

CALIFORNIA GAMBLING CONTROL COMMISSION
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**MINUTES OF OCTOBER 14, 2008
COMMISSION MEETING**

OPEN SESSION

1. Call to Order and Pledge of Allegiance.

Chairman Shelton called the meeting to order at 10:02 a.m., and asked everyone to stand for the Pledge of Allegiance.

2. Roll Call of Commissioners.

Roll Call of Commissioners was taken with Chairman Shelton and Commissioners Schmidt, Shimazu, and Vuksich present.

A court reporter was present at the meeting. A copy of the court reporter's transcript of the meeting is incorporated into these minutes as Attachment A.

10:00 a.m.

3. Readoption of Uniform Tribal Gaming Regulation CGCC-8 (Minimum Internal Control Standards) in its original or amended form and Adoption of Written Response to Objections of the Association of Tribal and State Gaming Regulators to CGCC-8, for Submission to all Compact Tribes (Tribal-State Gaming Compact Section 8.4.1 (b) & (c)).

- The original form of CGCC-8 dated March 13, 2008.
- The amended form of CGCC-8.

Chief Counsel Matteucci indicated that staff recommended that the Commission readopt the Uniform Tribal Gaming Regulation CGCC-8, Minimum Internal Control Standards, in the amended form dated October 1, 2008, and adopt the written response to objections dated October 9, 2008.

See Commission meeting transcript (Attachment A) for comments presented to the Commission by the following individuals:

Richard Armstrong, Twenty-Nine Palms Band of Mission Indians, La Posta Band of Mission Indians, Tuolumne Band of Me-Wuk Indians, Coast Indian Community, Resighini Rancheria, Big Valley Band of Pomo Indians, and Susanville Indian Rancheria

Leland Kinter, Rumsey Tribal Gaming Agency

Anthony Roberts, Rumsay Rancheria Tribal Council

Sam Lawhon, Picayune Rancheria

Thomas Walker, Picayune Rancheria

Anthony Barnes, Pala Gaming Commission

Jane Zerbi, Pala Gaming Commission, United Auburn Tribal Gaming Agency, Jackson Rancheria Tribal Gaming Agency, and Trinidad Rancheria Tribal Gaming Agency

Peter Larson, Rincon Luiseno Band of Indians

Jerry Levine, Dry Creek Rancheria

Sharon House, Santa Rosa Katchi and the Pauma Gaming Commission

Theodore Pata, Paskenta Band of Nomlaki Indians

Mike LaCosta, Bear River Band Rancheria

Ron Jager, Tribal Gaming Agency for the United Auburn Tribe

Sherry Rodriguez, La Jolla Gaming Commission

Tracy Burris, Viejas Band of Kumeyaay Indians

Tracy Avila, Robinson Rancheria

Darci Houck, Picayune Rancheria

Ron Rossier, Paskenta Bank of Nomlaki Indians

Incorporated into the minutes as Attachment B are written comments submitted by Richard Estrada, La Posta Band of Mission Indians Gaming Commission.

Incorporated into the minutes as Attachment C are written comments submitted by Lenora "Dee" Cline, Pauma Gaming Commission.

Incorporated into the minutes as Attachment D are written comments submitted by Ronald Jaeger, United Auburn Indian Community Tribal Gaming Agency.

Incorporated into the minutes as Attachment E is the Statement of Theodore Pata, Paskenta Band of Nomlaki Indians.

Incorporated into the minutes as Attachment F are written comments submitted by Anthony Barnes, Pala Gaming Commission.

Incorporated into the minutes as Attachment G are written comments submitted by Norm Hansen, Twenty-Nine Palms Gaming Commission.

Incorporated into the minutes as Attachment H are written comments submitted by DeLisle Calac, Rincon Gaming Commission.

Incorporated into the minutes as Attachment I are written comments submitted by Marvin E. Hess, Bishop Paiute Gaming Commission.

Incorporated into the minutes as Attachment J are written comments submitted by Thomas Walker, Picayune Rancheris of the Chukchansi Indians.

After receiving public comments concerning Item 3., Uniform Tribal Gaming Regulation CGCC-8, Commissioner Shimazu made the following motion: I move to approve staff's recommendation which is pursuant to compact section 8.4.1(b) regarding MICS in the amended form dated October 1, 2008 and also to adopt the detailed response to Tribal-State Association objections to CGCC-8 dated October 9, 2008. Commissioner Vuksich seconded the motion, which unanimously carried in a vote by roll call with Chairman Shelton and Commissioners Schmidt, Shimazu, and Vuksich voting yes.

