copy of the report titled "Revenue Sharing Trust Fund Report of Distribution of Funds to Non-Compact Tribes for the Quarter Ended June 30, 2005." is incorporated into the minutes as Attachment I. A copy of the report titled "Supplement to Revenue Sharing Trust Fund Report of Distribution of Funds to Non-Compact Tribes for the Quarter Ended June 30, 2005" is incorporated into the minutes as Attachment J.

11. Indian Gaming Special Distribution Fund and Indian Gaming Revenue Sharing Trust Fund Shortfall Distribution Report per Government Code 12012.90:

Frank Lechner, Manager, Compliance Division presented to the Commission the Indian Gaming Special Distribution Fund and Indian Gaming Revenue Sharing Trust Fund Shortfall Distribution Report to Legislature per Government Code Section 12012.90, for consideration of the following recommendation:

*It is recommended that the Commission approve this report to be*

*submitted to the Legislature and the amounts of shortfall shown in Exhibit 1, determined pursuant to Government Code section 12012.90, under the methodology prescribed therein.*

Upon motion of Chairman Shelton, seconded by Commissioner Shelton and unanimously carried in a roll-call vote with Chairman Shelton and Commissioners Cruz, Sasaki, and Williams voting yes, the Commission approved the Shortfall Distribution Report to the Legislature, and the distribution of \$48,483,757.00 to each eligible Non-Compact Tribe. A copy of the report "*Indian Gaming Special Distribution Fund and Indian Gaming Revenue Sharing Trust Fund Shortfall Distribution Report to Legislature per Government Code section 12012.90*", is incorporated into these minutes as Attachment K.

12. Staff Report: Regulations on Gaming Activity, Additional Tables:

Heather Hoganson, Staff Counsel, presented an oral staff report for discussions on the following three draft regulations to be sent out for a formal Administrative Procedure Act (APA) Notice and Comment after incorporating any comments during the Commission Meeting:

*1. The gaming activities authorization.*

The Gambling Control Act mandates that the Commission provide for approval game rules and equipment by the Division. The proposed regulation codifies current practice that is based on an older Division regulation and specifies remedies. A copy of the regulation concerning State Gambling Licenses for Gambling Establishments and Key Employees, as presented by staff, is incorporated into the minutes as Attachment L.

*2. Procedure to request additional tables on a temporary basis.*

There is currently no formal procedure and staffs of both the Division and Commission have expressed a need for this regulation, both in developing a process and in collecting revenue and deposits to cover the additional workload that is generated. Application fees are set at the Commission at \$500.00 pursuant to statute. An application form was created and is incorporated in this rule-making package. A copy of the regulation concerning Request for Additional Temporary Tables for Tournaments of Special Events, as presented by staff, is incorporated into the minutes as Attachment M.

*3. Additional tables on a permanent basis.*

These regulations were circulated as part of a larger rule-making package regarding Minimum Internal Control Standards in August 2004 and a public workshop was held in

September 2004. A copy of the form *Application For Additional Authorized Permanent Tables*, as presented by staff, is incorporated into the minutes as Attachment N.

After receiving comments from the industry staff removed the limits on the number of tournaments held per year or the number of days a tournament may last, since the industry indicated they were paying extra for tables. In determining the fee, the multiplier was also lowered from 7 to 3, and lowered again from 3 to 2 in another draft in spring 2004, for industry who expressed an interest. In response to industry concerns additional timeline language was added for judicial remedies. Commission staff has coordinated with Division staff on these regulations and incorporated their comments and concerns.

Commissioner Sasaki suggested the language in subsection (b) regarding temporary and permanent tables address the possibility of violations, accusations or disciplinary hearings and Staff Counsel Hoganson stated she could research adding language stating that no tables would be issued pending an accusation, suspension, or probation.

Commissioner Cruz suggested that the wording in Section 12356(a) be changed to read *a disapproved method of operation*. Staff Counsel Hoganson stated the word *unsuitable* was used because it reflects the language in the Gambling Control Act but the change would be considered.

Kermit Schayltz, Golden State Gaming Association, questioned the formula for additional tables. He advised that tournament play and live action play are not the same. Mr. Schayltz stated that tournaments require a small buy in and realize big win. The current focus is on tournament play and not on live play and he believes the formula is excessive, increasing cardroom costs from \$40.00 per day to \$236.00 per day.

Staff Counsel Hoganson reiterated that the multiplier was lowered from 7 to 2 and Division Special Agent-in-Charge, Deborah DeRosier explained that many cardrooms will hold tournaments every weekend to avoid paying the table fee throughout the year. Special Agent DeRosier advised that the number of consistent weekend temporary table requests has created a workload burden.

Chairman Shelton asked if this issue was addressed at the workshop and if regulations could be drafted to limit the number of temporary table requests during the year.

Staff Counsel Hoganson stated the initial draft limited the number of tournaments or the number of days a tournament could be held but that industry stated they would prefer to play more and have no limit restrictions.

Chairman Shelton suggested waiting to see if the formal APA Notice and Comment period generated further comment.

There was no action by the Commission on Item 12.

**CONSENT CALENDAR ITEMS**

1. Applications for Renewal of Work Permit:

- a. Gold Sombrero:  
Moua, Thong  
Vang, Liza Lo

2. Applications for tribal-State Compact Key Employee Finding of Suitability –

Renewals:

- a. Agua Caliente Band of Cahuilla Indians of the Agua Caliente Reservation  
– Agua Caliente Casino:  
Alexander, Keely  
Bailey, Todd  
Baland, Bruce  
Bostick, Kimberly  
Brown, Desmond  
Burroughs, Kenneth  
Cobos, Maria  
Davis, Chylene  
Daxl, Denise  
Easterwood, William  
Eskelin, Jon  
Evans, Norma  
Federman, Cecilia  
Fleeman, Donald  
France, Sharon  
Gaydos, Anna  
Gomez, Victoria  
Gussler, Percy  
Hammar, Joseph  
Harrison, Maureen  
Heathershaw, Marty  
Heatley, Richard  
Henschell, Karl  
Hester, Robert  
Hinton, Frederick  
Hirschhorn, Darlene  
Jarrett, Julia  
Johns, Randall  
Kettler, Kenneth  
LeBlanc, Signe  
Lingana, Janet  
Lorton, Christopher

Mann, Yolanda  
McCabe, Robert  
McEachern, Katherine  
Miller, Brian  
Montano, Jose  
Moore, Dennis  
Musson, Jean  
Napenas, Robert  
Nares, Gregory  
O'Brien, Michael  
Oliva, Santa  
Pate, Frank  
Pepple, Jeffrey  
Quinnett, Carolyn  
Quinones, Donna  
Ragay, Joey  
Reyes, Richard  
Riley, Jason  
Roe, Charles  
Romero, Debbie  
Sheiha, Saleh  
Smith, Douglas  
Spillman, Charles  
Starsky, Benjamin  
Stern, Jeffrey  
Stevenson, Anita  
Styve, Scott  
Taylor, Mark  
Thomas, Aaron  
Tovar, Jesse  
Tung, Ellen  
Vandenberg, Mickey  
Velez, Jhonathan  
Violick, Donald  
Vizcarra, Cesar  
Wallace, Ronald  
Whitton, Steven  
Williams, James  
Williams, Richard  
Williams, Stephen  
Wright, Robert

- b. Augustine Band of Cahuilla Mission Indians of the Augustine Reservation  
– Augustine Casino:  
Rapp, Harrold
- c. Big Sandy Rancheria of Mono Indians of California – Mono Winds Casino:

- Rose, Terrance
- d. Blue Lake Rancheria – Blue Lake Casino:  
Frank, Thomas
  - e. Cher-Ae Heights Indian Community of the Trinidad Rancheria – Cher-Ae Heights Casino:  
Cain, Cammi  
Coffelt, Ava  
Edwards, Lela  
Egle, Valdis  
Muhleck, Jeremy  
Murphy, Shannon  
Oliveri, Lisa
  - f. Elk Valley Rancheria – Elk Valley Casino:  
Bach, John  
Cholwell, Jay  
Darnell, Norene  
Hutsell, Timothy
  - g. Pala Band of Luiseno Mission Indians of the Pala Reservation – Pala Casino Resort Spa:  
Burt, Billy
  - h. Quechan Tribe of the Fort Yuma Indian Reservation – Paradise Casino:  
Ward, Christine
  - i. Redding Rancheria – Win-River Casino:  
Adams, John  
Baggett, Vicki  
Brickwood, Michael  
Carelli, Fred  
Davidson, Robert  
Freeman, Regenia  
Hawes, Charles  
Paczynski, Michael  
Rainville, Teddy  
Roberts, Randall  
Romero, Teresa  
Simon, Dawn  
Striegel, Michael
  - j. Rumsey Indian Rancheria of Wintun Indians of California – Cache Creek Casino Resort:  
Acedira, Josephine  
Breckenridge, Elizabeth  
Brown, Frank  
Budtanase, Surapol  
Cellucci, Laurence  
Chhoung, Charlene  
Codarre, Robert

Decker, Kenneth  
Dizon, Nancy  
Dizon, Ronel  
Dovel, Tracy  
Gimeno, Walter  
Gosal, Gursaranjit  
Helsel, Sompoch  
Heng, Vincent  
Hong, Ki  
Hong, Vinh  
Justus, Eugene  
Kanemasu, Stephanie  
Keopraseut, Mike  
Kuoch, Charlie  
Le, Diem  
Le, Tan  
Longshore, Jonathan  
Luangrath, Liam  
Mac, Annie  
Mahaphengxay, Ay  
Mayoral, Sounthone  
Mendoza, Lilia  
Mills, Kathleen  
Miranda, Oscar  
Munoz, Tanya  
Neville, Rosalyn  
Newbre, Jacqueline  
Nguyen, Colleen  
Nguyen, Danny  
Nguyen, Vincent  
Ocampo, Pablo  
Odell, Steve  
Paulson, Michael  
Pena, Froilan  
Pfeiffer, Alan  
Pham, Hungze  
Pham, Jay  
Pichlmaier, Johann  
Plazibat, Ante  
Quijano, Robert  
Reach, Pha  
Reach, Phath  
Reach, Savoeun  
Saetern, Charles  
Sertaangh, Quincy

Simmons, Aaron  
Sith, Sonyee  
Smith, Evelyn  
Takemoto, Randall  
Tavassoli, Saeed  
Tran, Thy-Thy  
Venethongkham, Connie  
Vongschanphen, Somboon  
Wolcott, Guy  
Young, Tsun-Kai  
Yun, Kevin  
Zayas, Alvin  
Navarro, Jonathan

k. San Manuel Band of Serrano Mission Indians of the San Manuel  
Reservation – San Manuel Indian Bingo & Casino:

Harris, Edward  
Intapura, Saithong  
Lebron, Ramona  
Marshall, Barbara  
Mastandrea, Ronald  
McKinley, Charles  
Monsalve, Jaime  
Shearer, Ryan  
Spalding, Rebecca

l. San Pasqual Band of Diegueno Mission Indians of California – Valley  
View Casino:

Calvo, Saul  
Dela Torre, Imelda  
Hashemi, Seyedreza  
Kranz-Coble, Roxanne  
Martinez, Armando  
Matsubara, Aki  
Montesdeoca, Porfirio  
Rhymes, Mark

m. Smith River Rancheria – Lucky 7 Casino:

Bray, Terry  
Fender, William  
Hernandez, David  
Penney, Candace  
Richards, Marla  
Scott, John  
Walker, Duane

2. Applications for Tribal-State Compact Key Employee Finding of Suitability:

- a. Agua Caliente Band of Cahuilla Indians of the Agua Caliente Reservation – Agua Caliente Casino:  
Greenberg, Paul
- b. Chicken Ranch Rancheria of Me-Wuk Indians of California – Chicken Ranch Casino:  
Fouts, Nola
- c. Jackson Rancheria of Me-Wuk Indians of California – Jackson Casino:  
Burrus, Michelle
- d. Morongo Band of Cahuilla Mission Indians of the Morongo Reservation – Casino Morongo:  
Ramirez, Laura
- e. Pala Band of Luiseno Mission Indians of the Pala Reservation – Pala Casino:  
Mazzola, Sarah
- f. Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation – Pechanga Gaming Center:  
Holden, Charles  
Kao, David
- g. Picayune Rancheria of Chukchansi Indians of California – Chukchansi Gold Resort and Casino:  
Elias, Windy
- h. Rincon Band of Luiseno Mission Indians of the Rincon Reservation – Harrah's Rincon Casino and Resort:  
Nelson, Louise
- i. Rumsey Indian Rancheria of Wintun Indians of California – Cache Creek Casino:  
Yang, Lee
- j. Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation – Chumash Casino:  
Elderbaum, Matthew  
Ricci, Donato
- k. Soboba Band of Luiseno Indians – Soboba Casino  
Delducco, Michael  
Nacua, Melani
- l. Tule River Indian Tribe of the Tule River Reservation – Eagle Mountain Casino:  
Cardenas, Adoranto  
Moldonado, Michael  
Pena, Stephanie  
Rafanan, Artemio
- m. Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California – Black Oak:  
Gillespie, Terrel  
Hodge, James
- n. Twenty-Nine Palms Band of Mission Indians of California – Trump 29

- Casino:  
Navarro, Juan  
Perez, Wendy
- o. United Auburn Indian Community of the Auburn Rancheria of California –  
Thunder Valley Casino:  
Shahbaz, Patrick
  - p. Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of  
the Viejas Reservation – Viejas Casino & Turf Club:  
Gaxiola, Maricela

Manager Podesto presented the Consent Calendar to the Commission for its consideration of the applications for (1) renewal of a work permit, (2) applications for Tribal-State Compact Key Employee Findings of Suitability and (3) applications for Tribal-State Compact Key Employee Finding of Suitability - Renewals. Chairman Shelton moved to approve the consent calendar as presented by staff. Commissioner Sasaki seconded the motion, which unanimously carried in the call for a vote with Chairman Shelton and Commissioners Cruz, Sasaki, and Williams voting yes, the Commission approved the consent calendar.

**PUBLIC COMMENT:**

Robert Black, counsel for Del Norte County, asked the Commission to elevate in priority the issue of Smith River Rancheria's total of the number of gaming devices and re-categorize Del Norte County from a contributing county to a non-contributing county of the Special Distribution Fund. Mr. Black stated he did not understand how more than 200 machines were reported in 1999, because they have less than 200 gaming devices.

Kara Miller, Chairperson to the Tribal Council Smith River Rancheria, apologized for the error in failing to submit certification and asked for resolution to the gaming device issue.

Executive Director Balonon responded to the comments regarding Smith River Rancheria and Del Norte County, indicated that each tribe certified the number of machines they were operating when the 1999 Compacts were signed. Executive Director Balonon further stated that the representatives for Smith River had certified that the tribe was operating 235 gaming devices. The Executive Director suggested that a compact amendment might be required to correct the discrepancy, and that responsibility may belong to the Governor's Office. Executive Director Balonon assured the Commission that staff would complete a report within a month and if necessary, provide that report to the Governor's Office.

Commissioner Cruz asked Mr. Black if it was determined the number of tables was in error would Smith River pay the back Special Distribution Fund quarterly payments.

Mr. Black urged that it would be a hardship since two funding cycles had occurred and a third and fourth funding cycle could be anticipated during the process. Mr. Black stated he hoped to work with the legislature for some retroactivity.

**CLOSED SESSION:**

Chairman Shelton announced that the Commission would not adjourn to Closed Session since there were no new matters under Government Code section 11126(e) that required discussions.

**ADJOURNMENT:**

Upon motion to adjourn the meeting by Chairman Shelton, seconded by Commissioner Sasaki and unanimously carried with Chairman Shelton and Commissioners Cruz, Sasaki and Williams voting yes, the meeting adjourned at 2:14 p.m.

1	Chapter 10. Discipline .....	1
2	12550. Purpose and Scope .....	1
3	12552. Grounds for Issuance of Notice of Violation and Offer to Pay Penalties in Lieu of the	
4	Formal Hearing Process.....	1
5	12554. Formal Hearing Process.....	3
6	12556. Factors in Mitigation or Aggravation of Penalty .....	5
7	12558. Grounds for Discipline for Holders of Work Permits.....	6
8	12560. Grounds for Discipline and Disciplinary Guidelines for Holders of Licenses or	
9	Registrations .....	7
10	12561. Grounds for Revocation for Holders of Licenses, Registrations, Findings of Suitability,	
11	or Approvals.....	11
12	12562. Settlements.....	12
13	12564. Precedential Decisions.....	12
14		

## Chapter 10. Discipline

### 12550. Purpose and Scope

- (a) The purpose of this Chapter is to set forth disciplinary procedures and guidelines, which are applicable to the holder of any license, registration, permit, finding of suitability, or approval issued by the Commission.
- (b) The disciplinary guidelines in this chapter are designed to promote fairness and the flexibility to deal with a wide range of disciplinary scenarios. Variation in sanctions based on differing circumstances and depending upon factors in aggravation or mitigation are an integral part of this disciplinary scheme so as to allow it to achieve its appropriate deterrent effect. When such factors are applied, pursuant to section 12556, they shall be detailed in the Findings of Fact.
- (c) Nothing in this Chapter is intended to limit the authority of the Commission to issue orders of summary suspension pursuant to Business and Professions Code section 19913, or to limit the authority of the Division to issue emergency orders pursuant to Business and Professions Code section 19931.

Authority: Sections 19811, 19823, 19824, 19840, 19841, 19850, 19853(a)(3), 19854, 19912, 19914, 19920, 19922, 19924, 19930, 19971, and 19984 of the Business and Professions Code.

Reference: Sections 19913, 19930, and 19931 of the Business and Professions Code.

### 12552. Grounds for Issuance of Notice of Violation and Offer to Pay Penalties in Lieu of the Formal Hearing Process.

- (a) Violation of law or violation of a previously imposed disciplinary condition may, in the discretion of the Division, be the subject of a Notice of Violation issued to a holder of a license, registration, or permit. A Notice of Violation shall specify the code section of the law violated, facts concerning the circumstances of the violation, and the penalty to be imposed, if not disputed

1 pursuant to subsection (b). A Notice of Violation may be accompanied by an  
2 Offer to Pay Penalties in Lieu of the Formal Hearing Process.