A copy of Uniform Tribal Gaming Regulation CGCC-8 in the amended form dated October 1, 2008 and the Detailed Response to Tribal-State Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8) are incorporated into the minutes as Attachment K and L respectively.

At 11:35 a.m. Chairman Shelton announced that the Commission would recess and reconvene at 1:30 p.m.

OPEN SESSION

1:30 p.m.

Chairman Shelton reconvened the meeting at 1:30 p.m., with Commissioners Schmidt, Shimazu, and Vuksich present.

4. Approval of Commission Meeting Minutes for September 10, 2008.

Upon motion of Commissioner Vuksich, seconded by Commission Schmidt and unanimously carried in a vote by roll call with Chairman Shelton and Commissioners Schmidt, Shimazu,

and Vuksich voting yes, the Commission adopted the September 10, 2008 Commission meeting minutes.

5. Application for Approval for Initial State Gambling License Including All Associated Applicants and Endorsees (Pursuant to Business and Professions Code section 19851):

A. Commerce Casino – California Commerce Club, Inc.

Saatchian Revocable Trust

Kasar Saatchian – Trustee, Trustor and Beneficiary

Susan Saatchian – Trustee, Trustor and Beneficiary

Acting Deputy Director Littleton indicated that staff recommended that the Commission approve the initial application for the Saatchian Revocable Trust, Kasar Saatchian and Susan Saatchian, to be endorsed on the state gambling license for Commerce Casino. Upon motion of Commissioner Vuksich, seconded by Commissioner Schmidt and unanimously carried in a vote by roll call with Chairman Shelton and Commissioners Schmidt, Shimazu, and Vuksich voting yes, the Commission adopted the staff recommendation.

B. Diamond Jim's Casino – Wizard Gaming, Inc.

George Deitch, Trustee of the Zephyr Inter Vivos Trust

Acting Deputy Director Littleton indicated that staff recommended that the Commission approve the initial application for George Deitch to be endorsed of the state gambling license for Diamond Jim's Casino.

Steve Blacken presented comments to the Commission in opposition of George Deitch being granted a state gambling license as trustee of the Zephyr Inter Vivos Trust. Those comments are included in Attachment A of these minutes.

Harlan Goodson, representing George Deitch, presented comments to the Commission, which are included in Attachment A of these minutes.

Commissioner Shimazu moved to adopt the staff recommendation. Chairman Shelton seconded the motion, which carried in a vote by roll call with Chairman Shelton and Commissioners Schmidt and Shimazu voting yes and Commissioner Vuksich voting no.

C. Commerce Casino: California Commerce Club, Inc.

Marsha Gold, Contingent Beneficiary of the Anter Family Trust

Acting Deputy Director Littleton indicated that staff recommended that the Commission approve the initial application for Marsha Gold to be endorsed on the state gambling license for Commerce Casino. Upon motion of Commissioner Vuksich, seconded by Chairman Shelton and unanimously carried in a vote by roll call with Chairman Shelton and Commissioners Schmidt, Shimazu, and Vuksich voting yes, the Commission adopted the staff recommendation.

6. Applications for Renewal of State Gambling License Including All Associated Applicants and Endorsees (Pursuant to Business and Professions Code section 19876):
Poker Flats Casino – Terry Vargas, Sole Proprietor

Acting Deputy Director Littleton indicated that staff recommended that the Commission approve renewal of the state gambling license for the remainder of the licensure period through July 31, 2010, with removal of the existing condition. Upon motion of Chairman Shelton, seconded by Commissioner Vuksich and unanimously carried in a vote by roll call with Chairman Shelton and Commissioners Schmidt, Shimazu, and Vuksich voting yes, the Commission adopted the staff recommendation.

7. Requests for Additional Permanent Authorized Tables (Pursuant to California Code of Regulations, Title 4, section 12359):
Bankers Casino – Cap's Enterprises, Inc.

Acting Deputy Director Littleton indicated that staff recommended that the Commission approve the request to add two additional tables for a total of nine tables endorsed on the license for Bankers Casino.

Robert Tabor, attorney for Bankers Casino, provided the Commission an update on the status of the casino.

Commissioner Schmidt moved to approve the staff recommendation. Commissioner Vuksich seconded the motion, which unanimously carried in a vote by roll call with Chairman Shelton and Commissioners Schmidt, Shimazu and Vuksich voting yes, the Commission adopted the staff recommendation.