3 (1) Within the guidelines of Business and Professions Code section 19930,  
4 subdivision (c), if the Notice of Violation is for an owner of a gambling  
5 establishment, third-party provider of proposition player services  
6 business, or gambling business, the Offer to Pay Penalties in Lieu of  
7 the Formal Hearing Process shall be the equivalent of ten percent of  
8 the average daily gross gaming revenue, for the number of days for  
9 which the violation was noticed, with the exception that an Offer to Pay  
10 Penalties in Lieu of the Formal Hearing Process shall be no less than  
11 \$500 and no more than \$20,000 per instance of each code section  
12 violation.

13 (2) Within the guidelines of Business and Professions Code section 19943  
14 (failure to comply with 19841, subsection (d)), if the Notice of Violation  
15 is for an owner of a gambling establishment, the Offer to Pay Penalties  
16 in Lieu of the Formal Hearing Process shall be the equivalent of ten  
17 percent of the average daily gross gaming revenue, for the number of  
18 days for which the violation was noticed, with the exception that an  
19 Offer to Pay Penalties in Lieu of the Formal Hearing Process shall be  
20 no less than \$500 and no more than \$100,000.

21 (3) If the Notice of Violation is for a key employee or a supervisor of a  
22 gambling business or third-party provider of proposition player services,  
23 the Offer to Pay Penalties in Lieu of the Formal Hearing Process shall  
24 be no less than \$200 and no more than \$1000.

25 (4) If the Notice of Violation is for a holder of a work permit or an employee  
26 or player of a gambling business or third-party provider of proposition  
27 player services, the Offer to Pay Penalties in Lieu of the Formal Hearing  
28 Process shall be no less than \$100 and no more than \$500 per  
29 instance of each code section violation.

30 (5) If the Notice of Violation is for a person not otherwise described above,  
31 the Offer to Pay Penalties in Lieu of the Formal Hearing Process shall  
32 be no less than \$100 and no more than \$500 per instance of each code  
33 section violation.

34 (b) A holder of a license, registration, or permit may request to meet with the  
35 Division and discuss the basis or circumstances of the Notice of Violation.  
36 Such a request shall be communicated to the Division in writing within 15  
37 days of service of the Notice of Violation, in compliance with Code of Civil  
38 Procedure section 415.10 or 415.20. Any meetings shall occur within ten  
39 days of receipt of the request by the Division, unless the parties agree  
40 otherwise.

41 (c) An acceptance of the Offer to Pay Penalties in Lieu of the Formal Hearing  
42 Process by a holder of a license, registration, or permit shall be

- 1 communicated to the Division in writing within 35 days of service, in  
2 compliance with Code of Civil Procedure section 415.10 or 415.20.
- 3 (d) If no final agreement is reached between the holder of a license, registration,  
4 or permit and the Division after 36 days, the Division shall withdraw the Offer  
5 to Pay Penalties in Lieu of the Formal Hearing Process and the Division may  
6 proceed with the formal hearing process under this Chapter.
- 7 (e) A copy of all Notices of Violation and Offers to Pay Penalties in Lieu of the  
8 Formal Hearing Process shall be sent to the Commission when served upon a  
9 holder of a license, registration, or permit. Any agreement to pay a penalty in  
10 full or any settlement of an assessed penalty shall be submitted by the  
11 Division for approval by the Commission at a noticed Commission meeting or,  
12 at the Commission Chair's direction, by the Executive Director. The  
13 Commission or Executive Director shall have final approval authority  
14 concerning any such payment or settlement. Any payment in full or  
15 settlement of an assessed penalty shall include a plan for immediate  
16 abatement of all violations and a plan for immediate compliance with all  
17 statutory and regulatory requirements. If the Executive Director or  
18 Commission rejects an agreement to pay a penalty in full or a settlement of an  
19 assessed penalty, and no amended agreement or settlement is reached  
20 before two additional regularly noticed Commission meetings have concluded  
21 or sixty days have elapsed, whichever is later, then the Division shall proceed  
22 with the formal hearing process under this Chapter.
- 23 (f) Nothing in this section precludes the Division, in its discretion, from issuing  
24 warning notices and notices to cure or advisory letters regarding violations or  
25 possible violations of law.

27 Authority: Sections 19811, 19823, 19824, 19840, 19841, 19850, 19853(a)(3), 19854, 19912,  
28 19920, 19930, 19942, and 19984 of the Business and Professions Code.

29 Reference: Sections 19824, 19840, and 19930 of the Business and Professions Code.

30  
31 **12554. Formal Hearing Process**

- 32 (a) Upon the filing with the Commission of an accusation by the Division  
33 recommending revocation, suspension, or other discipline of a holder of a  
34 license, registration, permit, finding of suitability or approval, , the Commission  
35 shall proceed under Chapter 5 (commencing with Section 11500) of Part 1 of  
36 Division 3 of Title 2 of the Government Code.
- 37 (b) A "conviction" within the meaning of this chapter means a judgment or verdict  
38 of guilty, including a judgment or verdict following a plea of *nolo contendere*,  
39 notwithstanding any subsequent order under Penal Code section 1203.4.
- 40 (c) Findings of fact shall be based upon a preponderance of the evidence  
41 standard. The "preponderance of the evidence standard" is such evidence as  
42 when considered and compared with that opposed to it, has more convincing

1 force, and produces a belief in the mind of the fact-finder that what is sought  
2 to be proved is more likely true than not true.

3 (d) Upon a finding of a violation of any law related to gambling or gambling  
4 establishments, the Commission may:

- 5 (1) Revoke the license, registration, permit, finding of suitability, or  
6 approval;
- 7 (2) Suspend the license, registration, or permit;
- 8 (3) Order the licensing authority of a city, county, or city and county to  
9 revoke a work permit, pursuant to Business and Professions Code  
10 section 19914, subdivision (a),
- 11 (4) Impose any condition, limitation, order, or directive (including but not  
12 limited to a directive to divest an interest in a business entity  
13 pursuant to Business and Professions Code, section 19879);
- 14 (5) Impose any fine or monetary penalty consistent with Business and  
15 Professions Code, subdivision (c) of section 19930 or subdivision (b)  
16 of section 19943;
- 17 (6) Stay, in whole or in part, the imposition of a revocation or  
18 suspension against the holder of a license, registration, work permit,  
19 finding of suitability, or approval, or
- 20 (7) Order the holder to pay a monetary penalty in lieu of all or a portion  
21 of a suspension. Within the guidelines of Business and Professions  
22 Code sections 19930, subdivision (c), and 19943, subdivision (b):
  - 23 (A) If the respondent is an owner of a gambling establishment,  
24 third party provider of proposition services business, or gambling  
25 business, the monetary penalty shall be equivalent of twenty-five  
26 percent of the average daily gross gaming revenue, for the  
27 number of days for which the suspension is stayed.
  - 28 (B) If the respondent is a key employee of a gambling  
29 establishment or a supervisor of a gambling business or third-  
30 party provider of proposition services, the monetary penalty shall  
31 be \$100 per day for the number of days for which the suspension  
32 is stayed.
  - 33 (C) If the respondent is a holder of a work permit, a player or other  
34 employee of a gambling business or third-party provider of  
35 proposition services, or a person not otherwise described above,  
36 the monetary penalty shall be \$50 per day for the number of days  
37 for which the suspension is stayed.

38 (e) If a person's state gambling license is revoked by the Commission pursuant to  
39 this Chapter, the Commission may stay such revocation for a reasonable

1 period of time to allow such person to sell or divest himself or herself of  
2 ownership of the gambling establishment, provided that after the date on  
3 which the revocation is stayed by the Commission, such person shall not be  
4 entitled to, realize, or receive any profits, distributions, or payments that might  
5 directly or indirectly be due to such person or which arise out of, are  
6 attributable to, or are derived from controlled gambling.

7 (f) Any order to pay the costs of investigation or prosecution of the case shall be  
8 fixed pursuant to Business and Professions Code, section 19930, subdivision  
9 (d).

10 (g) For multiple violations, or for suspensions imposed by other jurisdictions  
11 based on the same violations, the decision shall state whether any  
12 Commission-imposed suspensions shall run consecutively or concurrently.

13 Authority: Sections 19811, 19823, 19824, 19840, 19850, 19853(a)(3), 19854, 19912, 19914,  
14 19920, 19922, 19924, 19930, 19932, 19971, and 19984 of the Business and Professions  
15 Code.

16 Reference: Sections 19857, 19858, 19859, 19862, 19870, and 19878 of the Business and  
17 Professions Code.

### 18 **12556. Factors in Mitigation or Aggravation of Penalty**

19 If presented by complainant or respondent, the Commission shall consider the  
20 following factors in mitigation or aggravation of the penalty imposed:

21 (a) Violation of any previously imposed or agreed upon condition, restriction or  
22 directive.

23 (b) Whether or not the conduct was knowing, willful, reckless, or inadvertent.

24 (c) The extent to which respondent cooperated with the Division or  
25 Commission during the investigation of the violation.

26 (d) The extent to which respondent was honest with the Division or  
27 Commission during the investigation of the violation.

28 (e) The extent to which respondent is willing to reimburse or otherwise make  
29 whole any person who has suffered a loss due to the violation.

30 (f) Whether respondent has initiated remedial measures to prevent similar  
31 violations.

32 (g) The extent to which respondent realized an economic gain from the  
33 violation.

34 (h) Disciplinary history of respondent, repeated offenses of the same or similar  
35 nature, or evidence that the unlawful act was part of a pattern or practice.

36 (i) Any other aggravating factors, including any factors which the Commission  
37 determines to bear on the health, safety, or welfare of the public.

- 1 (j) The extent to which there was actual or potential harm to the public or to  
2 any patron.
- 3 (k) The extent to which an owner licensee or supervisor of a gambling  
4 establishment, third-party provider of proposition player services, or  
5 gambling business exercised due diligence in management or supervision.
- 6 (l) If the violation was caused by an employee, the extent to which the owner  
7 licensee or registrant knew or should have known of the employee's  
8 improper conduct; the level of authority of the employee involved and the  
9 extent to which the employee acted within the scope of his or her authority  
10 in committing the violation.
- 11 (m) If the violation was caused by an independent contractor of a gambling  
12 business, the extent to which the gambling business owner licensee or  
13 registrant knew or should have known of the independent contractor's  
14 improper conduct; the level of authority of the independent contractor  
15 involved and the extent to which the independent contractor acted within  
16 the scope of his or her authority in committing the violation.
- 17 (n) If the violation was caused by a third party, the extent to which the owner  
18 licensee or registrant knew or should have known of the third party's  
19 improper conduct.

20 (o) Any evidence offered by respondent in mitigation of the violation.

21 Authority: Sections 19811, 19823, 19824, 19840, 19850, 19853(a)(3), 19854, 19912, 19914,  
22 19920, 19922, 19924, 19930, 19932, 19971, and 19984 of the Business and Professions  
23 Code.

24 Reference: Sections 19857, 19858, 19859, 19862, 19870, and 19878 of the Business and  
25 Professions Code.

## 26 27 **12558. Grounds for Discipline for Holders of Work Permits**

28 Pursuant to Business and Professions Code, section 19914, the holder of a work  
29 permit may be subject to a monetary penalty, suspension, or revocation by the  
30 Commission if the Commission finds that the holder:

- 31 (a) Engaged in or committed a prohibited act specified in Business and  
32 Professions Code 19914, subdivision (a).
- 33 (b) Does not meet or no longer meets any criterion for eligibility or  
34 qualification.
- 35 (c) Violated or is in violation of any condition, limitation or directive previously  
36 imposed on the work permit.
- 37 (d) Violated or is in violation of any Commission or Division regulations,  
38 including those regulations regarding work permits in the California Code  
39 of Regulations, title 4, division 18, chapter 2 (commencing with section  
40 12100).

1 Authority: Sections 19811, 19823, 19824, 19911, 19912, 19914, 19920, 19930, 19932, and 19971  
2 of the Business and Professions Code.

3 Reference: Section 19878 of the Business and Professions Code.

4 **12560. Grounds for Discipline and Disciplinary Guidelines for Holders of**  
5 **Licenses or Registrations**

6 (a) If the Commission finds that the holder of a state gambling license has failed  
7 to post a current and valid license, in violation of Business and Professions  
8 Code, section 19875:

9 (1) The minimum discipline shall be a monetary penalty, within the  
10 guidelines of Business and Professions Code, sections 19930,  
11 subdivision (c), and 19943, subdivision (b), of the following:

12 (A) If the establishment has one to five licensed tables, inclusive, the  
13 minimum penalty will be \$250;

14 (B) If the establishment has six to eight licensed tables, inclusive, the  
15 minimum penalty will be \$450;

16 (C) If the establishment has nine to 14 licensed tables, inclusive, the  
17 minimum penalty will be \$1050;

18 (D) If the establishment has 15 to 25 licensed tables, inclusive, the  
19 minimum penalty will be \$2150;

20 (E) If the establishment has 26 to 70 licensed tables, inclusive, the  
21 minimum penalty will be \$3200;

22 (F) If the establishment has more than 71 licensed tables, the  
23 minimum penalty will be \$3700;

24 (2) The maximum discipline shall be **suspension for five days** of normal  
25 business operation, which may be stayed on terms and conditions and  
26 any monetary penalty as described in section 12554(d)(7) of this  
27 chapter.

28 (b) If the Commission finds that the holder of a license or registration has violated  
29 or is out of compliance with any mandatory duty specified in or imposed by  
30 the Gambling Control Act or any Commission or Division regulation, which is  
31 not otherwise listed in these disciplinary guidelines, pursuant to Business and  
32 Professions Code section 19922:

33 (1) The minimum discipline shall be a monetary penalty, within the  
34 guidelines of Business and Professions Code sections 19930,  
35 subdivision (c), and 19943, subdivision (b), of the following:

36 (A) If the establishment has one to five licensed tables, inclusive, the  
37 minimum penalty will be \$250;

- 1 (B) If the establishment has six to eight licensed tables, inclusive, the  
2 minimum penalty will be \$450;
- 3 (C) If the establishment has nine to 14 licensed tables, inclusive, the  
4 minimum penalty will be \$1050;
- 5 (D) If the establishment has 15 to 25 licensed tables, inclusive, the  
6 minimum penalty will be \$2150;
- 7 (E) If the establishment has 26 to 70 licensed tables, inclusive, the  
8 minimum penalty will be \$3200;
- 9 (F) If the establishment has more than 71 licensed tables, the  
10 minimum penalty will be \$3700;

11 (2) The maximum discipline shall be revocation, which may be stayed on  
12 terms and conditions and any monetary penalty as described in section  
13 12554(d)(7) of this chapter.

14 (c) A state gambling license or registration granted by the Commission may be  
15 subject to a minimum discipline of suspension for **three days** of normal  
16 business operation and a maximum discipline of revocation, which may be  
17 stayed on terms and conditions and any monetary penalty as described in  
18 section 12554(d)(7) of this chapter, if the Commission finds that the holder of  
19 the license or registration has:

- 20 (1) Committed any crime, not otherwise listed in these disciplinary  
21 guidelines, which substantially relates to the duties and qualifications  
22 of the licensee or registrant, or which occurred in a gambling  
23 establishment or the associated adjacent property,
- 24 (2) Engaged in any dishonest, fraudulent, or deceptive activities in  
25 connection with controlled gambling, or
- 26 (3) Engaged in any conduct on the premises of the gambling  
27 establishment or in connection with controlled gambling which is  
28 inimical to the health, welfare, or safety of the general public.

29 (d) A state gambling license or registration granted by the Commission may be  
30 subject to a minimum discipline of suspension for **five days** of normal  
31 business operation and a maximum discipline of revocation, which may be  
32 stayed on terms and conditions and any monetary penalty as described in  
33 section 12554(d)(7) of this chapter, if the Commission finds that the holder of  
34 the license or registration has:

- 35 (1) Violated Business and Professions Code, section 19912 (failure to  
36 have valid work permit),
- 37 (2) Violated an ordinance of any city, county, or city and county, which  
38 pertains to gambling or gambling-related activities, pursuant to  
39 Business and Professions Code, section 19923,

- 1 (3) Violated Business and Professions Code, section 19924 (failure to
- 2 maintain security controls),
- 3 (4) Violated any law or ordinance with respect to campaign finance
- 4 disclosure or contribution limitations, pursuant to Business and
- 5 Professions Code, section 19982,
- 6 (5) Violated California Code of Regulations, title 4, regarding gambling
- 7 businesses or third-party providers of proposition player services,
- 8 except for any provision regarding an annual fee,
- 9 (6) Violated California Code of Regulations, title 11, section 2050,
- 10 subsection (a) (failure to maintain owner licensee or key employee
- 11 on premises),
- 12 (7) Violated California Code of Regulations, title 11, section 2052,
- 13 (failure to furnish information regarding employees), or
- 14 (8) Violated California Code of Regulations, title 11, section 2070,
- 15 subsections (a) through (f) (unsuitable gaming activities), or section
- 16 2071, (failure to have gaming activity authorized).

17 (e) A state gambling license or registration granted by the Commission may be  
 18 subject to a minimum discipline of suspension for **fifteen days** of normal  
 19 business operation and a maximum discipline of revocation, which may be  
 20 stayed on terms and conditions and any monetary penalty as described in  
 21 section 12554(d)(7) of this chapter, if the Commission finds that the holder of  
 22 the license or registration has:

- 23 (1) Violated Business and Professions Code, section 19878 (contract
- 24 with, employment of, services provided by person(s) with denied,
- 25 suspended, or revoked license or registration),
- 26 (2) Violated Business and Professions Code, section 19921 (failure to
- 27 exclude persons under 21 from access to gambling areas),
- 28 (3) Violated Business and Professions Code, section 19941 (failure to
- 29 prohibit persons under 21 from gambling, loitering, being employed
- 30 in gambling areas, or using fraudulent identification to gamble, loiter,
- 31 or be employed),
- 32 (4) Intentionally misrepresented a material fact on an application or
- 33 supplemental application for licensure or registration,
- 34 (5) Violated California Code of Regulations, title 4, chapter 7, article 4
- 35 (commencing with section 12400), regarding accounting and
- 36 financial reporting, or
- 37 (6) Failed to maintain adequate financing for chips in use or for player
- 38 banks.