8. Applications for Initial Key Employee Portable License (Pursuant to Business and Professions Code section 19854(d)):
 - A. Scott Fiedler
 - B. Hung Tran

Acting Deputy Director Littleton indicated that staff recommended that the Commission approve the initial applications for a personal key employee license for the period of October 14, 2008 through October 31, 2008 for Scott Fiedler, Item 8.A., and Hung Tran, Item 8.B. Upon motion of Commissioner Vuksich, seconded by Commissioner Schmidt and unanimously carried in a vote by roll call with Chairman Shelton and Commissioners Schmidt, Shimazu, and Vuksich voting yes, the Commission adopted the staff recommendation.

9. Conversion of Endorsed Key Employee Licenses to Personal Portable Licenses (Pursuant to Business and Professions Code section 19854(d)):

David Lewis	Jason Brisby	Valerie Maldonado
Alan Wong	Michael Sana	Ingrid Roseman
Fred McGarr	Cynthia Winters	Jeffrey Harris
Glenn Tracey	Martin Kasko	John Griffo
Steven Romeyn	Efren Antonio	Debora Millan
Mike Kusano	James Denio	David Mosikian
Susan Holyfield	Daniela Cicu	Robert Burgum
James Dent	Panu Suwanjinda	Won Sung
Patrick Berry	Verachai Jongjjaroenroongroche	Touraj Tehrany
Michiko Barratt	Veronica Lombardi	Thomas De Coudres
George Freese	Jessica Raznikov-Clein	Elisabeth Chavez
Randy Yaple	William Marsden	Michael Stan
Mabel Conti	James Castalano	Barry Mok
Anthony Pastor	Nicole Provolt	Bill Bundesen
David Samaris		

Acting Deputy Director Littleton indicated that staff recommended that the Commission approve the conversion of the endorsed key employee licenses to a personal key employee license for the individuals listed in Item 9. Upon motion of Commissioner Shimazu, seconded by Commissioner Vuksich and unanimously carried in a vote by roll call with Chairman Shelton and Commissioners Schmidt, Shimazu, and Vuksich voting yes, the Commission adopted the staff recommendation.

10. Applications to Convert Gambling Business Owner Registration to a License (Pursuant to Business and Professions Code section 19853 and California Code of Regulations, Title 4, section 12233):

Network Management Group, Inc.:

Jamie Tierney, Beneficiary, Community Property Interest Holder

11. Applications to Convert Third Party Provider of Proposition Services Owner Registration to a License (Pursuant to Business and Professions Code section 19984 and California Code of Regulations, Title 4, section 12218):

Network Management Group, Inc.:

Jamie Tierney, Beneficiary, Community Property Interest Holder

Acting Deputy Director Littleton indicated that staff recommended that the Commission approve the application to convert gambling business owner and third party provider of proposition player services registration to a license for the licensure period of October 14, 2008 through August 31, 2010 for Jamie Tierney. Upon motion of Chairman Shelton, seconded by Commissioner Vuksich and unanimously carried in a vote by roll call with Chairman Shelton and Commissioners Schmidt, Shimazu, and Vuksich voting yes, the Commission adopted the staff recommendation.

12. Applications for Initial Tribal-State Compact Gaming Resource Supplier Finding of Suitability (Authority Pursuant to the Tribal-State Gaming Compact, section 6.4.5):
Sealaska Properties, LLC:

Richard Rinehart, Jr., Co-Manager, Vice-President, CFO

Acting Deputy Director Littleton indicated that staff recommended that the Commission approve the initial finding of suitability application for the period of October 14, 2008 through March 31, 2010 for Sealaska Properties, LLC. Upon motion of Commissioner Vuksich, seconded by Commissioner Schmidt and unanimously carried in a vote by roll call with Chairman Shelton and Commissioners Schmidt, Shimazu, and Vuksich voting yes, the Commission adopted the staff recommendation.

13. Application for Tribal-State Compact Gaming Resource Supplier Finding of Suitability – Request to Withdraw (Pursuant to Business and Professions Code section 19869):

A. Aruze Gaming America, Inc.:

Steven Munatones, General Manager Mikio Tanji, Chairman, President, Treasurer

B. HCAL, LLC: Stephen Brammell, Secretary, Sr. Vice-President, General Counsel

Acting Deputy Director Littleton indicated that staff recommended that the Commission approve, without prejudice, the requests for withdrawal of the applications for Tribal-State Compact Gaming Resource Supplier finding of suitability for Aruze Gaming America, Inc., and HCAL, LLC. Upon motion of Commissioner Schmidt, seconded by Commissioner Vuksich and unanimously carried in a vote by roll call with Chairman Shelton and Commissioners Schmidt, Shimazu, and Vuksich voting yes, the commission adopted the staff recommendation.