1 (f) A state gambling license or registration granted by the Commission may be  
2 subject to a minimum discipline of suspension for **thirty days** of normal  
3 business operation and a maximum discipline of revocation, which may be  
4 stayed on terms and conditions and any monetary penalty as described in  
5 section 12554(d)(7) of this chapter, if the Commission finds that the holder of  
6 the license or registration has:

7 (1) Violated or is out of compliance with conditions, limitations, or orders or  
8 directives imposed by the Commission, either as part of an initial grant  
9 of license or registration, renewal of such, or pursuant to disciplinary  
10 action,

11 (2) Intentionally provided untruthful responses during an investigation by  
12 the Division, pursuant to Business and Professions Code, section  
13 19827,

14 (3) Violated Business and Professions Code, section 19942 (willful failure  
15 to report or pay license fee), or violated California Code of Regulations,  
16 title 4, regarding annual fees for gambling businesses or third-party  
17 providers of proposition player services,

18 (4) Willfully interfered with the performance of Commission or Division  
19 duties, pursuant to Business and Professions Code, section 19944,

20 (5) Concealed or did not disclose ownership or interest, pursuant to  
21 Business and Professions Code, sections 19850, 19851, 19853, 19854,  
22 19855, 19883, or 19901,

23 (6) Committed an act prohibited by Chapter 9 (commencing with section  
24 319) and Chapter 10 (commencing with section 330) of Title 9 of Part 1  
25 of the Penal Code, including but not limited to operation of a banked or  
26 percentage game (Penal Code, section 330), possession of a slot  
27 machine (Penal Code, section 330b) or agreement for slot machine  
28 payout (Penal Code, section 330.1), bookmaking (Penal Code, section  
29 337), and cheating (Penal Code, section 337x),

30 (7) Committed extortion (as that term is defined in Chapter 7 of Title 13 of  
31 Part 1 of the Penal Code, commencing with section 518),

32 (8) Committed loan-sharking (as that term is used in Civil Code section  
33 1916-3, subdivision (b)),

34 (9) Conducted or negotiated illegal sales of controlled substances (as that  
35 term is used in Chapter 1 (commencing with Section 11000) of Division  
36 10 of the Health and Safety Code) or dangerous drugs (as that term is  
37 used in Business and Professions Code, section 4022),

38 (10) As an owner licensee, not taken reasonable steps to prevent the  
39 crimes listed in subsections (i)(7) through (i)(9) from occurring at the

**Level 4:** A suspension of 30 Days to Revocation. Felony criminal violation, such as money laundering or loan sharking.

---

### Fines

The regulations should use the range of monetary penalties in the Act.

- Section 19930(c) provides general authority to fine up to \$20,000 per violation.  

...no fine imposed shall exceed twenty thousand dollars (\$20,000) for each separate violation of any provision of the chapter or any regulations adopted thereunder.
  - Section 19943(b) provides that any person who violates certain financial reporting requirements shall receive progressively larger fines, from \$10,000 up to \$100,000.
  - Section 19942 (failure to pay license fee) and 19944 (interference with Commission or Division) limit fines imposed by a court for misdemeanor violations of the Act.
- 

### Forced Sales

Closing a facility impacts:

- The Employees
- The City or County, fire and police protection
- Minority owners
- Investors, Lenders, Banks
- Suppliers, Vendors
- Players, chip liabilities

The criminal justice system should be responsible for punitive measures, and the civil justice system for restitution and compensatory damages.

The Commission's role is administrative: to deny the guilty parties a license.

---

### **Standard of Proof**

In limited cases -- the suspension or revocation of an owner's license or where felony criminal conduct is alleged but no prosecution has been brought -- clear and convincing evidence should be required.

- Accusing someone of felony criminal conduct affects their reputation, credit-worthiness and future employment.
  - No criminal prosecution may indicate unreliable evidence.
  - Punitive penalties require more reliable evidence.
  - The owners have a substantial investment in their businesses and careers.
- 

### **Standard of Proof**

#### Civil:

"Preponderance of the evidence" means evidence that has more convincing force than that opposed to it. (Jury Instruction 2.60) This is sometimes referred to as the weight of a feather rule: if both sides are equally balanced, but if a feather falls on either side, the balance is tipped and there is a preponderance of evidence.

"Clear and convincing" evidence means evidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the fact[s] for which it is offered as proof. Such evidence requires a higher standard of proof than proof by a preponderance of the evidence. (Jury Instruction 2.61).

This standards is used in civil cases. Before punitive penalties can be imposed, the fraud must be proven by clear and convincing evidence.

#### Criminal:

"Proof Beyond a Reasonable Doubt" is: "proof of such convincing character that you have no real doubt, based upon reason and common sense after careful and impartial consideration of all the evidence, or lack of evidence, in a case."

---

## The Gambling Control Act

Section 19920:

It is the policy of the State of California to require that all establishments wherein controlled gambling is conducted in this state be operated in a manner suitable to protect the **public health, safety, and general welfare** of the residents of the state. The responsibility for the employment and maintenance of suitable methods of operation rests with the owner licensee, and **willful or persistent** use or toleration of methods of operation deemed unsuitable by the commission or by local government shall constitute grounds for **license revocation or other disciplinary action**.

---

### Fundamental Principles

- Citations and small fines for inadvertent or occasional violations.
  - Progressive discipline for *Persistent* violations.
  - Stronger penalties up to revocation for violations that threaten *Public Safety*.
- 

### Progressive Penalties, Focus on Public Welfare

**Level 1:** Citations and/or Small Fines. Any violation of the Act, regulations or gaming laws could lead to a citation and/or small fine.

**Level 2:** Fines up to a Suspension of 7 Days. If the licensee has: (1) violated orders imposed as a result of prior violations; (2) been suspended or disciplined in another jurisdiction, or, (3) persistently violated the Act or any regulations.

**Level 3:** A suspension of 7 Day to Revocation. Persistent or Serious Violations.

For example, if the licensee: (1) has been disciplined under Level 2 within the last 24 months, but persists in violations; (2) had their license suspended or revoked in another jurisdiction; (3) provided material, untruthful responses to the Commission or Division; (4) obstructed an investigation; (5) committed any felony substantially relating to license qualifications; (6) willfully engaged in any dishonest, fraudulent, or deceptive activities or violated gambling laws, with a material adverse effect on public welfare or safety; (7) failed to disclose an ownership interest; or (8) having notice that crimes were being committed by others, did not take reasonable steps to prevent them.

1 (f) If the Commission finds that a gambling business licensee or registrant has  
2 committed any of the acts listed in California Code of Regulations, title 4,  
3 section 12220.18.

4 Authority: Sections 19811, 19823, 19824, 19840, 19841, 19850, 19853(a)(3), 19854, 19859,  
5 19875, 19912, 19913, 19914, 19920, 19922, 19924, 19930, 19931 19971, and 19984 of  
6 the Business and Professions Code.

7 Reference: Sections 19844, 19852, 19857, 19858, 19859, 19862, 19863, 19870, 19875, 19878,  
8 19880, 19913, 19914, 19920, 19922, 19923, 19924, 19930, 19931, 19941 and 19942 of  
9 the Business and Professions Code.

10  
11 **12562. Settlements**

12 All settlements of an accusation shall be approved by the Commission or, at the  
13 Commission Chair's direction, by the Executive Director. Any settlement shall  
14 include a plan for immediate abatement of the violation, a plan for immediate  
15 compliance with all statutory and regulatory requirements, an agreement to the  
16 penalty imposed, and shall be a full and final settlement of the violation including  
17 a complete waiver of all judicial or other review.

18  
19 Authority: Sections 19811, 19823, 19824, 19840, 19841, 19850, 19854, 19859, 19875, 19912,  
20 19913, 19914, 19920, 19922, 19924, 19930, 19931 and 19971 of the Business and  
21 Professions Code.

22 Reference: Sections 19844, 19852, 19857, 19858, 19859, 19862, 19863, 19870, 19875, 19878,  
23 19880, 19913, 19914, 19920, 19922, 19923, 19924, 19930, 19931, 19941 and 19942 of  
24 the Business and Professions Code.

25  
26 **12564. Precedential Decisions.**

27 Pursuant to Government Code section 11425.60, the Commission, at a noticed  
28 Commission meeting, may:

29 (a) Designate all or part of any of the following as a precedential decision:

30 (1) An adopted final decision,

31 (2) An adopted stipulated decision pursuant to a settlement agreement, or

32 (3) An adopted stipulated decision pursuant to an Offer to Pay Penalties in  
33 Lieu of the Formal Hearing Process.

34 (b) Reverse in whole or in part the prior designation of a decision as a  
35 precedential decision.

36  
37 Authority: Sections 19811, 19823, 19824, 19840, 19841, 19850, 19854, 19912, 19914, 19920,  
38 19922, 19924, 19930, and 19971 of the Business and Professions Code.

39 Reference: Sections 19857, 19858, 19859, 19862, 19870, 19878, 19912, 19913, 19914, 19930, and  
40 19931 of the Business and Professions Code. Section 11425.60 of the Government  
41 Code.

1 gambling establishment, when the owner licensee knew or should have  
2 known that these crimes were being committed,

3 (11) Committed bribery (as that term is used in Penal Code section 67 or  
4 67.5),

5 (12) Committed money laundering (as that term is used in Chapter 10 of  
6 Title 7 of Part 1 of the Penal Code, commencing with Section 186.9),

7 (13) Been convicted of a crime involving fiscal dishonesty, including but  
8 not limited to tax evasion (26 U.S.C. § 7201),

9 (14) Been convicted in any jurisdiction of any offense involving or relating  
10 to gambling, or

11 (15) Been found to have violated or be in violation of any law involving or  
12 relating to gambling in a final administrative decision in any jurisdiction.

13 Authority: Sections 19811, 19823, 19824, 19840, 19841, 19850, 19853(a)(3), 19854, 19859,  
14 19875, 19912, 19913, 19914, 19920, 19922, 19924, 19930, 19931 19971, and 19984 of  
15 the Business and Professions Code.

16 Reference: Sections 19844, 19852, 19857, 19858, 19859, 19862, 19863, 19870, 19875, 19878,  
17 19880, 19913, 19914, 19920, 19922, 19923, 19924, 19930, 19931, 19941 and 19942 of  
18 the Business and Professions Code.

19  
20 **12561. Grounds for Revocation for Holders of Licenses, Registrations,**  
21 **Findings of Suitability, or Approvals**

22 A state gambling license, registration, finding of suitability, or approval granted by  
23 the Commission shall be subject to **revocation** by the Commission on any of the  
24 following grounds:

25 (a) If the Commission finds the holder to have been convicted of a felony or a  
26 crime of moral turpitude,

27 (b) If the Commission finds the holder to have engaged in or committed a  
28 prohibited act specified in Business and Professions Code section 19863  
29 (no more than one gambling establishment at racetrack),

30 (c) If the Commission finds the holder no longer meets any criterion for  
31 eligibility, qualification, suitability or continued operation, including those  
32 set forth in Business and Professions code sections 19857, 19858, or  
33 19880, as applicable,

34 (d) If the Commission finds the holder currently meets any of the criteria for  
35 mandatory denial of an application set forth in Business and Professions  
36 Code sections 19859 or 19860,

37 (e) If the Commission finds that a third-party provider of proposition player  
38 services licensee or registrant has committed any of the acts listed in  
39 California Code of Regulations, title 4, section 12200.18, or

Which one is Underage?



Golden State Gaming Association  
1127 11<sup>th</sup> St., Suite 242  
Sacramento, CA 95814

July 19, 2005

Commissioners  
Dean Shelton, Chairman  
John Cruz  
J.K. Sasaki  
Ed C. Williams  
California Gambling Control Commission  
2399 Gateway Oaks Drive, Suite 100  
Sacramento, CA 95833-4231

re: Disciplinary Regulations, Workshop: July 21, 2005

Dear Commissioners:

In advance of the workshop on the proposed disciplinary regulations, the Golden State Gaming Association is submitting these comments on behalf of its members, which include a majority of the licensed card rooms in California.

Our comments are divided into sections. In section one, we provide an overview of the penalty provisions in the regulations, their structure and purpose, including our general concerns and recommendations. In section two, we address particular substantive and procedural issues concerning hearings, fines, revocations, etc.... Finally, we have attached revised versions of the regulations showing how our suggested changes could be implemented.

**I. Overview.**

We recognize that one of the difficulties in writing regulations is that the regulations must address not only businesses of different size, resources and compliance ability, but also clubs of different attitudes about, and approaches to, compliance.

With all clubs and gambling businesses, even those that make concerted efforts at compliance, owners and employees are human, and the laws and regulations are numerous and highly technical. With thousands of employees in the industry, someone will make a mistake, sometime. We view the owners as being responsible for instituting compliance programs, and providing training and supervision. But even with concerted compliance efforts, there will be violations from time to time.

There are also clubs and businesses that generally need to make better efforts at understanding and following regulations. These licensees may want to succeed, but are not making all the efforts they reasonably could, falling short and need to improve their efforts at compliance. The Commission needs a system of progressive discipline to encourage that improvement and compliance.

Finally, there may be those clubs, businesses or individuals, hopefully few in number, that are unable or unwilling to comply with regulations, or who commit serious criminal violations. The Commission needs to be able to deal with these situations with strong penalties.

A. Recommendations.

In view of these different situations, we suggest that the regulations provide for a system of progressive discipline that focuses on compliance efforts, with stronger penalties for violations threaten public safety. Under this approach, the Commission would have discretion to consider the facts of each case and the appropriate penalty.

- At a minimum, any violation of the Act or regulations should be met with a citation, corrective action and possibly small fines.
- Repeated but not substantial violations should be met with detailed operations and/or compliance orders, fines, short suspensions, and with the caution that further violations of a similar nature could lead to greater penalties and suspensions.
- Persistent violations could lead to successive increases in fines and suspensions, and possibly revocation.
- Willful and persistent violations or violations that are criminal should lead to suspension and/or revocation.

We believe that this progressive approach is suggested by the Gambling Control Act ("Act"), which provides:

§19920: "**willful or persistent** use or toleration of methods of operation deemed unsuitable by the commission or by local government shall constitute grounds for **license revocation or other disciplinary action.**"

As spelled out in our proposed revisions, we suggest the following penalty levels:

Level 1:        Citations and/or Small Fines. Any violation of the Act, regulations, Commission orders or gaming laws could lead to a citation and small fine. The Commission would have discretion to waive the fine in the event the violation is cured promptly. The Commission also would have discretion over the amount of the fine. The range of fines for each violation would be between \$250 and \$20,000. In some cases of repeated violations, the fines could be \$100,000 per violation. The upper limits on fines are provided in the Act, §§19930 and 19943. For employees, the minimum fine would be \$100.

Level 2:        Fines up to a Suspension of 7 Days. This level of sanction would be appropriate if the licensee has: (1) violated or is out of compliance with conditions, limitations, orders or directives imposed by the Commission as a result of prior violations; (2) had their gaming license suspended for a short time in another jurisdiction, or, (3) persistently violated the Act or any regulations. This second level of penalties, which can include suspensions, gives the Commission the

opportunity to make sure that any persons not making adequate compliance efforts can be encouraged to do so.

Level 3:        A suspension of 7 Days to Revocation. This level of penalties, up to revocation, would be appropriate for persistent violations and for serious violations. This level could be applied if the licensee: (1) has been disciplined under Level 2 within the last 24 months, but persists in violations; (2) received a license suspension or revocation in another jurisdiction; (3) provided material, untruthful responses to the Commission or Division; (4) obstructed an investigation; (5) committed any felony crime which substantially relates to the duties and qualifications of the licensee or registrant; (6) willfully engaged in any dishonest, fraudulent, or deceptive activities or violated gambling laws, which conduct or violations had or could have a material adverse effect on the health, welfare, or safety of the general public, (7) failed to disclose an ownership interest; or (8) having notice that crimes were being committed by others, did not take reasonable steps to prevent them.

Level 4:        A suspension of 30 Days to Revocation: This level would apply if the licensee has committed a serious criminal violation.

This approach to the assessment of penalties meets the Commission's real need to see that laws and regulations, and Notices of Violations, are not disregarded. Any licensee that persists in committing violations will receive progressively greater penalties, and any serious violation can result in suspension or revocation.

B.        Comparison to the June 27 draft regulations.

The foregoing scheme also meets our major concerns with the regulations, namely:

(1)        The present draft focuses on enumerating a minimum penalty for the violation of each law or regulation without regard to the seriousness of the offense, and in a manner that is both over and under inclusive. Too many offenses are grouped together into minimum penalties when the offenses themselves are disparate.

- For example, the current draft regulation states that any violation of a local ordinance is a 5 day suspension. However, local ordinances cover a lot of subjects. You can violate a local ordinance by not posting a sign, or by using a skill in games. Yet, both would trigger a five day minimum suspension.
- Any violation of the accounting regulations is a 15 day suspension. But a club can violate the accounting regulations by skimming revenue or by failing to notify the Commission that it added sub-accounts to chart of accounts: these are both violations of the regulations but should not be subject to the same minimum penalty.

In short, under the current draft, some violations may implicate public welfare and safety and others may not, yet they are classified as the same. But the nature of compliance regulations

is that they cover all things great and small. Saying that you violated a local ordinance or regulation does not really tell you whether you did something inadvertent and minor, or something willful and serious.

(2) There is not enough attention to progressive penalties, whether for serious violations or even where a licensee refuses to comply with technical requirements over time.