CONSENT CALENDAR ITEMS:

14. Applications for Initial Work Permit (Pursuant to Business and Professions Code section 19912):

Napa Valley Casino: Stephen Brazil

15. Applications for Initial Tribal-State Compact Key Employee Finding of Suitability (Authority Pursuant to the Tribal-State Gaming Compact, section 6.4.4):

A. Bear River Casino - Bear River Band of the Rohnerville Rancheria: John Simmons

B. Cache Creek Casino Resort – Rumsey Indian Rancheria of Wintun Indians:

Richard Beatty Ken Tieu

C. Mono Wind Casino – Big Sandy Rancheria Band of Western Mono Indians:

Patricia Whitehead Scott Yang

D. Morongo Casino Resort & Spa – Morongo Band of Cahuilla Indians of the Morongo Reservation: Don Ayers

~~E. Pit River Casino – Pit River Tribe: Boyd Taylor - Tabled~~

F. River Rock Casino – Dry Creek Rancheria Band of Pomo Indians: Felice Yu

G. Sycuan Casino - Sycuan Band of Diegueno Mission Indians: Bryan Hunter

H. Valley View Casino – San Pasqual Band of Digueno Mission Indians:

Ramiro Guerra Jennifer Mills

16. Applications for Renewal Tribal-State Compact Key Employee Finding of Suitability (Authority Pursuant to the Tribal-State Gaming Compact, section 6.4.4):

- A. Augustine Casino - Augustine Band of Cahuilla Mission Indians:
 Dulce Fernandez Fernando Martinez
- B. Barona Valley Ranch Resort - Barona Band of Mission Indians:
 Mikle Brooks George Denny Lausannah Knies
 Donna Miller Gregorio Rodriguez Ashleigh Sarmiento
 James Schloegel Scott Tuck Rema Vasquez
 Javier Zavala
- C. Black Oak Casino – Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria:
 Marty Goldman Tina Rust
- D. Cache Creek Casino Resort – Rumsey Indian Rancheria of Wintun Indians:
 Joseph Beauchamp Liam Luangrath Andras Pota
- E. Casino Pauma – Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation: Hong Bui
- F. Cher-Ae-Heights Casino – Cher-Ae-Heights Indian Community of the Trinidad Rancheria:
 Andrew Snowden Epifania Talkington
- G. Chukchansi Gold Resort and Casino – Picayune Rancheria of the Chukchansi Indians:
 Kelli Jennings Ramda Thongprasith
- H. Chumash Casino – Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation:
 Brandi Borden Keela Gregg
- I. Colusa Casino and Bingo – Cachil Dehe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria: Maria Salazar
- J. Desert Rose Casino – Alturas Rancheria: Deborah Reynolds
- K. Diamond Mountain Casino – Susanville Indian Reservation: Jacob Fogal
- L. Eagle Mountain Casino – Tule River Indian Tribe of the Tule River Reservation:
 Rose Gonzalez Eric O’Neil
- M. Elk Valley Casino – Elk Valley Rancheria: Jay Cholwell
- N. Feather Falls Casino – Mooretown Rancheria of Maidu Indians:
 Shawn Davis Harvey Gramps
- O. Harrah’s Rincon – Rincon Band of Luiseno Indians: Jason Clark
- P. Jackson Rancheria Hotel & Casino – Jackson Rancheria Band of Miwuk Indians:
 William Bowden Emily Quintoa San Saechao
- Q. Morongo Casino Resort & Spa – Morongo Band of Cahuilla Indians of the Morongo Reservation:
 Dave Griffin Jason Kendrick Sandra La Placa
 Eric Nash Norris Runnels Wendy Shain
 Roxanne Shenah Chou Vang Gregory Williams
- R. Pala Casino – Pala Band of Mission Indians:
 Shauna Anton Lynda Buendel Debbie Butler
 Grace Chue Marlon Cordoba Jesus Debaran
 Mitchel Glusky Deborah Greco Anthony Hale
 Edward Hatcher Eddie Ho Michael Ka’ahanui
 Igor Khazanovskiy Thu Ly Denise Montoya
 Kim Huong Nguyen Ronald Olsen Matthew Pelletier

- Roberto Quintana Rotkeo Sayyasouk Tommy Spencer II
- S. San Manuel Indian Bingo and Casino – San Manuel Band of Serrano Mission
Indians of the San Manuel Reservation:
- Rufina Charles Joel Dancel Saithong Intapura
Michael Kohn Cac Truong
- T. Tachi Palace Hotel & Casino – Santa Rosa Indian Community of the Santa Rosa
Rancheria
- Rowena Decena Brian Kooyman
- U. Thunder Valley Casino - United Auburn Indian Community of the Auburn
Rancheria: Stephen Bryant Matthew Morgan
- V. Pine Casino – Middletown Rancheria Band of Pomo Indians:
- Cassandra Alford Susan Knowles Marsha Johnson-
Levie
- W. Valley View Casino – San Pasqual Band of Digueno Mission Indians:
Charles Matanane
- X. Viejas Casino & Turf Club - Viejas Band of Kumeyaay Indians:
- Elisa Ezquerro Gerardo Gardner Chris Le
Garcia

Acting Deputy Director Littleton announced that staff was tabling Consent Calendar Item 15.E., and then indicated that staff recommended that the Commission approve the remaining Consent Calendar Items 14 through 16. Upon motion of Commissioner Vuksich, seconded by Chairman Shelton and unanimously carried in a vote by roll call with Chairman Shelton and Commissioners Schmidt, Shimazu, and Vuksich voting yes, the Commission adopted the staff recommendation.

PUBLIC COMMENT

There were no comments from the public during this portion of the meeting.

ADJOURNMENT

Upon motion to adjourn the meeting by Chairman Shelton, seconded by Commissioner Vuksich and unanimously carried in a roll call vote, with Chairman Shelton and Commissioners Schmidt, Shimazu, and Vuksich voting yes, the meeting adjourned at 2:15 p.m.

ATTACHMENT A

RECEIVED

2008 OCT 24 AM 9:15

CONTROL COMMISSION

GAMBLING COMMISSION MEETING

TUESDAY, OCTOBER 14, 2008

10:00 A.M.

ORIGINAL

BY: Cindy M. Billalón, CSR No. 10618



Northern California Court Reporters

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A P P E A R A N C E S

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Chairman Dean Shelton
Commissioner Sheryl Schmidt
Commissioner Stephanie Shimazu
Commissioner Alexandra Vuksich

Terri Ciau, Deputy Director of Licensing
Pam Ramsay, Staff Services Analyst
Evelyn Matteucci, Chief Counsel
Tina Littleton, Licensing Manager

1 BE IT REMEMBERED, that on Tuesday, October 14, 2008,
2 commencing at the hour of 10:00 a.m., at the California
3 Gambling Control Commission hearing room, 2399 Gateway Oaks
4 Drive, Sacramento, California, 95833, before me, CINDY M.
5 BILLALON, a Certified Shorthand Reporter in and for the county
6 of Sacramento, state of California, the following proceedings
7 were had:

8 ---oOo---

9 CHAIRMAN SHELTON: I'd like to call the meeting to order
10 and ask everybody to please stand and state the Pledge of
11 Allegiance of the flag.

12 (Pledge of Allegiance recited.)

13 CHAIRMAN SHELTON: May I have roll call, please.

14 MS. RAMSAY: Chairman Shelton.

15 CHAIRMAN SHELTON: Here.

16 MS. RAMSAY: Commissioner Schmidt.

17 COMMISSIONER SCHMIDT: Here.

18 MS. RAMSAY: Commissioner Shimazu.

19 COMMISSIONER SHIMAZU: Here.

20 MS. RAMSAY: Commissioner Vuksich.

21 COMMISSIONER VUKSICH: Here.

22 CHAIRMAN SHELTON: First off, a little housecleaning
23 chores here. If you have cell phones on, please either turn
24 them off or put them on vibrator so we don't interrupt the
25 proceedings.

1 And we have a lot of people here I'm sure that want to
2 speak and I need to have an idea of how many people wish to
3 speak so I can see whether I need to time the presentation of
4 the speakers or if I may limit -- not to have to put a limit
5 on it. Okay. Thank you.

6 I would also request that if a speaker has said something
7 you agree with and you're going to get up to be repetitious
8 and say the same thing, please just say that and don't go into
9 just the same dissertation unless you have a new and different
10 slant on it or we'll be here until midnight and I don't think
11 any of you wish to do that.