(3) By employing rigid penalties based on the regulation violated, the current draft does not give the Commission sufficient discretion to consider the appropriate penalty in each case based on the facts, the seriousness of the offense, and the respondent's disciplinary history.

We have heard the current draft defended on the grounds that the minimum penalties are merely starting points, and fines can be substituted for actual days of suspension. However, if the current categories for determining suspension are, on their face, inappropriate, they should be eliminated now. In addition, licensees should not be placed in a position of arguing for a departure from a minimum penalty when the minimum is inappropriate anyway.

Moreover, the fact that a licensee can pay a fine rather than serve a suspension is useful only if the fines are reasonable. But the fines in the current draft are excessive. First, the fines are assessed based on the length of the suspension, and thus the fine will be excessive if the 5 or 15 day suspension is itself excessive. Second, paying 10% or 25% of daily gross revenue as a fine, which is what has been proposed, can be a staggering sum. Business owners know that gross revenue does not equal net profit. Since clubs don't operate with 25% profit margin, given labor, workers' compensation insurance and other overhead, 25% of the daily gross is a stunning amount of money for a fine. Third, the fines are assessed for each day the violation "was noticed." This provides the discretion to notice the violation for several days before accumulating the fine.

Accordingly, we urge the Commission to consider instead the progressive discipline model we have enclosed, which will give the Commission the flexibility to impose appropriate penalties in each case.

## **II. Comments on Specific Provisions, and Recommendations.**

In this section of the letter, we provide section by section comments and suggestions.

### **A. Section 12552. Notices of Violation.**

1. Scope. Consistently throughout our revision to the regulation, we have specified that violations must relate to the Gambling Control Act, regulations or laws related to gaming. Under the Act, the Division's enforcement is limited to "investigat[ing] suspected violations of this chapter or laws of the state relating gambling ..." §19826(c).

2. Fines. In the June 27 draft, the Offer to Pay Penalties uses daily gross gaming revenues for the number of days a violation is noticed. We deleted this, and revised this

section to permit the Offer to Pay Penalties to use the minimum and maximum fines allowed under the Act (as specified in a later section of the regulations dealing with fines).

3. Approval of Settlements. In view of comments at the last meeting, we struck a reference to settlements being approved in some cases by the Executive Director. Originally, that suggestion came from the industry so that the Commission meeting docket would not become taxed. We still think that for minor infractions, perhaps Level 1 penalties, there is less need to put those on the Commission agenda, or they should be placed on the consent calendar.

**B. Section 12554. Formal Hearing Process.**

1. Findings of Fact. In subsection (c), we added that the Administrative Law Judge and Commission must use written findings of fact. Under the regulations, the Commission is going to hear cases after an ALJ has made determinations of fact. Requiring the ALJ to prepare written findings of fact will aid the Commission's review of the Administrative Law Judge's decision, as well as the parties in any hearing the Commission conducts. The Commission can adopt or disagree with those findings, but should be specific as to which findings it adopts and which it does not.

2. Standard of Review. In subsection (d), for the suspension or revocation of an owner's license or where felony criminal conduct is alleged but no prosecution has been brought, clear and convincing evidence should be required. Such allegations demand a greater probability of truth. We suggest adding:

For the suspension or revocation of an owner's license, or where any disciplinary decision to suspend or revoke a license or registration is based on alleged criminal conduct that would constitute a felony offense if proven in a criminal proceeding, but where such felony conduct has not been proven or admitted in a criminal proceeding, the findings of fact relating to any violation shall be based on clear and convincing evidence.

We appreciate the legal burdens of proof may be confusing, but for reference, here are the three standards used in courts:

"Preponderance of the evidence" means evidence that has more convincing force than that opposed to it. (Jury Instruction 2.60) This is sometimes referred to as the weight of a feather rule: if both sides are equally balanced, but if a feather falls on either side, the balance is tipped and there is a preponderance of evidence.

"Clear and convincing" evidence means evidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the fact[s] for which it is offered as proof. Such evidence requires a higher standard of proof than proof by a preponderance of the evidence. (Jury Instruction 2.61).

This standard is used in civil cases. Before punitive penalties can be imposed, the fraud must be proven by clear and convincing evidence.<sup>1</sup>

“Proof Beyond a Reasonable Doubt” is: “proof of such a convincing character that you have no real doubt, based upon reason and common sense after careful and impartial consideration of all the evidence, or lack of evidence, in a case.”

Here, where an accusation alleges that a licensee is a criminal and his or her license should be revoked, but no criminal prosecution has occurred because the prosecutors have declined to press charges based on the same facts, the facts showing felony criminal conduct should be proven by clear and convincing evidence. There are several reasons for using this intermediate standard of proof.

First, accusing someone of criminal conduct is a serious matter. The accusation as well as the resulting decision can stain someone’s reputation forever. It may affect their licenses here or in other states, as well as their ability to obtain a bank loan or future employment. Such an accusation demands a stronger showing of truth, especially where the accusation is made in an administrative proceeding without the procedural protections of a civil or criminal court, including the same discovery rights, right to present evidence etc...

Second, where the Commission accuses a licensee of engaging in felony criminal conduct, but prosecutors have decided not to seek criminal prosecution, the Commission should proceed with caution. The decision not to prosecute suggests the possibility that the case may be weak or some witnesses not credible.

Third, the penalties imposed for criminal conduct under the disciplinary regulations are punitive: suspension and or revocation. Even in civil cases in court, penalties that go beyond compensating a wronged party are based on clear and convincing evidence. Revoking a license, which takes away a person’s profession and damages their reputation permanently, clearly has a punitive element, like punitive damages in a civil case, and should be subject to a more trustworthy civil standard of proof.

Fourth, the owners have a substantial investment in their card rooms. With only rare exception, this has been their life long career. Many of them have worked their way up from entry level jobs to owning a club. When you take away their license, you are taking away their career and livelihood. That decision should be based on reliable evidence.

Thus, in limited cases, a clear and convincing standard of proof should be used.

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<sup>1</sup> “Where the defendant's oppression, fraud or malice has been proven by clear and convincing evidence, California law permits the recovery of punitive damages ‘for the sake of example and by way of punishing the defendant.’” *Simon v. San Paolo U.S. Holding Co., Inc.*, 35 Cal. 4th 1159 (2005).

3. Penalties. In subsection (e), we added that the Commission may issue citations and require training or educational programs. For example, if an owner is having bookkeeping problems, the Commission could require the completion of a course in accounting.

Importantly, in subsection (e)(6), we specified that the regulations would use the range of monetary penalties available under the Act. We referred to the Act because the Legislature has already written into the Act the structure for disciplinary fines. Therefore, it is not clear to us why or on what legal basis the regulations could use a different structure than the Act.

Section 19930(c) provides:

In addition to any action the commission may take against a license, permit, finding of suitability or approval, the commission may also require the payment of fines or penalties. However, no fine imposed shall exceed twenty thousand dollars (\$20,000) for each separate violation of any provision of the chapter or any regulations adopted thereunder.

Section 19943(b) provides that any person who violates certain financial reporting requirements shall receive progressively larger fines, from \$10,000 up to \$100,000.

We also referred to two other sections of the Act that address fines imposed by a court in a criminal proceeding for misdemeanor violations of the Act. In those cases, we do not understand why the Commission fines should exceed what would be available in court.

4. Closure of Facilities. Subsection (f) provides that the Commission may stay a revocation to allow the owner to sell their ownership interests. This provision is extremely important and should be included in the regulations for several reasons.

First, even in cases of serious criminal violations, the Commission's action with regard to a state license is only part of the enforcement response. If a licensee engages in loan-sharking or money laundering, they will be subject to prosecution, fines and imprisonment.

For example, the most significant disciplinary situation of which we are aware occurred in the early 1990s at the Garden City card room, where some individuals were charged with skimming revenue and tax evasion. The persons responsible were sentenced to jail and house arrest. The court imposed over a million dollars in fines and restitution. And the Internal Revenue Service enforced substantial back taxes.

The criminal justice system is responsible for determining the ultimate punishment of the guilty parties. The Commission's role in such a case is administrative: to decide if the guilty individuals can keep their license.

So in the Garden City case, the Department of Justice authorized the club to remain open under a trustee while the ownership interests were sold. Shortly thereafter, the drafters of the Act

provided in section 19879 for the transfer of ownership interests where a license is denied, with a limit on the profit realized.

Second, the Commission must consider the effect on other persons of closure. Closing a business does not just punish the owner(s), it puts hundreds of employees out of work, and could cost cities hundreds of thousands and even millions of dollars in lost tax revenue. There could be hundreds of long-time employees who have nothing to do with the criminal violations, but are put out of work, and unable to pay their rent, mortgage or support their families. Likewise, many cities rely on card room taxes to pay for basic police and fire protection.

In addition, there may be minority owners, banks or investors who have money at risk in the business, as well as third party vendors and suppliers, players with player banks and chips outstanding, etc... Their security or accounts would all be put at risk if the club closes.

Accordingly, even in cases of the most serious violations of law, the owners should be forced to sell the club, rather than closing the club and putting the employees out of work.

5. Settlement. We added subsection (i) to make clear that, with Commission approval, accusations can be settled.

**C. Section 12556: Mitigation/Aggravation Factors.**

We added four factors, three of which are drawn from Nevada Gaming Disciplinary Regulation 7. These factors are self-explanatory. These factors do not excuse violations but may play a role in determining the appropriate penalty.

- o Whether the licensee reasonably relied upon a written opinion from law enforcement, City Attorney, District Attorney or other government official or agency, or written professional advice from an accountant, lawyer or other professional, relevant to the action resulting in the violation.
- o Whether the gambling establishment or other business had a reasonably constituted and functioning compliance program
- o Whether the institution of a condition requiring changes or improvements to the compliance program, or additional education or training, would assist in ensuring the licensee's future compliance.

We also suggest adding one factor. In view of the fact that larger clubs have passive investors who are retired or engaged in other professions, and play no role in management, an additional factor should be:

- o For minority owners of gambling operations who do not exercise management or supervisory authority, whether they were ignorant of any violations, ignored or failed to report evidence of violations, or were complicit in the violation(s).

**D. Section 12560. Penalties.**

This section was re-written per the penalty levels we outlined above. Here are a few specific comments on the existing draft.

We used flat minimum penalties rather than using table fees as a guideline for minimum fines. Fines and table fees are different and should not be related.

In subsection (c), we generally used the language from the June 27 draft specifying serious offenses. We added with regard to interference with Commission or Division duties (4), "without reasonable legal justification." There was a recent case where the Division asked for financial records of customers and the club was concerned not to violate the legal rights of third parties. The dispute was resolved. We added in subsection (c) (10), the civil standard for notice to property owners of criminal activity. This standard comes from a recent Supreme Court decision, *Delgado v. Trax Bar & Grill* (June 30, 2005).

We did not put in a minimum penalty for underage gambling. This should not be a strict liability offense. We think a club satisfies its due diligence when it checks identification, when the person falsely represents their age using an apparently official identification, and when the person reasonably looks 21. Because of the drinking age, fake identification is prevalent among young people and on college campuses, and the clubs cannot be suspended every time someone uses a fake id. If this is a persistent problem then the Commission can use progressive discipline.

**Conclusion**

We appreciate the Commission's willingness to receive our comments on these regulations. We hope these comments will spur a constructive discussion of the regulations at the workshop.

Sincerely,

David M. Fried, on behalf of the  
Association.

**TRACEY BUCK-WALSH**

Attorney at Law

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July 20, 2005

Chairman Dean Shelton  
California Gambling Control Commission  
2399 Gateway Oaks Drive, Suite 100  
Sacramento, CA 95833-4231

**Re: Proposed Disciplinary Regulations**

Dear Chairman Shelton and Members of the Commission:

Network Management Group is California's largest provider of Third Party Proposition Player Services (TPPPS). Network has reviewed the proposed Disciplinary regulations (proposed Chapter 10) and would like to offer its observations and recommendations. Network also plans to participate in the July 21, 2005 workshop devoted to this subject.

At the outset, it was Network's impression when it received the original notice of the workshop in February of 2005 that the purpose was to develop disciplinary regulations with Card Clubs, not TPPPS' or Gambling Businesses in mind. Network was advised that draft regulations would be issued and subsequent workshops would be held. Network assumed that the Gaming Policy Advisory Committee would hold a hearing, as they did with the TPPPS regulations adopted last year, and that in any event, Network would have plenty of time for notice and comment on these regulations. Since Network did not participate in the original workshop, it appears that Network was dropped from the mailing list for notice, as it received no further information regarding this rulemaking. It was only, during regular review of the CGCC website, that Network discovered these regulations in draft form and learned the CGCC was originally planning to move ahead with adoption. We are grateful to now have the opportunity to address our concerns with these regulations and offer alternatives that we believe the CGCC should consider before moving forward with any formal action.

Network's principle concern is that the proposed regulations do not address either differences or regulatory needs of TPPPS or Gambling Businesses and consequently, the proposed regulations fall short of addressing legitimate law enforcement concerns. The purpose of this letter is to address general concerns with the specific penalties assessed in these proposed regulations as well as suggest alternative approaches that would allow the CGCC to create disciplinary regulations that address the real law enforcement concerns of all of the businesses it licenses and regulates.

**Alternative 1: All Reference to TPPPS and Gambling Businesses Should Be Deleted From These Proposed Disciplinary Regulations**

**i. The Card Club Model Does Not Work For TPPPS' and Gambling Businesses**

It does not follow that a disciplinary and fine based system that may work for Card Clubs will also work for TPPPS and Gambling Businesses. There are several large Card Clubs and dozens of small card clubs with less than 5 tables in California. Both sizes of Card Clubs can operate profitably. There are approximately 14 TPPPS' listed (although we do not know how many are registered with the CGCC) and an unknown number of Gambling Businesses.<sup>1</sup> Apart from having personnel that are "registered" or "Licensed" with requisite background checks performed, TPPPS businesses are structured and regulated quite differently from Card Clubs. TPPPS are assessed annual fees that increase with every new registrant employed by the TPPPS. Network currently pays \$2,050 for each of its registered employees. Add to that the \$500 registration fee valid for 2 years, or amortized at \$250 per year. Network's employees must obtain their registration from the state. In contrast, Card Club employees need to pay \$250 for a work permit, also good for 2 years, amortized at \$125 per year, which may be waived if the work permit is issued by a City or County.

The impact of the huge disparity in annual employee fees is that Network cannot afford to pay these fees unless they hire employees that will pass the background check and then train them to obey the law and report violations committed by others, both within Network and within the Card Clubs. *Network cannot afford to invest \$2,300 in annual fees on an employee that takes a cavalier approach to the legal obligations imposed by the CGCC's TPPPS regulations.* Indeed, the comprehensive TPPPS regulation adopted just last fall impose strenuous reporting requirements on TPPPS' when they become aware of improprieties. For example, section 12200.7(b)18 requires that any cheating reported to the house by a registrant or licensee shall be reported in writing within five (5) days of the incident by the primary owner and the house to the Commission and Division. The reporting requirements coupled with the hefty annual fees provide a serious incentive for compliance with the law—for those TPPPS who register and pay the annual fees. Network acknowledges that front end incentives such as the annual fees imposed on its industry cannot be imposed on Card Clubs due to statutory limitations. However, profit based penalties (which may have their own infirmities) are unnecessary to promote compliance and impose a disproportionate burden on TPPPS vis-à-vis Card Clubs whose employees can work at a fraction of the cost of TPPPS.

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<sup>1</sup> In fact, the definition of and initial regulation of Gambling Businesses was created late last year with the adoption of the regulations governing TPPPS. Gambling Businesses appear to be a catch all designation for TPPPS that do not have contracts with Card Clubs.

**Alternative 2: A Separate Rulemaking To Develop Disciplinary Rules for TPPPS and Gambling Businesses Should Be Considered Or the Proposed Disciplinary Regulations Should Be Revised to Impose Unambiguous and Meaningful Penalties for Violations of the TPPPS Regulations**

**ii. Violations of TPPPS Operations Are Inadequately Addressed In These Regulations**

Network operates from the premise that if one wants to keep the TPPPS industry clean and compliant, one should identify the law enforcement problems that exist and devise penalties to deter non-compliance. Assuming the CGCC sees the need for additional incentives to comply with the law other than the existing fee structure, Network respectfully suggests the CGCC devise regulation design to attack obvious violations. For example, Bus. & Prof. Code § 19984(b) mandates that all TPPPS players wear a badge identifying themselves as a TPPPS. Network has repeatedly complained of TPPPS' that employ players that are not registered and play with fraudulent, expired, tampered, phony or borrowed badges, often with the picture turned around. The net result is that unregistered TPPPS (1) do not pay the registration or annual fees, (2) have not completed a background check and thus pose a law enforcement concern, (3) place compliant TPPPS's such as Network at a competitive disadvantage vis-à-vis the lawless TPPPS.

The lack of meaningful penalties and resources limitations preventing meaningful enforcement of these blatant violations has created what Network calls a reverse, perverse incentive—the more a lawless TPPPS succeeds in employing unregistered TPPPS's, the more money that TPPPS makes. The more Network complies, the less it makes, because it is paying all the fees attendant with employing legitimate, registered players.

The proposed disciplinary regulations are unclear what the penalty is imposed if a TPPPS is caught wearing a non-visible or phony badge. Proposed regulation 12560(d)(5) proposes a *minimum penalty* of a five day suspension for violations of "title 4". This is overly broad and ambiguous. Which section of title 4? The penalties imposed on Card Clubs vary depending on the which section of the Bus. & Prof. Code is violated and the relative seriousness of the violation. Moreover, Card Clubs are subject to a five day suspension as the *maximum penalty, not the minimum*. Why the difference? It is unclear who or what will be suspended, the player or the employer? If the penalty impacts the player, again the perverse incentive exists for companies to employ unauthorized people. On the other hand, if the penalty attaches to the company it places the entire company's registration at risk based on the violation of one player.