12 I'm gonna ask legal to open up for us and then we'll move
13 on from there.

14 MS. MATTEUCCI: Good morning, Mr. Chair, Commissioners:
15 Agenda Item No. 3 -- Agenda Item No. 3, readoption of the
16 Uniform Tribal Gaming Regulation CGCC-8, minimum internal
17 control standards, in its original or amended form and adoption
18 of written response to objections of the Association of Tribal
19 and State Gaming Regulators to CGCC-8 for submission to all
20 compact tribes.

21 The original form of CGCC-8, dated March 13th, 2008, and
22 adoption of written response to objections or the amended form
23 of CGCC-8 dated October 1st, 2008 and adoption of written
24 response to objections.

25 Staff recommends that the Commission readopt the Uniform

1 Tribal Gaming Regulation CGCC-8, minimum internal control
2 standards, in the amended form dated October 1st, 2008 and
3 adopt the written response to objections dated October 9th,
4 2008.

5 And before we proceed, I would like to give a brief
6 history of the minimum internal control standards, a chronology
7 and then just a brief summary of the changes that were made to
8 the regulation that were -- that were recently made and I'll
9 just briefly outline the changes.

10 Minimum internal control standards are the primary
11 procedures used to protect the integrity of casino gaming
12 operations, which is cash intensive and are a vitally important
13 part of properly regulated gambling. Inherent in any internal
14 control structure are the concepts of individual accountability
15 and segregation of incompatible functions. They are a system
16 of internal checks and balances, but ones that can be
17 circumvented, which is why independent oversight is essential.

18 In October 2006 in Colorado River Indian Tribes v.
19 National Indian Gaming Association, or the CRIT decision, the
20 United States Court of Appeals for the District of Columbia
21 Circuit held that the National Indian Gaming Commission, or
22 NIGC, did not have the authority to promulgate or enforce the
23 MICS with regard to Class III tribal gaming. This decision
24 effectively eliminated the federal government's authority and
25 jurisdiction to regulate Class III gaming in California, at

1 least with regard to Class III MICS. The court clearly held
2 that the declared Indian Gaming Regulatory Act policy of
3 shielding Indian tribes, quote, from organized crime and other
4 corrupting influences, closed quote, and, quote, to assure that
5 gaming is conducted fairly and honestly by both the operator
6 and players for Class III gaming is accomplished through the
7 only allowable basis for such, which is the Tribal-State
8 Compacts.

9 Under the compact, the State Gaming Agency has a role in
10 addition to the tribal gaming agency and has the authority to
11 promulgate regulations to establish statewide uniform operating
12 procedures pursuant to Sections 8.0, 8.1 and 8.4 of the Compact.

13 Under Compact Section 8.4.1(d) authorizes the State
14 Gaming Agency to adopt a regulation which becomes effective
15 immediately if the agency demonstrates exigent circumstances.
16 The Commission could have demonstrated exigent circumstances
17 here. That is, in light of the fundamental importance of MICS
18 in protecting the integrity of the gaming activities and
19 ensuring the successful functioning of Class III gaming
20 operations and the need for independent oversight of MICS
21 compliance, immediate adoption of the regulation was necessary.

22 However, the Commission decided not to exercise its
23 exigent circumstance authority, but rather went to the Tribal
24 State Association in a non-exigent, regular adoption mode.
25 This was done in a collaborative manner so as to work with the

1 Association and the tribes to get a regulation acceptable to
2 all the parties in order that there be a uniform statewide
3 regulation incorporating the equal to or more stringent than
4 NIGC MICS language.

5 The regulation you have before you is not only the efforts
6 of commission staff, but also the result of the scores of
7 suggestions from a variety of interested parties, particularly
8 tribal representatives which we very much appreciate.

9 The Commission's MICS regulations provide for greater
10 transparency of gaming operations. The hope was that the use
11 of the Association process would demonstrate a sharing of a
12 joint Sovereign interest in ensuring that tribal gaming
13 activities are open and any threat to integrity of the gaming
14 operation reduced or eliminated.

15 I'll go quickly through the chronology. The regulation
16 took approximately one year to go through the initial
17 Tribal-State Association protocol and process to be adopted by
18 the Commission. It took approximately four months to complete
19 the protocol process for voting on the regulation. We began
20 in March 2007 with the first draft of CGCC-8 which was
21 distributed in April 2007 and was eventually voted upon by the
22 Commission in March 2008.

23 There were five Association meetings and six task force
24 meetings prior to CGCC-8 being adopted in March 2008 with much
25 discussion and proposed alternative language.

1 From May of 2008 through early September 2008, there were
2 three Association meetings to consider and comment on CGCC-8
3 and to finally vote pursuant to the Association protocol. It
4 is now before the Commission pursuant to Section 8.4.1(b), the
5 so-called override provision for possible readoption in its
6 original or amended form with a detailed written response to
7 the Association's objections.

8 The State believes that Section 8.4.1(b) provides a clear
9 exception to the general proposition in Subsection (a) of
10 Section 8.4.1 that the regulation has to be approved by the
11 Tribal-State Association. This readoption and response
12 procedure constitutes a clear exception to the general
13 requirement that the association approve a regulation before it
14 be effective and has been exercised by the Commission before.

15 Lastly, I'll just go through the changes that we've made,
16 and just to highlight some of them.

17 In response to the many comments received and in
18 recognition of its government-to-government relationship with
19 the tribes, the staff made some suggested changes to CGCC-8
20 March 13, 2008 draft. The revisions and corrections seek to
21 clarify, improve and update the Commission's original regulation.

22 The primary changes are: That we originally were
23 adopting the NIGC MICS as in effect on October 1st, 2006 or as
24 amended from time to time. We took out the language "as
25 amended from time to time" which created in our opinion a due

1 process problem.

2 We deleted the requirement that each tribe provide to
3 CGCC a copy of its MICS within 30 days of the effective date
4 of the regulation and all amendments within 30 days of
5 adoption. So they're no longer required to be given to the
6 Commission.

7 Per the request of several tribes, we deleted the word
8 "full" from the phrase "full financial audit" in Subsection (h).

9 In Subsections (i) dealing with report acceptance and
10 tribal action plan and (j), compliance review report dispute.
11 We corrected the confusion and clarified the process by
12 revising Subsections (i) and (j).

13 We revised the variance process in Subsection (l) to
14 clarify that the Commission agrees a variance process is
15 appropriate and that the CGCC review and dispute resolution
16 process regarding variances that a tribe may take advantage of
17 before invoking the compact Section 9 process is voluntary.

18 Changes were made to address concerns about requiring
19 dispute resolution to be mandatory with the Commission by
20 clarifying that the tribe has the option of seeking review by
21 the full commission before invoking the compact dispute
22 resolution process.

23 And, lastly, we added a severability clause which permits
24 other provisions of the regulation to continue in effect even
25 though one particular provision is found to have a fatal

1 defect. Thank you.

2 CHAIRMAN SHELTON: Commissioners, any statements?

3 COMMISSIONER SHIMAZU: Just to kinda summarize what
4 Evelyn said -- our chief legal counsel said, this has been a
5 long process. I think it's been ongoing for at least 20 months
6 now. And we've had, what, eight Association meetings and six
7 task force meetings. And I think this is the third time before
8 the Commission. So I kinda wanted to clarify it's been a long
9 process and we've been working hard on it.

10 We probably wanna hear from the public.

11 CHAIRMAN SHELTON: I don't know if you already selected
12 an order, but whoever would like to come up and address us,
13 please do.

14 MR. ARMSTRONG: Good morning Commissioners, Chairman
15 Shelton, Staff. My name's Richard Armstrong counsel with
16 Rosette & Associates. On behalf of the Twenty-Nine Palms Band
17 of Mission Indians, the La Posta Band of Mission Indians, the
18 Tuolumne Band of Me-Wuk Indians, the Coast Indian Community,
19 the Resighini Rancheria, the Big Valley Band of Pomo Indians
20 and the Susanville Indian Rancheria. On behalf of these tribes,
21 I respectfully come before you today with two requests.

22 First, I urge you to reconsider the path that you've
23 taken thus far in crafting CGCC-8. CGCC-8 as originally
24 drafted and in its current version is viewed by my clients as
25 an expansion of the State's regulatory role and authority over

1 tribal gaming activities. CGCC-8 as originally drafted and in
2 its current version impermissibly establishes a state mandated
3 minimum internal control standards which are currently within
4 the sole regulatory authority of my client, tribal gaming
5 agencies pursuant to Section 8.1 of the compact.

6 Additionally, CGCC-8 remains unnecessary, unduly
7 burdensome and duplicative. Specifically, the NIGC recently
8 approved an amendment to the Twenty-Nine Palms Band of Mission
9 Indians tribal gaming ordinance which specifically provides
10 for and maintains the status quo between the tribe and the
11 NIGC, the National Indian Gaming Commission, with regard to
12 MICS compliance and enforcement pursuant to 25CFR542. My
13 other client, tribal gaming ordinances, gaming regulations and
14 internal controls already include MIC standards at least as
15 stringent as the federal MICS which are effective.