The failure of these regulations to focus on the consequence that flows from the obvious violation of a TPPPS wearing a phony badge bolsters the argument that they were designed for the Card Club industry, not the TPPPS industry. For example, severe

penalties are proposed for Card Clubs for failing to post a license (see proposed regulation 12560). Again, we respectfully suggest these regulations be revised to impose unambiguous and meaningful penalties on violations of the TPPPS regulations or devise a separate rulemaking to address TPPP and Gambling Business violations at a date in the near future taking into account the operations and law enforcement issues of both industries.

**Alternative 3: The Proposed Regulations, Even If Applied Solely to Card Clubs, Are Constitutionally Questionable--Penalties Based on Profitability May Be A Violation of the Equal Protection Clause**

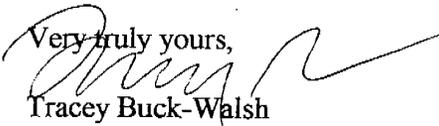
**iii. Letting the Inherent Discretion of the Enforcement Agency to Target Repeat Offenders With Suspension or Revocation May be Preferable**

The proposed disciplinary regulations impose differential pre-hearing penalties based on the profitability of the entity. Network knows of no instance of regulations where a pre-conviction violation results in a differential penalty based on profitability. Such penalties cannot be analogized to indeterminate sentencing, which follows a conviction, or a plea bargain, which is private and flexible. Imposing a differential profit based penalty via a mandatory regulatory structure may create equal protection concerns given that the penalties are based on the relative wealth of the alleged violator.

Network is cognizant of the CGCC's desire to create incentives for compliance and to adequately punish violators—make them hurt—where otherwise paying a penalty becomes a cost of doing business. However, any such penalty must be constitutionally sound. The inherent discretion that law enforcement possesses to target recidivists and move to suspend or pull their licenses or registrations is an obvious fall back option. Beyond this approach, Network is more than willing to work with the CGCC to devise the appropriate and constitutionally sound approach.

We look forward to working with the CGCC and its staff to address these concerns in order to create meaningful and constitutionally sound disciplinary regulations.

Very truly yours,

  
Tracey Buck-Walsh

Attorney for Network Management, Inc.

## ATTACHMENT E

STATE OF CALIFORNIA -- BUSINESS, TRANSPORTATION AND HOUSING AGENCY

ARNOLD SCHWARZENEGGER, Governor

## DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

Rancho Mirage District Office  
42-700 Bob Hope Drive, Suite 317  
Rancho Mirage, CA 92270  
(760) 568-0990



June 8, 2005

Tommie Wayne Buck, Inc.  
PO Box 3878  
El Centro, CA 92243

The New Esquire  
467 Main St.  
El Centro, CA 92243  
File: 48-345562

Dear Licensee(s):

As per our discussion today on the phone, you have been licensed with an Alcoholic Beverage License since September 21, 1998. There has been no record of disciplinary action from that date until present.

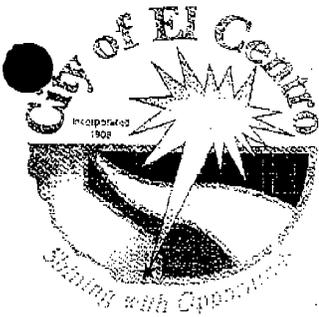
If you have any questions regarding this information please call me at the number listed above.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dana L. Saladen".

Dana L. Saladen  
District Supervisor

DLS:



June 8, 2005

California Gambling Control Commission  
State of California  
P.O. Box 168024  
Sacramento, CA 95816

Re: Renewal of State Gambling License - Tommy's Casino and Saloon located at  
467 West Main Street, El Centro, CA

Dear Commissioners:

On behalf of Mr. Tommie W. Buck, we are writing with regards to his card room, Tommy's Casino and Saloon. The City of El Centro does not oppose his license renewal and has had no issues with Mr. Buck regarding this card room. In our dealings with Mr. Buck, the City has found him to be cooperative in resolving any issues related to his card room.

If you have any questions regarding this matter, please do not hesitate to let me know.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ruben A. Duran", is written over a horizontal line.

Ruben A. Duran  
City Manager

cc: Finance Director  
Police Chief

*Office of the City Manager*

1275 Main Street, El Centro, CA 92243 (760) 337-4540 Fax (760) 352-6177

TED BOWEN  
LAWYER

LAW OFFICES OF  
TED B. BOWEN  
450 WEST 23RD STREET  
YUMA, ARIZONA 85364  
(602)782-4331

July 27, 1987

CERTIFIED  
RECEIPT NO. P 709 296 080

Mr. Kenneth H. Swearingen  
49645 Aspen Drive  
Morongo Valley, California 92256

Re: TOMMIE WAYNE BUCK fdba BONANZA MOBILE HOMES

Dear Mr. Swearingen:

When my client Tommie Buck was a licensed mobile home dealer in the State of Arizona, you purchased a mobile home from Mr. Buck's dealership "Bonanza Mobile Homes."

Subsequently a dispute occurred between Mr. Buck and the supplier Champion Mobile Homes, and you may not have received your certificate of title.

This is apparently so because of California law, whereas buyers who live in Arizona have received their certificates of title. I am sure you would like to do something about this, and perhaps there is a solution.

At no cost to you, but at the request of Mr. Buck, I would like to assist you in seeking recovery from the Arizona Statutory Fund, A.R.S. Section 41-2190. To do so, you need to sign the original of this letter, and return that to me. By signing and returning the letter, you will be certifying as follows:

1. At the time of purchase, you purchased a mobile home from Bonanza Mobile Homes located in Ehrenberg, State of Arizona.
2. As a purchaser, you purchased the mobile home for consumer, residential purposes.
3. You have never received a certificate of title to the mobile home that you purchased from Bonanza nor have you ever received from the manufacturer Champion the document called "Manufacturer's Statement of Origin" (MSO).
4. You make application for protection and payment, as necessary, from the statutory fund in Arizona to assure that consumer purchasers

COPY

TED BOWEN  
*Attorney at Law*

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1405 W. 16<sup>th</sup> Street  
Yuma, Arizona 85364  
Telephone (520) 343-4900  
Fax (520) 343-7877

March 2, 2000

Tommie W. Buck  
725 State Street  
El Centro, CA 92243

RE: TOMMIE BUCK/GAMBLING APPLICATION NO. 2575/THE NEW ESQUIRE  
POSSIBLE CLAIM ON BEHALF OF CONSUMER RECOVERY FUND

Dear Mr. Buck:

You have filed your application with the State of California, Department of Justice.

Concern has been raised about your potential exposure or liability, if any, for a claim from the Consumer Recovery Fund.

In March, 1986, Champion Home Builders Company (Champion) filed a lawsuit against Tommie Wayne Buck in U.S. District Court, District of Arizona, case number CIV86-0382PHX-RGB. In the complaint, Champion sought money judgment against Buck for at least \$97,140.15, Champion sought to immediately attach and seize certain assets of Buck including the property where Buck was living in Ehrenberg and where he had his mobile home sales lot and mobile home park, including three permanent structured houses.

On June 9, 1986, you filed a voluntary petition for reorganization under Chapter 11 of the United States Bankruptcy Code, U.S. Bankruptcy Court, District of Arizona, case number 86-2419-YUM-RGM. On June 19, 1986, you were designated and appointed as the Debtor in Possession.

You knew that the Consumer Recovery Fund would pay some of the claims of the purchasers, and that money would go to Champion and you were also working on a plan to reorganize the business, and provide other funds to pay Champion.

By November 30, 1988, a settlement had been reached with Champion, as evidenced by the Stipulation for Entry of Judgment against Tommy Wayne Buck.

Tommie W. Buck  
March 2, 2000  
Page Two

A consent judgment was entered against Tommy Wayne Buck on January 11, 1989, in U.S. District Court.

By May, 1991, you had made all of the required payments, and had completed paid and satisfied the Champion judgment. Champion then on May 20, 1991, issued its Satisfaction of Judgment and Release of Judgment Lien.

Because in November, 1988, you had entered into the Stipulation with Champion for settlement of the District Court lawsuit, that allowed the Chapter 11 bankruptcy case to be dismissed and your Chapter 11 case was dismissed, the Notice of Dismissal is dated December 13, 1988.

The Consumer Recovery Fund was created by Arizona Statute, A.R.S. § 41-2188. This fund was created and then paid for by assessments against the dealers and brokers of new and used manufactured homes, mobile homes or factory built buildings, and a required payment or deposit of \$100 for each unit sold was paid into the Consumer Recovery Fund. A.R.S. § 41-2189(A). It is generally known that this fund remains quite solvent, not very many claims have ever been paid.

While you were in business, Tommie, you contributed to the fund by an assessment or payment for each unit that you sold.

A.R.S. § 41-2190(H) specifically authorizes a claim on behalf of the Consumer Recovery Fund against the licensee. The Office of Manufactured Housing is a division of the Building and Fire Safety Administration, and an Assistant Director presides over the Office of Manufactured Housing. A.R.S. § 41-2171-2173.

The Office of Manufactured Housing would have to make a determination if a claim should be made against a licensee, where there has been payment from the Consumer Recovery Fund. Claims sometimes are not made or prosecuted against a licensee. It could be reasoned that the payment from the Consumer Recovery Fund came from funds that the very licensee had contributed.

In any event, you have never had any notice of any sort that the Consumer Recovery Fund is making a claim against you for reimbursement of whatever amount was paid. And I have been your attorney going back to about 1985, I am shown as your attorney of record, I have never received any notice of any claim being made against you on behalf of the Consumer Recovery Fund.

A claim could have been made in or about November, 1988.

Tommie W. Buck  
March 2, 2000  
Page Three

Your potential liability to pay the Consumer Recovery Fund could be based on the statutes I have cited, or perhaps it could be based on a written contract such as your dealer's application for a license.

In Arizona there is a one year statute of limitation on liability created by statute. A.R.S. § 12-541.

There is a six year statute of limitation involving a contract in writing for debt. A.R.S. § 12-548.

Therefore the longest statute of limitation is six years, if the cause of action accrued in November, 1988, the statute of limitation would be a bar by November, 1994.

Even if the cause of action didn't accrue until a later date, lets say the dismissal of your Chapter 11 bankruptcy (which occurred in December, 1988) or even the satisfaction of the Champion judgment which occurred in May, 1991, still the six year statute of limitation bar has existed at the outside from May, 1997.

Primarily, I don't believe that any claim can or would be brought against you on behalf of the Consumer Recovery Fund, because in my opinion the Office of Manufactured Housing did not think that any claim should be brought or prosecuted against you when payments were made from the Consumer Recovery Fund.

Even if a claim was now asserted, I am sure that the Arizona statute of limitation is an absolute bar to that claim.

Filing of the Chapter 11 bankruptcy gave you some breathing room, Tommie, and allowed you to pay your creditors, and you did so completely.

You were never notified that the Consumer Recovery Fund made any claim, expected repayment of whatever amounts may have been paid from the Consumer Recovery Fund.

You were never advised of any alleged debt owed to the Consumer Recovery Fund that you were supposed to pay.

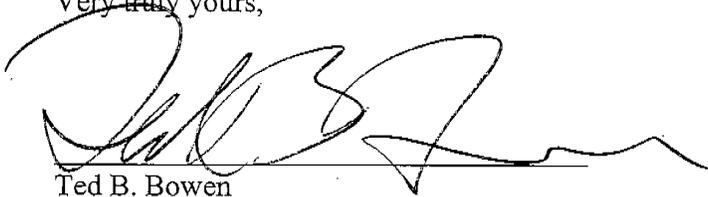
There has now been a passage of time of about twelve years. Never during that time did the Consumer Recovery Fund notify you of any alleged debt.

Tommie W. Buck  
March 2, 2000  
Page Four

I am completely confident in my opinion that the Consumer Recovery Fund never intended to seek repayment from you, did not do so, and could not at this time successfully assert any claim.

I understand that you will present this opinion letter to the Division of Gambling Control, State of California, and I specifically authorize you so to do.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Ted B. Bowen', written over a horizontal line.

Ted B. Bowen  
Attorney at Law

TBB:fc

**CALIFORNIA GAMBLING CONTROL COMMISSION**

Physical Address: 2399 Gateway Oaks Drive, Suite 100 • Sacramento, CA 95833-4231  
Mailing Address: P.O. Box 526013 • Sacramento, CA 95852-6013  
Phone: (916) 263-0700 • FAX: (916) 263-0499



DATE: July 21, 2005  
TO: Gambling Control Commission  
FROM: Gary Qualset, Deputy Director  
Compliance Division  
SUBJECT: Revenue Sharing Trust Fund Report of Distribution of Funds to Non-Compact Tribes for the Quarter Ended June 30, 2005

**ISSUE:** *Can the Gambling Control Commission (Commission) make a current quarterly distribution from the Indian Gaming Revenue Sharing Trust Fund (IGRSTF) to each eligible Non-Compact Tribe for the quarter ended June 30, 2005?*

The Commission, as administrator for the IGRSTF, is required to make distributions from the IGRSTF in accordance with the Tribal-State Gaming Compacts (Compacts) sections 4.3.2.1 (a) and (b).

The IGRSTF serves as the depository for payments made by Tribes that acquire and maintain gaming device licenses and interest income earned by the IGRSTF. The process for allocating licenses and the awarding thereof by the administrator is outlined in Section 4.3.2.2. This Section also specifies the amounts that shall be paid for license fees.

To date, the Commission has approved the distribution of approximately \$139.71 million in license fees, payments, and interest income from the IGRSTF covering nineteen fiscal quarters from July 1, 2000 through March 31, 2005. The current distribution being proposed will make a distribution of the actual amount of license fees received and any interest income that may have been deposited in the IGRSTF for the quarter ended June 30, 2005, leaving an undistributed balance of license fees, payments received, and interest income in the IGRSTF as of that date of less than \$1.00.

As shown in Exhibit 1, all eligible tribes will be receiving \$95,376.89 for this distribution. Total license fees of approximately \$6.64 million and interest earned of \$44,046.54 for the quarterly period ended June 30, 2005 and deposited in April 2005 into the IGRSTF for the quarter ended June 30, 2005 amounted to approximately \$6.68 million. A portion of the interest earned is allocated to previously approved distributions held in abeyance in the IGRSTF on behalf of two (2) tribes in the amount of \$8,334.24. Approved distributions will be held only in the event there is no existing tribal chairperson or representative with whom the BIA conducts government-to-government relations, or there is some other unusual situation which calls into question the Commission's ability to distribute funds to the tribe or otherwise carry out its obligation pursuant to Section 4.3.2.1 (b). The remaining receipts are equally distributed to the seventy (70) tribes listed in Exhibit 1 as eligible Non-Compact recipient tribes (pending receipt of outstanding eligibility certification forms, if any). Thus, the equal share distribution amount per tribe for this quarter is as noted above.

At the end of the calendar quarter for distribution and as of the close of business on June 30, 2005, the amount of outstanding license fee payments due into the IGRSTF was approximately \$2.38 million. If the total license fee payments due at the end of this quarter had been paid into the IGRSTF, recipient tribes would have received \$34,117.00 in additional moneys

along with this quarter's distribution. The Commission makes quarterly distributions on a cash basis based on the amount of available funds in the IGRSTF for each quarter. Total outstanding and due license fee payments for the quarter ended June 30, 2005 are summarized in Table 1 below:

<b>Indian Gaming Revenue Sharing Trust Fund License Fee Payment Aging Schedule as of June 30, 2005</b>		
<b>Quarter(s) in Arrears</b>	<b>Number of Tribes</b>	<b>Amount of License Fees Due</b>
Less than 1	0	\$0.00
1	6	1,862,175.00
2	5	526,015.49
<b>Totals</b>	<b>11</b>	<b>\$2,388,190.49</b>

Table 1 shows the number of tribes that are in arrears and the amount due in accordance with the terms of the original 1999 Compacts. The amount due includes an estimate of prorated fees for partial quarterly amounts. Compact Section 4.3.2.3 provides that a tribe shall not conduct any gaming activity authorized by the Compact if the tribe is more than two quarterly contributions in arrears in its license fee payments into the IGRSTF.

Effective September 2, 2004, five (5) Compacts of 1999 were amended related to fees due to the IGRSTF from the tribes that amended their Compacts. These fees are to maintain the existing gaming device licenses that are held by each of these tribes. Amended Compact Section 4.3.2.2 provides that the tribes shall deposit fees within 30 days of the end of the each calendar quarter. As of the date of this report the 30-day period has not run. Thus, no fees are overdue at this time.

The Commission, as administrator, sends out quarterly invoices for the payment of license fees near the beginning of each quarter. Additionally, the Commission follows standard collection practices, which includes noticing those of past due amounts, and has initiating procedures if action is needed under the provisions of Compact Section 4.3.2.3 noted above.

The distribution amounts for each tribe that are presented in the attached report are subject to audit and subsequent verification of eligibility by the Commission. In accordance with the Commission's methodology for determining a Non-Compact Tribe, it is also being recommended that this distribution be on a conditional basis pending receipt of certification of the maximum number of gaming devices operated during the quarter by each tribe that is required to submit a completed certification form. Tribes that are required to complete the certification form are those tribes that entered into Compacts with the State of California and have operated less than three hundred-fifty gaming devices during the entire quarter for this distribution.

Pursuant to Item 0855-101-0366 of the Budget Act of 2004, \$96.5 million was appropriated for distribution to Non-Compact Tribes. Per Provision 3 of item 0855-101-0366, the following items are requested according to control language as part of any request to augment Item 0855-101-0366. Although no augmentation is being requested with this distribution, we are submitting the following report information voluntarily.

## **1. The Methodology for Determining a Non-Compact Tribe**

Per Section 4.3.2(a)(i) of the Compact, the term "Compact Tribe" and "Non-Compact Tribe" is defined as:

A "Compact Tribe" is a tribe having a compact with the State that authorizes the Gaming Activities authorized by this Compact. Federally-recognized tribes that are operating fewer than 350 Gaming Devices are "Non-Compact Tribes." Non-Compact Tribes shall be deemed third party beneficiaries of this and other compacts identical in all material respects. A Compact Tribe that becomes a Non-Compact Tribe may not thereafter return to the status of a Compact Tribe for a period of two years becoming a Non-Compact Tribe (sic).

For this distribution from the IGRSTF, the Commission used the following procedures as the methodology for determining if a tribe is a Non-Compact Tribe:

- A. Identify all tribes in the State of California that are Federally-recognized based on information obtained from the U. S. Department of Interior, Bureau of Indian Affairs, and a legal opinion received from the State Attorney General's Office.
- B. Request that each Non-Compact Tribe that entered into Compacts with the State that is to receive a distribution certify the maximum number of gaming devices operated during the quarter by completing and filing a Tribal-State Compact Gaming Device Certification Form (CGCC-C2004.04). Receive this form from each eligible tribe in accordance with the streamlined verification procedure implemented by the Commission. This form was mailed to Tribes for completion and filing and is also available on the Commission's website at [www.cgcc.ca.gov](http://www.cgcc.ca.gov).
- C. Classify all tribes identified in step A based on the information obtained in step B as either: 1) Compact Tribes operating 350 or more gaming devices, 2) Non-Compact Tribes as defined by the Compact, 3) non-compact gaming tribes, or a combination of classification 1) and 3).
- D. Classify all Non-Compact Tribes identified in part 2) of step C as eligible Non-Compact non-gaming tribes and Non-Compact gaming tribes that have submitted the requested certification form to the Commission if required.
- E. Prepare a list of Non-Compact Tribes based on the most recent information reported to the Commission.

## **2. A list of the Non-Compact Tribes Identified Based on the Commission's Methodology**

A list of all Non-Compact Tribes as identified by the methodology identified in item 1 above is attached as Exhibit 1.

## **3. A Fund Condition Report Including the Amount of Revenue Received From Each Compact Tribe**

A fund condition statement for the IGRSTF through June 30, 2005, for the fiscal year 2004-05 is attached as Exhibit 2. A listing of the amount of revenue from each Compact Tribe received by the Commission is attached as Exhibit 3.

#### 4. The Amount of Funds to be Distributed to Each Non-Compact Tribe

The amount of funds to be distributed to each Non-Compact Tribe is listed in Exhibit 1 that is attached. The recommended distribution to each tribe listed in Exhibit 1 is subject to verification of eligibility and receipt of a Tribal-State Compact Gaming Device Certification Form (CGCC-C2004.04), if required.

**RECOMMENDATION:** *It is recommended that:*

*1) the Commission approve distribution of the current full quarterly amount of approximately \$6.68 million of all payments made by tribes and any interest income received by the IGRSTF during the most recent quarter ended June 30, 2005, to the listed tribes that are determined to be eligible Non-Compact Tribes in accordance with the Commission's identified methodology for determining a Non-Compact Tribe as shown in Exhibit 1 attached to this report, and any interest accrued for previously approved distributions held in abeyance in the IGRSTF but not immediately disbursed, and*

*2) approval of distributions shall be made on a conditional basis subject to receipt of any required eligibility certification of the maximum number of gaming devices operated during the quarter by each tribe that is required to submit a completed certification form.*

**Exhibit 1****Non-Compact Tribes Eligible to Receive a Distribution from the IGRSTF (Based on the Commission's Methodology) and the Amount of Funds Recommended for Distribution**

<b>Non-Compact Indian Tribe</b>	<b>Amount of Funds Recommended to be Distributed</b>
Alturas Indian Rancheria	\$95,376.89
Bear River Band of the Rohnerville Rancheria	95,376.89
Benton Paiute Reservation	95,376.89
Big Lagoon Rancheria	95,376.89
Big Pine Reservation	95,376.89
Big Sandy Rancheria	95,376.89
Bridgeport Paiute Indian Colony	95,376.89
Buena Vista Rancheria	95,376.89
Cahto Indian Tribe of the Laytonville Rancheria	95,376.89
Cahuilla Band of Mission Indians	95,376.89
California Valley Miwok Tribe	95,376.89
Cedarville Rancheria	95,376.89
Chemehuevi Indian Tribe	95,376.89
Cher-Ae Heights Indian Community	95,376.89
Chicken Ranch Rancheria	95,376.89
Cloverdale Rancheria	95,376.89
Cold Springs Rancheria	95,376.89
Colorado River Indian Tribes	95,376.89
Cortina Rancheria	95,376.89
Death Valley Timbi-Sha Shoshone Tribe	95,376.89
Elem Indian Colony	95,376.89
Elk Valley Rancheria	95,376.89
Enterprise Rancheria	95,376.89
Ewiiapaayp Band of Kumeyaay Indians	95,376.89
Federated Indians of Graton Rancheria	95,376.89
Fort Bidwell Indian Community	95,376.89
Fort Independence Reservation	95,376.89
Fort Mojave Indian Tribe	95,376.89
Greenville Rancheria	95,376.89
Grindstone Rancheria	95,376.89
Guidiville Rancheria	95,376.89
Hoopa Valley Tribe	95,376.89
Inaja-Cosmit Mission Indians	95,376.89

**Exhibit 1 (Continued)****Non-Compact Tribes Eligible to Receive a Distribution from the IGRSTF (Based on the Commission's Methodology) and the Amount of Funds Recommended for Distribution**

<b>Non-Compact Indian Tribe</b>	<b>Amount of Funds Recommended to be Distributed</b>
Ione Band of Miwok Indians	95,376.89
Jamul Indian Village	95,376.89
Karuk Tribe of California	95,376.89
La Jolla Band of Mission Indians	95,376.89
La Posta Band of Mission Indians	95,376.89
Lone Pine Reservation	95,376.89
Los Coyotes Band of Cahuilla Indians	95,376.89
Lower Lake Rancheria	95,376.89
Lytton Rancheria	95,376.89
Manchester Point Arena Rancheria	95,376.89
Manzanita Mission Indians	95,376.89
Mechoopda Indian Tribe	95,376.89
Mesa Grande Mission Indians	95,376.89
Northfork Rancheria	95,376.89
Paiute Bishop Community	95,376.89
Pinoleville Rancheria	95,376.89
Pit River Tribe	95,376.89
Potter Valley Rancheria	95,376.89
Quartz Valley Indian Community	95,376.89
Quechan Tribe of Fort Yuma	95,376.89
Ramona Mission Indians	95,376.89
Redwood Valley Rancheria	95,376.89
Resighini Rancheria	95,376.89
Round Valley Indian Tribe	95,376.89
Santa Rosa Band of Cahuilla Mission Indians	95,376.89
Santa Ysabel Mission Indians	95,376.89
Scotts Valley Band of Pomo Indians	95,376.89
Sherwood Valley Pomo Indians	95,376.89
Shingle Springs Rancheria	95,376.89
Smith River Rancheria	95,376.89
Stewarts Point Rancheria	95,376.89
Susanville Indian Rancheria	95,376.89
Table Bluff Reservation	95,376.89
Torrez-Martinez Mission Indians	95,376.89

**Exhibit 1 (Continued)****Non-Compact Tribes Eligible to Receive a Distribution from the IGRSTF (Based on the Commission's Methodology) and the Amount of Funds Recommended for Distribution**

<b>Non-Compact Indian Tribe</b>	<b>Amount of Funds Recommended to be Distributed</b>
Upper Lake Band of Pomo Indians	95,376.89
Washoe Tribe of Nevada & California	95,376.89
Yurok Tribe of the Yurok Reservation	95,376.89
<b>Total</b>	<b>\$6,676,382.30<sup>1</sup></b>

## Footnotes:

1. The total amount of distribution to each tribe is subject to audit and verification by the Commission. Future distributions may be adjusted for any overpayments or underpayments that may have been made. If a tribe is subsequently determined to be a "Compact Tribe" by definition of the Compact, and is therefore not eligible for future distributions, any overpayments that may be made are subject to refund by a tribe(s) to the Commission. The above distributions are being recommended for distribution on a conditional basis and are subject to verification of eligibility. Distributions will only be made after receipt of a Tribal-State Compact Gaming Device Certification Form (CGCC-C2004.04) that indicates eligibility in accordance with the terms of the Compact.

EXHIBIT 2

CALIFORNIA GAMBLING CONTROL COMMISSION  
 0366 - INDIAN GAMING REVENUE SHARING TRUST FUND  
 FUND CONDITION STATEMENT  
 For the twelve months ended June 30, 2005  
 Cash Basis

BEGINNING BALANCE	\$	10,848,051.12
REVENUES AND TRANSFERS		
Revenues:		
150300 Income from surplus money investments		154,986.41
216900 License fees held in trust		28,396,751.22
Transfer from the Indian Gaming Special Distribution Fund To IGRSTF for shortfall per Assembly Bill No. 1102 (Chapter 227, Statutes of 2004)		45,266,711.70
Totals, Revenues	\$	<u>73,818,449.33</u>
Totals, Resources	\$	84,666,500.45
EXPENDITURES		
Disbursements:		
Distribution	\$	32,440,071.69
Fiscal Year 2003-2004 shortfall distribution per Assembly Bill No. 1102 (Chapter 227, Statutes of 2004) and Government Code Section 12012.90		<u>45,266,711.70</u>
Totals, Expenditures	\$	<u>77,706,783.39</u>
FUND BALANCE, prior to distribution	\$	6,959,717.06
Disbursements, pending distribution		6,676,382.30
Assembly Bill No. 673 (Chapter 210, Statutes of 2003) and Government Code Section 12012.90 reserve pending audit resolution		275,000.00
Interest due to tribes <sup>1</sup>		<u>8,334.24</u>
FUND BALANCE, after distribution	\$	<u>0.52</u>

Footnotes:

1. Accrued interest on previously held distributions in the amount of \$7,222.39 for Buena Vista Rancheria and \$ 1,111.85 for Pinoleville pending distribution.

**Exhibit 3****Amount of Revenue from Each Compact Tribe Received by the Commission Through June 30, 2005 for the Fiscal Year Ending June 30, 2005**

<b>Compact Tribe</b>	<b>Revenue Received Fiscal Year to Date</b>	<b>Revenue Received Inception to Date</b>
Agua Caliente Band of Cahuilla Indians	\$549,150.00	\$3,735,856.25
Alturas Indian Rancheria	0.00	187,500.00
Augustine Band of Mission Indians	0.00	437,500.00
Barona Band of Mission Indians	736,350.00	3,590,462.77
Bear River Band of the Rohnerville Rancheria	0.00	0.00
Berry Creek Rancheria	0.00	617,500.00
Big Sandy Rancheria	0.00	0.00 <sup>2</sup>
Big Valley Rancheria	0.00	500,000.00
Blue Lake Rancheria	0.00	437,500.00
Buena Vista Rancheria	0.00	0.00 <sup>2</sup>
Cabazon Band of Mission Indians	1,266,750.00	3,592,067.05
Cahto Indian Tribe of the Laytonville Rancheria	0.00	0.00
Cahuilla Band of Mission Indians	0.00	125,000.00
Campo Band of Diegueno Mission Indians	0.00	500,000.00
Chemehuevi Indian Tribe	0.00	0.00 <sup>2</sup>
Cher-Ae Heights Indian Community	0.00	0.00
Chicken Ranch Rancheria	0.00	0.00
Colusa Rancheria	91,250.00	403,750.00
Dry Creek Rancheria	1,001,250.00	6,509,496.58
Elem Indian Colony	0.00	0.00
Elk Valley Rancheria	62,500.00	62,500.00
Ewiiapaayp Band of Kumeyaay Indians	0.00	2,437,433.22
Hoopa Valley Tribe	0.00	0.00
Hopland Band of Pomo Indians	755,700.00	2,064,958.57
Jackson Rancheria	974,250.00	3,026,877.22
Jamul Indian Village	0.00	0.00
La Jolla Band of Luiseno Indians	0.00	0.00
Manchester Point Arena Rancheria	0.00	0.00
Manzanita Band of Mission Indians	0.00	0.00
Middletown Rancheria	0.00	187,500.00
Mooretown Rancheria	67,013.70	692,013.70
Morongo Band of Mission Indians	0.00	497,300.00
Paiute Bishop Tribe	0.00	0.00
Pala Band of Mission Indians	1,684,035.33	14,371,569.58
Paskenta Band of Nomlaki Indians	91,250.00	528,750.00

**Exhibit 3 (Continued)****Amount of Revenue from Each Compact Tribe Received by the Commission Through June 30, 2005 for the Fiscal Year Ending June 30, 2005**

Compact Tribe	Revenue Received Fiscal Year to Date	Revenue Received Inception to Date
Pauma/Yuima Band of Mission Indians	205,421.61	1,080,421.61
Pechanga Band of Mission Indians	427,950.00	1,462,455.62
Picayune Rancheria	2,756,250.00	9,297,719.18
Pit River Tribe	0.00	0.00
Quechan Indian Nation	0.00	0.00
Redding Rancheria	0.00	687,500.00
Resighini Rancheria	0.00	0.00
Rincon Band of Mission Indians	1,335,000.00	6,843,246.58
Robinson Rancheria	0.00	275,000.00
Rumsey Rancheria	1,457,488.70	5,134,900.62
San Manuel Band of Mission Indians	898,200.00	4,604,197.81
San Pasqual Band of Diegueno Indians	1,327,510.68	6,031,181.91
Santa Rosa Indian Community	1,908,225.00	12,406,076.51
Santa Ynez Band of Chumash Indians	1,315,500.00	6,743,289.04
Sherwood Valley Rancheria	0.00	0.00
Shingle Springs Rancheria	0.00	1,238,750.00
Smith River Rancheria	0.00	0.00
Soboba Band of Mission Indians	865,050.00	3,642,468.09
Susanville Indian Rancheria	0.00	0.00
Sycuan Band of Mission Indians	2,339,850.00	11,994,135.21
Table Mountain Rancheria	1,169,250.00	5,993,607.53
Tule River Reservation	770,175.00	2,383,674.04
Tuolumne Rancheria	91,250.00	828,750.00
Twenty-Nine Palms Band of Mission Indians	1,378,500.00	7,066,228.77
United Auburn Indian Community	1,614,033.43	6,946,560.76
Viejas Band of Mission Indians	1,257,597.77	3,692,366.54
<b>Totals</b>	<b>28,396,751.22</b>	<b>142,858,064.76</b>
Interest	154,986.41	3,612,462.19
<b>Grand Totals</b>	<b>\$28,551,737.63<sup>1</sup></b>	<b>\$146,470,526.95</b>

## Footnotes:

1. See Exhibit 2 for a copy of a fund condition statement for the Fund for the quarter ended June 30, 2005, which is the most recent quarter-end for which a distribution has been recommended for payment.
2. Prepayment receipts were returned to payor tribes for the return of unused putative gaming device licenses issued by Sides Accountancy Corporation. Licenses in equal number were issued by the Commission on September 5, 2002 resulting in \$2,137,500 in prepayment fees to the Fund.

**CALIFORNIA GAMBLING CONTROL COMMISSION**

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Phone: (916) 263-0700 • FAX: (916) 263-0499



DATE: July 21, 2005  
TO: Gambling Control Commission  
FROM: Gary Qualset, Deputy Director  
Compliance Division  
SUBJECT: Supplement to Revenue Sharing Trust Fund Report of Distribution of Funds to Non-Compact Tribes for the Quarter Ended June 30, 2005

On July 18, 2005, the California Gambling Control Commission (Commission) received the certification report that the Coyote Valley Band of Pomo Indians (Tribe) submitted pursuant to its Tribal-State Gaming Compact section 4.3.1(e)(2). The certification report specifies the number of gaming devices operated and is used to determine the Tribe's quarterly payments due to the State. Based upon the number of gaming devices indicated in the report, the Tribe may be eligible for the distribution from the Indian Gaming Revenue Sharing Trust Fund (IGRSTF) for the quarter ended June 30, 2005 in accordance with the Commission's methodology for determining a Non-Compact Tribe. This would bring the number of tribes eligible for the distribution for the quarter ended June 30, 2005 to a total of seventy-one (71), pending determination of eligibility.

If there are seventy-one (71) tribes eligible to receive this distribution from the IGRSTF, each would receive \$94,033.56 for the distribution for the quarter ended June 30, 2005, totaling \$6,676,382.76, as shown in Exhibit 1 attached to this supplemental report. Had the total license fee payments of \$2,388,190.49 due at the end of this quarter been paid into the IGRSTF as discussed in the original report, each of the recipient tribes would have received \$33,636.48 in additional moneys along with this quarter's distribution.

A revised fund condition statement for the IGRSTF through June 30, 2005, for the fiscal year 2004-05, that reflects this change, is attached as Exhibit 2.

**RECOMMENDATION:** *It is recommended that:*

- 1) the Commission approve distribution of the current full quarterly amount of approximately \$6.68 million of all payments made by tribes and any interest income received by the IGRSTF during the most recent quarter ended June 30, 2005, to the listed tribes that are determined to be eligible Non-Compact Tribes in accordance with the Commission's identified methodology for determining a Non-Compact Tribe as shown in Exhibit 1 attached to this supplemental report, and any interest accrued for previously approved distributions held in abeyance in the IGRSTF but not immediately disbursed, and
- 2) approval of distributions shall be made on a conditional basis subject to receipt of any required eligibility certification of the maximum number of gaming devices operated during the quarter by each tribe that is required to submit a completed certification form.

**Exhibit 1****Non-Compact Tribes Eligible to Receive a Distribution from the IGRSTF (Based on the Commission's Methodology) and the Amount of Funds Recommended for Distribution**

<b>Non-Compact Indian Tribe</b>	<b>Amount of Funds Recommended to be Distributed</b>
Alturas Indian Rancheria	\$94,033.56
Bear River Band of the Rohnerville Rancheria	94,033.56
Benton Paiute Reservation	94,033.56
Big Lagoon Rancheria	94,033.56
Big Pine Reservation	94,033.56
Big Sandy Rancheria	94,033.56
Bridgeport Paiute Indian Colony	94,033.56
Buena Vista Rancheria	94,033.56
Cahto Indian Tribe of the Laytonville Rancheria	94,033.56
Cahuilla Band of Mission Indians	94,033.56
California Valley Miwok Tribe	94,033.56
Cedarville Rancheria	94,033.56
Chemehuevi Indian Tribe	94,033.56
Cher-Ae Heights Indian Community	94,033.56
Chicken Ranch Rancheria	94,033.56
Cloverdale Rancheria	94,033.56
Cold Springs Rancheria	94,033.56
Colorado River Indian Tribes	94,033.56
Cortina Rancheria	94,033.56
Coyote Valley Band of Pomo Indians	94,033.56
Death Valley Timbi-Sha Shoshone Tribe	94,033.56
Elem Indian Colony	94,033.56
Elk Valley Rancheria	94,033.56
Enterprise Rancheria	94,033.56
Ewiiapaayp Band of Kumeyaay Indians	94,033.56
Federated Indians of Graton Rancheria	94,033.56
Fort Bidwell Indian Community	94,033.56
Fort Independence Reservation	94,033.56
Fort Mojave Indian Tribe	94,033.56
Greenville Rancheria	94,033.56
Grindstone Rancheria	94,033.56
Guidiville Rancheria	94,033.56
Hoop Valley Tribe	94,033.56
Inaja-Cosmit Mission Indians	94,033.56

**Exhibit 1 (Continued)****Non-Compact Tribes Eligible to Receive a Distribution from the IGRSTF (Based on the Commission's Methodology) and the Amount of Funds Recommended for Distribution**

<b>Non-Compact Indian Tribe</b>	<b>Amount of Funds Recommended to be Distributed</b>
Ione Band of Miwok Indians	94,033.56
Jamul Indian Village	94,033.56
Karuk Tribe of California	94,033.56
La Jolla Band of Mission Indians	94,033.56
La Posta Band of Mission Indians	94,033.56
Lone Pine Reservation	94,033.56
Los Coyotes Band of Cahuilla Indians	94,033.56
Lower Lake Rancheria	94,033.56
Lytton Rancheria	94,033.56
Manchester Point Arena Rancheria	94,033.56
Manzanita Mission Indians	94,033.56
Mechoopda Indian Tribe	94,033.56
Mesa Grande Mission Indians	94,033.56
Northfork Rancheria	94,033.56
Paiute Bishop Community	94,033.56
Pinoleville Rancheria	94,033.56
Pit River Tribe	94,033.56
Potter Valley Rancheria	94,033.56
Quartz Valley Indian Community	94,033.56
Quechan Tribe of Fort Yuma	94,033.56
Ramona Mission Indians	94,033.56
Redwood Valley Rancheria	94,033.56
Resighini Rancheria	94,033.56
Round Valley Indian Tribe	94,033.56
Santa Rosa Band of Cahuilla Mission Indians	94,033.56
Santa Ysabel Mission Indians	94,033.56
Scotts Valley Band of Pomo Indians	94,033.56
Sherwood Valley Pomo Indians	94,033.56
Shingle Springs Rancheria	94,033.56
Smith River Rancheria	94,033.56
Stewarts Point Rancheria	94,033.56
Susanville Indian Rancheria	94,033.56
Table Bluff Reservation	94,033.56
Torrez-Martinez Mission Indians	94,033.56

**Exhibit 1 (Continued)****Non-Compact Tribes Eligible to Receive a Distribution from the IGRSTF (Based on the Commission's Methodology) and the Amount of Funds Recommended for Distribution**

<b>Non-Compact Indian Tribe</b>	<b>Amount of Funds Recommended to be Distributed</b>
Upper Lake Band of Pomo Indians	94,033.56
Washoe Tribe of Nevada & California	94,033.56
Yurok Tribe of the Yurok Reservation	94,033.56
<b>Total</b>	<b>\$6,676,382.76<sup>1</sup></b>

## Footnotes:

1. The total amount of distribution to each tribe is subject to audit and verification by the Commission. Future distributions may be adjusted for any overpayments or underpayments that may have been made. If a tribe is subsequently determined to be a "Compact Tribe" by definition of the Compact, and is therefore not eligible for future distributions, any overpayments that may be made are subject to refund by a tribe(s) to the Commission. The above distributions are being recommended for distribution on a conditional basis and are subject to verification of eligibility. Distributions will only be made after receipt of a Tribal-State Compact Gaming Device Certification Form (CGCC-C2004.04) that indicates eligibility in accordance with the terms of the Compact.

EXHIBIT 2

CALIFORNIA GAMBLING CONTROL COMMISSION  
 0366 - INDIAN GAMING REVENUE SHARING TRUST FUND  
 FUND CONDITION STATEMENT  
 For the twelve months ended June 30, 2005  
 Cash Basis

BEGINNING BALANCE	\$	10,848,051.12
REVENUES AND TRANSFERS		
Revenues:		
150300 Income from surplus money investments		154,986.41
216900 License fees held in trust		28,396,751.22
Transfer from the Indian Gaming Special Distribution Fund To IGRSTF for shortfall per Assembly Bill No. 1102 (Chapter 227, Statutes of 2004)		45,266,711.70
Totals, Revenues	\$	<u>73,818,449.33</u>
Totals, Resources	\$	84,666,500.45
EXPENDITURES		
Disbursements:		
Distribution	\$	32,440,071.69
Fiscal Year 2003-2004 shortfall distribution per Assembly Bill No. 1102 (Chapter 227, Statutes of 2004) and Government Code Section 12012.90		<u>45,266,711.70</u>
Totals, Expenditures	\$	<u>77,706,783.39</u>
FUND BALANCE, prior to distribution	\$	6,959,717.06
Disbursements, pending distribution		6,676,382.76
Assembly Bill No. 673 (Chapter 210, Statutes of 2003) and Government Code Section 12012.90 reserve pending audit resolution		275,000.00
Interest due to tribes <sup>1</sup>		<u>8,334.24</u>
FUND BALANCE, after distribution	\$	<u>0.06</u>

Footnotes:

1. Accrued interest on previously held distributions in the amount of \$7,222.39 for Buena Vista Rancheria and \$1,111.85 for Pinoleville pending distribution.

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DATE: July 21, 2005  
TO: Gambling Control Commission  
FROM: Gary Qualset, Deputy Director  
Compliance Division  
SUBJECT: Indian Gaming Special Distribution Fund and Indian Gaming Revenue Sharing Trust Fund Shortfall Distribution Report per Government Code Section 12012.90

Government Code Section 12012.90 provides a mechanism that requires the California Gambling Control Commission (Commission) to distribute moneys appropriated and transferred from the Indian Gaming Special Distribution Fund (SDF) to the Indian Gaming Revenue Sharing Trust Fund (RSTF) for the purpose of making payments of any shortfalls that may occur in the RSTF. A copy of Government Code Section 12012.90 is attached to the end of this report. Additionally, Government Code Section 12012.85 provides for how moneys in the SDF shall be available for appropriation by the Legislature.

Government Code Section 12012.90 requires the Commission to:

- Determine the aggregate amount of shortfalls in payments that occurred in the RSTF pursuant to Section 4.3.2.1 of the Tribal-State Gaming Compacts (Compact) for each fiscal year commencing with the 2002-03 fiscal year,
- Report to the committees in the Legislature that consider the State Budget an estimate of the amount needed to backfill the RSTF on or before the date of the May budget revision for each fiscal year, and
- Distribute the moneys without delay, upon a transfer and appropriation from the SDF to the RSTF, to eligible recipient Indian tribes for each quarter that a tribe was eligible to receive a distribution during the fiscal year immediately preceding, and furthermore,
- Prohibits an eligible recipient Indian tribe from receiving an amount from the backfill in excess of \$275,000 per eligible quarter, and
- Specifies that any transfer of funds from the SDF to the RSTF that results in a surplus shall revert back to the SDF.

As set forth in the Government Code Section 12012.90, in case of occurrence of any shortfalls in payments that occur in the RSTF during the preceding fiscal year, the Commission must determine the aggregate amount of that shortfall according to the method delineated in subparagraphs (A) and (B) of paragraph (1) of subdivision (a) of Government Code Section 12012.90. This method provides that the amount shall be the sum of the amounts determined in the above two subparagraphs as follows:

- A. For each eligible recipient Indian tribe that received distributions for all four quarters of the fiscal year the amount shall be the difference between \$1.1 million and the actual amount paid to each eligible recipient Indian tribe during the fiscal year, and
- B. For each eligible recipient Indian tribe that received distributions for less than four quarters of the fiscal year the amount shall be the difference between \$275,000 for each quarter in the fiscal year that a recipient Indian tribe was eligible to receive moneys and the actual amount paid to each eligible recipient Indian tribe during the fiscal year.

The aggregate amount of any shortfall in payments that occurred in the RSTF cannot be determined until the quarterly distribution amount for the fourth quarter of the prior fiscal year is approved by the Commission. Upon approval of the fourth quarter amount presented and recommended by Commission staff at the Commission meeting of July 21, 2005, it will be determined that each of the seventy (70) eligible recipient Indian tribes received \$407,374.90 from the RSTF for all four quarters of the prior fiscal year resulting in a shortage of \$692,625.10 for each eligible recipient Indian tribe. The aggregate amount of the shortfall in payments to all eligible recipient Indian tribes for the fiscal year 2004-05 totals \$48,483,757.00.

The statute calls for the Commission to distribute the moneys without delay to eligible recipient Indian tribes. As noted above, the aggregate amount of any shortfall to be distributed cannot be determined until the actual amount of the fourth quarter distribution is determined. On July 11, 2005 the agenda for the July 21, 2005, Commission meeting that included consideration of this *Item* and the *RSTF Report of Distribution to Non-Compact Tribes* for the fourth quarter was announced. This is generally the earliest that the fourth quarter distribution report can be considered due to the inherent administrative constraints of completing all accounting, reconciliation, and report preparation procedures related to the regular quarterly RSTF distribution process. The earliest that the Commission would thus be able to consider a shortfall distribution report is at the Commission meeting of July 21, 2005.

No reporting of this information to the Legislature is presently required. However, it will be recommended by Commission staff that the Commission voluntarily provide a copy of this report to the Legislature for informational purposes.

Pursuant to Items 0855-101-0366 and 0855-111-0367 of the Budget Act of 2005 (Senate Bill 77, Chapter 38, Statutes of 2005) \$50.5 million was appropriated and authorized for transfer and subsequent distribution to Non-Compact Tribes per Government Code Section 12012.90. As noted in Budget Item 0855-111-0367 the Director of Finance must first order the transfer of moneys by the Controller before the Commission can issue distributions. Commission staff will work with our Accounting Office, the State Controller's Office, and the Department of Finance to ensure that the transfer and distribution of these moneys are made as quickly as possible.

**RECOMMENDATION:** *It is recommended that the Commission approve this report to be submitted to the Legislature and the amounts of shortfall shown in Exhibit 1 determined pursuant to Government Code Section 12012.90 under the methodology prescribed therein.*

**Exhibit 1****Aggregate Amount of Shortfalls in Payments that Occurred in the Indian Gaming Revenue Sharing Trust Fund for Fiscal Year 2004-05**

Eligible Recipient Indian Tribe	Quarters Eligible	Total Potential Distribution	Total Approved Distribution	Aggregate Shortfall
Alturas Indian Rancheria	4	\$1,100,000.00	\$407,374.90	\$692,625.10
Bear River Band of the Rohnerville Rancheria	4	1,100,000.00	407,374.90	692,625.10
Benton Paiute Reservation	4	1,100,000.00	407,374.90	692,625.10
Big Lagoon Rancheria	4	1,100,000.00	407,374.90	692,625.10
Big Pine Reservation	4	1,100,000.00	407,374.90	692,625.10
Big Sandy Rancheria	4	1,100,000.00	407,374.90	692,625.10
Bridgeport Paiute Indian Colony	4	1,100,000.00	407,374.90	692,625.10
Buena Vista Rancheria	4	1,100,000.00	407,374.90	692,625.10
Cahto Indian Tribe of Laytonville Rancheria	4	1,100,000.00	407,374.90	692,625.10
Cahuilla Band of Mission Indians	4	1,100,000.00	407,374.90	692,625.10
California Valley Miwok Tribe	4	1,100,000.00	407,374.90	692,625.10
Cedarville Rancheria	4	1,100,000.00	407,374.90	692,625.10
Chemehuevi Indian Tribe	4	1,100,000.00	407,374.90	692,625.10
Cher-Ae Heights Indian Community	4	1,100,000.00	407,374.90	692,625.10
Chicken Ranch Rancheria	4	1,100,000.00	407,374.90	692,625.10
Cloverdale Rancheria	4	1,100,000.00	407,374.90	692,625.10
Cold Springs Rancheria	4	1,100,000.00	407,374.90	692,625.10
Colorado River Indian Tribes	4	1,100,000.00	407,374.90	692,625.10
Cortina Rancheria	4	1,100,000.00	407,374.90	692,625.10
Death Valley Timbi-Sha Shoshone Tribe	4	1,100,000.00	407,374.90	692,625.10
Elem Indian Colony	4	1,100,000.00	407,374.90	692,625.10
Elk Valley Rancheria	4	1,100,000.00	407,374.90	692,625.10
Enterprise Rancheria	4	1,100,000.00	407,374.90	692,625.10
Ewiaapaayp Band of Kumeyaay Indians	4	1,100,000.00	407,374.90	692,625.10
Federated Indians of Graton Rancheria	4	1,100,000.00	407,374.90	692,625.10
Fort Bidwell Indian Community	4	1,100,000.00	407,374.90	692,625.10
Fort Independence Reservation	4	1,100,000.00	407,374.90	692,625.10
Fort Mojave Indian Tribe	4	1,100,000.00	407,374.90	692,625.10
Greenville Rancheria	4	1,100,000.00	407,374.90	692,625.10
Grindstone Rancheria	4	1,100,000.00	407,374.90	692,625.10
Guidiville Rancheria	4	1,100,000.00	407,374.90	692,625.10
Hoopa Valley Tribe	4	1,100,000.00	407,374.90	692,625.10
Inaja-Cosmit Mission Indians	4	1,100,000.00	407,374.90	692,625.10
Ione Band of Miwok Indians	4	1,100,000.00	407,374.90	692,625.10
Jamul Indian Village	4	1,100,000.00	407,374.90	692,625.10

**Exhibit 1 (Continued)****Aggregate Amount of Shortfalls in Payments that Occurred in the Indian Gaming Revenue Sharing Trust Fund for Fiscal Year 2004-05**

Eligible Recipient Indian Tribe	Quarters Eligible	Total Potential Distribution	Total Approved Distribution	Aggregate Shortfall
Karuk Tribe of California	4	1,100,000.00	407,374.90	692,625.10
La Jolla Band of Mission Indians	4	1,100,000.00	407,374.90	692,625.10
La Posta Band of Mission Indians	4	1,100,000.00	407,374.90	692,625.10
Lone Pine Reservation	4	1,100,000.00	407,374.90	692,625.10
Los Coyotes Band of Cahuilla Indians	4	1,100,000.00	407,374.90	692,625.10
Lower Lake Rancheria	4	1,100,000.00	407,374.90	692,625.10
Lytton Rancheria	4	1,100,000.00	407,374.90	692,625.10
Manchester Point Arena Rancheria	4	1,100,000.00	407,374.90	692,625.10
Manzanita Mission Indians	4	1,100,000.00	407,374.90	692,625.10
Mechoopda Indian Tribe	4	1,100,000.00	407,374.90	692,625.10
Mesa Grande Mission Indians	4	1,100,000.00	407,374.90	692,625.10
Northfork Rancheria	4	1,100,000.00	407,374.90	692,625.10
Paiute Bishop Community	4	1,100,000.00	407,374.90	692,625.10
Pinoleville Reservation	4	1,100,000.00	407,374.90	692,625.10
Pit River Tribe	4	1,100,000.00	407,374.90	692,625.10
Potter Valley Rancheria	4	1,100,000.00	407,374.90	692,625.10
Quartz Valley Indian Community	4	1,100,000.00	407,374.90	692,625.10
Quechan Tribe of Fort Yuma	4	1,100,000.00	407,374.90	692,625.10
Ramona Mission Indians	4	1,100,000.00	407,374.90	692,625.10
Redwood Valley Rancheria	4	1,100,000.00	407,374.90	692,625.10
Resighini Rancheria	4	1,100,000.00	407,374.90	692,625.10
Round Valley Indian Tribe	4	1,100,000.00	407,374.90	692,625.10
Santa Rosa Band of Cahuilla Mission Indians	4	1,100,000.00	407,374.90	692,625.10
Santa Ysabel Mission Indians	4	1,100,000.00	407,374.90	692,625.10
Scotts Valley Band of Pomo Indians	4	1,100,000.00	407,374.90	692,625.10
Sherwood Valley Pomo Indians	4	1,100,000.00	407,374.90	692,625.10
Shingle Springs Rancheria	4	1,100,000.00	407,374.90	692,625.10
Smith River Rancheria	4	1,100,000.00	407,374.90	692,625.10
Stewarts Point Rancheria	4	1,100,000.00	407,374.90	692,625.10
Susanville Indian Rancheria	4	1,100,000.00	407,374.90	692,625.10
Table Bluff Reservation	4	1,100,000.00	407,374.90	692,625.10
Torrez-Martinez Mission Indians	4	1,100,000.00	407,374.90	692,625.10
Upper Lake Band of Pomo Indians	4	1,100,000.00	407,374.90	692,625.10
Washoe Tribe of Nevada & California	4	1,100,000.00	407,374.90	692,625.10
Yurok Tribe of the Yurok Reservation	4	1,100,000.00	407,374.90	692,625.10
<b>Total</b>		<b>\$77,000,000.00</b>	<b>\$28,516,243.00</b>	<b>\$48,483,757.00</b>

## **Government Code Section 12012.90**

(a) (1) For each fiscal year commencing with the 2002-03 fiscal year, the California Gambling Control Commission shall determine the aggregate amount of shortfalls in payments that occurred in the Indian Gaming Revenue Sharing Trust Fund pursuant to Section 4.3.2.1 of the tribal-state gaming compacts ratified and in effect as provided in subdivision (f) of Section 19 of Article IV of the California Constitution as determined below:

(A) For each eligible recipient Indian tribe that received money for all four quarters of the fiscal year, the difference between one million one hundred thousand dollars (\$1,100,000) and the actual amount paid to each eligible recipient Indian tribe during the fiscal year from the Indian Gaming Revenue Sharing Trust Fund.

(B) For each eligible recipient Indian tribe that received moneys for less than four quarters of the fiscal year, the difference between two hundred seventy-five thousand dollars (\$275,000) for each quarter in the fiscal year that a recipient Indian tribe was eligible to receive moneys and the actual amount paid to each eligible recipient Indian tribe during the fiscal year from the Indian Gaming Revenue Sharing Trust Fund.

(2) For purposes of this section, "eligible recipient Indian tribe" means a noncompact tribe, as defined in Section 4.3.2(a)(i) of the tribal-state gaming compacts ratified and in effect as provided in subdivision (f) of Section 19 of Article IV of the California Constitution.

(b) The California Gambling Control Commission shall provide to the committee in the Senate and Assembly that considers the State Budget an estimate of the amount needed to backfill the Indian Gaming Revenue Sharing Trust Fund on or before the date of the May budget revision for each fiscal year.

(c) An eligible recipient Indian tribe may not receive an amount from the backfill appropriated following the estimate made pursuant to subdivision (b) that would give the eligible recipient Indian tribe an aggregate amount in excess of two hundred seventy-five thousand dollars (\$275,000) per eligible quarter. Any funds transferred from the Indian Gaming Special Distribution Fund to the Indian Gaming Revenue Sharing Trust Fund that result in a surplus shall revert back to the Indian Gaming Special Distribution Fund following the authorization of the final payment of the fiscal year.

(d) Upon a transfer of moneys from the Indian Gaming Special Distribution Fund to the Indian Gaming Revenue Sharing Trust Fund and appropriation from the trust fund, the California Gambling Control Commission shall distribute the moneys without delay to eligible recipient Indian tribes for each quarter that a tribe was eligible to receive a distribution during the fiscal year immediately preceding.

1 Title 4. Business Regulations.....1  
 2 Division 18. California Gambling Control Commission .....1  
 3 Chapter 6. State Gambling Licenses for Gambling Establishments and Key Employees.....1  
 4 12356. Request for Gaming Activity Authorization .....1  
 5 12358. Request for Additional Temporary Tables for Tournaments or Special Events.....2  
 6 12359. Request for Additional Permanent Tables.....3  
 7

8 **Title 4. Business Regulations**  
 9 **Division 18. California Gambling Control Commission**  
 10 **Chapter 6. State Gambling Licenses for Gambling**  
 11 **Establishments and Key Employees**  
 12

13 **12356. Request for Gaming Activity Authorization**

- 14 (a) It shall be an unsuitable method of operation to offer for play any game or  
 15 gaming activity without first obtaining authorization from the Division.  
 16 (b) A gambling establishment may request the Division to authorize a game or  
 17 gaming activity which has not been previously authorized by the Division, for  
 18 use at that establishment, pursuant to California Code of Regulations, title 11,  
 19 section 2071, using a form pursuant to the California Code of Regulations, title  
 20 11, section 2038.  
 21 (c) Any games or gaming activity to be offered during a tournament or special  
 22 event not previously approved by the Division shall be submitted to the  
 23 Division for approval pursuant to California Code of Regulations, title 11,  
 24 section 2071, using a form pursuant to the California Code of Regulations, title  
 25 11, section 2038.  
 26 (d) Approval for a game or gaming activity shall not be given if the game or  
 27 gaming activity is prohibited or made unlawful by statute, local ordinance,  
 28 regulation, or final judgment by a competent court of law.  
 29 (e) If, upon subsequent review, it is determined by the Division that a game or  
 30 gaming activity is prohibited or made unlawful by statute, local ordinance,  
 31 regulation, or final judgment by a competent court of law, then the  
 32 authorization for that gaming activity shall be withdrawn.  
 33 (f) Within 10 days of service of notice from the Division either disapproving or  
 34 withdrawing authorization for a game or gaming activity as provided in this  
 35 regulation, an objection to such notice may be filed with the Division's  
 36 Director. The Director, in his or her discretion, may then grant or deny the  
 37 objection within 30 working days. Judicial review of the Director's decision is  
 38 subject to the limitation of Business and Professions Code Section 19804.

39 Authority: Sections 19811, 19823, 19824, 19840, and 19841(b), Business and Professions Code.  
 40 Reference: Sections 19826(g), 19867, and 19951, Business and Professions Code.  
 41

1 **12358. Request for Additional Temporary Tables for Tournaments or Special**  
2 **Events**

3 (a) An owner licensee of a gambling establishment may apply to operate, on a  
4 limited and temporary basis, for a tournament or special event (hereafter,  
5 event), more tables than the gambling establishment is authorized to regularly  
6 operate. To apply for additional tables, the applicant must submit to the  
7 Commission, no less than 45 days prior to the event, the following for each and  
8 every event:

9 (1) A completed and signed application form entitled "Request for a Certificate  
10 to Operate Additional Tables on a Temporary Basis" CGCC-024 (New 06-  
11 05), which is attached in Appendix A to this Chapter.

12 (2) A non-refundable application fee of \$500, made payable to the California  
13 Gambling Control Commission, plus a Division review deposit made  
14 payable to the Division of Gambling Control, pursuant to California Code of  
15 Regulations, title 11, section 2037.

16 (3) Additional tables fees, calculated by the following formula:

17 (A) Calculate the amount that the annual per table fee would be for the  
18 total number of tables planned for operation during the event, which is  
19 the total of:

20 (1) The number of tables the Commission has authorized the  
21 gambling establishment to operate on a permanent basis, plus

22 (2) The number of temporary tables being requested;

23 (B) Divide this number by 365 to determine the daily per table fee;

24 (C) Multiply this number by the number of additional tables;

25 (D) Multiply this number by the number of event days (fractions or  
26 portions of a day being considered as a full day) and round up to the  
27 nearest whole number.

28 (E) Multiply this number by two. This number is the additional tables fee  
29 for the event.

30 (b) The Commission shall not grant the application to operate additional tables on a  
31 temporary basis if a review by the Division discloses any of the following:

32 (1) The requested temporary increase in the number of tables would exceed the  
33 number of tables allowed to be operated by the local jurisdiction for both the  
34 cardroom and the jurisdiction where the gambling establishment is located.

- 1 (2) The requested temporary increase in the number of tables has been denied  
2 by the local jurisdiction where the gambling establishment is located.
- 3 (3) The requested temporary increase in the number of tables would constitute  
4 an expansion of gambling, as that term is used in Business and Professions  
5 Code, sections 19961 or 19962.
- 6 (4) The gambling establishment's state gambling license is suspended or  
7 contains conditions precluding the approval of a temporary increase in the  
8 number of tables.
- 9 (5) The gambling establishment has outstanding fees, deposits, fines, or  
10 penalties owing to the Commission or to the Division.
- 11 (c) The Commission may deny the application to operate additional tables on a  
12 temporary basis if the application as submitted was untimely or incomplete.
- 13 (d) A request by an applicant to withdraw the application shall result in the  
14 application being considered abandoned, and the additional tables fees and  
15 unused deposit amounts returned, with no further action to be taken by the  
16 Commission.
- 17 (e) The Commission may delegate the authority to deny the requested temporary  
18 increase or to issue a license certificate approving the requested temporary  
19 increase in the number of tables to any employee of the Commission.  
20 Commission staff shall commence the initial review and shall forward the  
21 application to the Division for review within 7 days of receipt of the  
22 application. The Division shall complete its review and return its findings to  
23 the Commission within 25 days of receipt of the application from the  
24 Commission. Commission staff shall then complete the review within 13 days  
25 of receiving the Division's findings and notify the applicant.

26 Authority: Sections 19811, 19823, 19824, 19840, 19841(a), (b), (c), and (p), 19864, and 19952, Business  
27 and Professions Code.

28 Reference: Section 19951, Business and Professions Code.

29  
30 **12359. Request for Additional Permanent Tables**

- 31 (a) The owner licensee of a gambling establishment may apply to operate  
32 additional tables on a permanent basis by submitting the following to the  
33 Executive Director:

- 34 (1) A completed and signed application form entitled "Application for  
35 Additional Authorized Permanent Tables" CGCC-027 (New 06-05), which  
36 is attached in Appendix A to this Chapter.

1 (2) A non-refundable application fee of \$500, made payable to the California  
2 Gambling Control Commission, plus a Division review deposit made  
3 payable to the Division of Gambling Control, pursuant to California Code of  
4 Regulations, title 11, section 2037.

5 (b) The Commission shall not grant the application to operate additional tables on a  
6 permanent basis if any of the following are disclosed by the application or the  
7 results of the investigation of the applicant by the Division:

8 (1) The requested increase in the number of tables would exceed the number of  
9 tables allowed to be operated by the local jurisdiction for both the cardroom  
10 and the jurisdiction in which the gambling establishment is located.

11 (2) The requested increase in the number of tables has been denied by the local  
12 jurisdiction in which the gambling establishment is located.

13 (3) The requested increase in the number of tables would constitute an  
14 expansion of gambling, as that term is used in Business and Professions  
15 Code, sections 19961 or 19962.

16 (4) The gambling establishment's state gambling license is suspended or is  
17 subject to conditions precluding the approval of an increase in the number of  
18 tables.

19 (5) The gambling establishment has outstanding fees, deposits, fines, or  
20 penalties owing to the Commission or to the Division.

21 (c) A request by an applicant to withdraw the application shall result in the  
22 application being considered abandoned and unused deposit amounts returned,  
23 with no further action to be taken by the Commission.

24 (d) Commission staff shall commence the initial review and shall forward the  
25 application to the Division for investigation within 7 days of receipt of the  
26 application. The Division shall complete its review and return its findings to  
27 the Commission within 25 days of receipt of the application from the  
28 Commission. Commission staff shall then complete the review and set the  
29 request on the Commission agenda within 90 days of receiving the Division's  
30 findings and advise the applicant of the agenda date and any required table fees  
31 due. If the request for additional permanent tables is approved, applicant must  
32 pay the required tables fee due before placing the additional tables in operation.

33 Authority: Sections 19811, 19823, 19824, 19840, 19841, 19864 and 19951, Business and Professions  
34 Code.

35 Reference: Sections 19961, Business and Professions Code.



STATE OF CALIFORNIA  
 CALIFORNIA GAMBLING CONTROL COMMISSION  
 CGCC 024 (New 06-05)

Application Complete	
Cert Number	
Date referred to DGC	
Fee Received	
Date Entered By:	
<i>For Commission Use Only</i>	

**REQUEST FOR A CERTIFICATE TO  
 OPERATE ADDITIONAL TABLES ON A TEMPORARY BASIS**

Do not misstate or omit any material fact(s) as each statement made herein is subject to verification.  
 Any corrections, changes, or other substitutions must be initialed and dated by the applicant.

**PLEASE SEND COMPLETED APPLICATIONS TO: CGCC at P.O. Box 526013, Sacramento, CA 95852-6013**

**PLEASE TYPE OR PRINT ALL INFORMATION**

**PART I - Establishment and Event information**

NAME OF GAMBLING ESTABLISHMENT	
BUSINESS ADDRESS OF GAMBLING ESTABLISHMENT	
PHONE NUMBER ( )	FAX NUMBER ( )
PROPOSED DATE(S) AND TIME(S) OF THE SPECIAL EVENT: <i>If the number of tables vary on multiple dates, attach a list by date.</i>	
NAME OF THE EVENT:	
LOCATION OF THE EVENT WITHIN THE GAMBLING ESTABLISHMENT:	
APPROVED GAMES TO BE OFFERED DURING THIS EVENT: <i>(If Division approval is pending, please so state.)</i>	
Number of authorized tables listed on state gambling license:	
Number of additional event tables being requested:	
Total number of tables you plan to operate during the date(s) listed in your request:	
Amount of table fees included with this request: <i>(Refer to instructions for additional information.)</i>	

**PART II - Statement Confirmation**

I request the issuance of a Certificate to Operate Additional Tables on a Temporary Basis at the above-named gambling establishment.  
 I have read the foregoing request and know the contents thereof.  
 The statements contained herein are true and correct and contain a full account of the information requested.  
 The number of tables requested does not exceed that which is authorized under the local and state law.  
 I understand that the establishment identified above will not be allowed to legally operate more than the number of tables for which a fee is being paid.  
 I am aware that later discovery of an omission or misrepresentation made in the above statements may be grounds for administrative action against any gambling licenses associated with the above-named gambling establishment.  
 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

\_\_\_\_\_  
 Signature of Owner/Licensee \_\_\_\_\_  
 Date

\_\_\_\_\_  
 Print Full Name \_\_\_\_\_  
 Title/Affiliation

**INSTRUCTIONS FOR CALCULATING THE AMOUNT OF TABLE FEES  
TO OPERATE ADDITIONAL TABLES ON A TEMPORARY BASIS**

Determine the amount of the required fee that must be included with this request by completing the following steps and using the table below:

Number of Tables	Per Table Fee
One to Five	\$250
Six to Eight	\$450
Nine to Fourteen	\$1,050

Number of Tables	Per Table Fee
Fifteen to Twenty-five	\$2,150
Twenty-six to Seventy	\$3,200
Seventy-one or more	\$3,700

1. Add the current number of authorized tables licensed by the Commission to operate to the number of special event tables.
2. Multiply the total number of tables by the per table fee indicated in the above table.
3. From this total, subtract the basic table fees previously assessed for the current year.
4. Divide this figure by 365. This establishes the additional daily table fee for the event.
5. Multiply this total by the number of event days (fractions or portions of a day are considered a full day) and round your result up to the nearest whole number.
6. Multiply this number by two. This final figure is the table fee for the tournament or special event.

**EXAMPLE:** Gambling establishment "A" proposes to operate an additional 3 tables during a 5-day tournament. Establishment "A" is licensed/certified by the Commission for 24 tables and has been previously assessed a fee of \$51,600 (24 tables x \$2,150 per table = \$51,600)

1. Add the current number of tables and the additional number of tournament tables (24 current + 3 additional = 27 total)
2. Multiply this amount by the per table fee shown above (27 total # tables x \$3,200 per table = \$86,400).
3. From this amount, subtract the previously assessed fee for the year (\$86,400 - \$51,600 previously assessed fee = \$34,800).
4. Divide this amount by 365 ( $\$34,800 \div 365 = \$95.34$ ).
5. Multiply this amount by the number of days of the tournament ( $\$95.34 \times 5 \text{ days} = \$476.70$ ) and round this number up to the nearest whole number (\$477).
6. Multiply this amount by two ( $\$477 \times 2 = \$954$ ). The final fee for Establishment "A" to operate the additional tables for its tournament would be \$954.



State of California  
**California Gambling Control Commission**  
 CGCC - 027 (New 06-05)

Commission Use Only
Fee Received: _____
Date to DGC: _____

## APPLICATION FOR ADDITIONAL AUTHORIZED PERMANENT TABLES

Please refer to the instructions when completing the application. Type or print (in ink) all information requested on this application form. If additional space is needed, please note response on a separate sheet of paper and attach to the application.

### SECTION 1: GAMBLING ESTABLISHMENT INFORMATION

Name of Gambling Establishment:

Business Address:

Street	City	State	Zip Code
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Mailing Address (if different than Business Address):

Street	City	State	Zip Code
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Business Telephone Number:

Business Facsimile Number (if applicable):

### SECTION 2: TABLE INFORMATION

A) Number of Presently Authorized Permanent Tables:	
B) Number of Requested Additional Permanent Tables:	
C) Total Number of Proposed Tables: (Total Amount of A and B)	

### SECTION 3: DECLARATION

I declare under penalty of perjury under the laws of the State of California that the foregoing information, and all information submitted with this application is true, correct, and complete.

Signature of Owner/Licensee: \_\_\_\_\_

Print Name:

Date:

Title/Affiliation:

Designated Contact for this Application

Telephone Number:

## APPLICATION FOR ADDITIONAL AUTHORIZED PERMANENT TABLES

Retain a photocopy of the complete application packet for your permanent records.

Applications not fully and accurately completed (including all required supporting materials) will be returned to the sender for completion. If the application is returned at any point in the processing, the applicant will need to follow the directions included with it and resubmit it in a timely manner. If any or all information is not provided, the application may be delayed, returned for completion, or denied.

The applicant is responsible for providing the appropriate information needed to determine eligibility for additional authorized permanent tables. If a question is not applicable, indicate with "N/A." If additional space is needed, use a separate sheet of paper and precede each response with the applicable section and item. Attach the paper to the back of the application.

Do not misstate or omit any material fact(s) as each statement made herein is subject to verification.

Any corrections, changes or other alterations must be initialed and dated by the applicant.

Items required for the application to be considered complete:

- Application for Additional Authorized Permanent Tables (CGCC-027)
- A non-refundable \$500 application fee (*payable to: the California Gambling Control Commission*)

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### SECTION 1: GAMBLING ESTABLISHMENT INFORMATION

Provide the legal name of the entity and any alternative names for the same business entity. You must notify the Commission of any name, address or telephone number changes. Your information is used to provide proper identification of your file, to contact you, and/or to determine your eligibility. Personal information contained in the *Additional Authorized Permanent Tables CGCC-027* may be disclosed to the public in accordance with the Gambling Control Act (Business and Professions Code section 19821(b)).

---

### SECTION 2: TABLE INFORMATION

Indicate the number of tables that the gambling establishment currently has and the number it is requesting. Also provide the number of tables total that the gambling establishment wishes to operate. Please note that all requests are subject to compliance with local ordinances and state gambling laws.

---

### SECTION 3: DECLARATION

Sign and date the application under penalty of perjury. An application must be signed and dated to be considered complete. The designated agent or contact person for this application must also be included, if applicable.