16 And the compact in uniform fashion at Section 8.1.1
17 through 8.1.14 specifically identifies those areas and
18 subjects which the tribal gaming agencies are vested with the
19 authority to promulgate and establish minimum standards which
20 ironically coincide with the longstanding tribally established
21 MICS standards.

22 In short, my clients view CGCC-8 as an attempt to
23 unilaterally amend their compacts which will not be tolerated
24 nor acquiesced to without a further review by competent
25 authority if the State seeks to enforce CGCC-8 upon them.

1 My second request this morning is to merely ask you to
2 abide by the terms of the compact. If you do indeed decide
3 today to readopt CGCC-8, here my clients are concerned in that
4 both the public legal memorandum dated October 1st and the
5 CGCC's recently released detailed response to Tribal-State
6 Association objections to minimum internal control standards
7 indicates that your chief legal counsel is advising you that
8 you do not need to take CGCC-8 back to the Tribal-State
9 Association for approval. Here my clients believe that
10 compact Section 8.4.1(a) could not be clearer with regard to
11 whether or not a proposed CGCC regulation requires Association
12 approval.

13 Specifically compact Section 8.4.1(a) provides that with
14 the exception of an exigent circumstance based regulation
15 promulgated pursuant to compact Section 8.4.1(d). States:
16 (Reading): No State Gaming Agency regulation shall be
17 effective with respect to the tribe's gaming operation unless
18 it has first been, one, approved by the Association. And,
19 two, the tribe has had an opportunity to review and comment on
20 the proposed regulation.

21 What's been indicated today is a divergence from what is
22 clearly stated in the compact; therefore, it's the position of
23 my clients that any attempt at enforcement of CGCC-8 prior to
24 both the approval by the Association and the applicable tribal
25 comment period will not be consented to nor tolerated.

1 In closing, my clients urge the CGCC to avoid maintaining
2 this 19- to 20-month long strong-arm approach with regard to
3 CGCC-8 any longer. It's not working. It goes without saying
4 that the sue us if you don't like it approach the state
5 regulation of tribes by the CGCC is ineffective and patently
6 offensive, especially in these trying economic times. If the
7 state of California truly desires to effectively and fairly
8 impose a state mandated MICS upon tribes, then, the governor
9 himself should initiate compact negotiations on a
10 tribe-by-tribe, government-to-government basis and respect
11 California tribes as the sovereign governments that they are.

12 I've got two written statements, one from the La Posta
13 Band of Mission Indians and one from the Twenty-Nine Palms
14 Band of Mission Indians that I'd like to submit and make part
15 of the record.

16 CHAIRMAN SHELTON: Give it to legal counsel.

17 MR. ARMSTRONG: Thank you very much.

18 CHAIRMAN SHELTON: Thank you. Commissioners.

19 MR. KINTER: Good morning.

20 CHAIRMAN SHELTON: Good morning.

21 MR. KINTER: My name is Lenny Kinter and I'm the chairman
22 of the Rumsey Tribal Gaming Agency which is responsible for
23 the regulatory oversight at Cache Creek Casino Resort. And I
24 wanna address a fundamental fallacy regarding the CGCC's
25 claimed need for CGCC-8. The CGCC's detailed response to the

1 Tribal-State Association's objection claims a state agency's
2 focus is on compact compliance. Not surprisingly then, the
3 document spends many pages asserting that CGCC-8 will assist
4 the State Gaming Agency to ensure tribes comply with their
5 compact obligations. However, the CGCC's premise that there
6 is a lack of state oversight in state indian casinos is simply
7 false. The State Gaming Agency not only has the authority to
8 conduct compliance reviews of Sections 6, 7 and 8 of Rumsey's
9 compact with the state, they have exercised that authority
10 numerous times at Cache Creek. Indeed, since the compacts
11 went into effect, the Bureau of Gambling Control's agents and
12 analysis -- analysts have performed compact compliance reviews
13 at Cache Creek nearly a dozen times and are scheduled to do so
14 again tomorrow on October 15th.

15 In connection with these compliance reviews, the Rumsey
16 Tribal Gaming Agency has on many occasions provided to the
17 Bureau of Gambling Control and even the CGCC copies of Cache
18 Creek's system internal controls or the SIC. The SIC is a
19 document that explains in great detail how Cache Creek complies
20 with each and every regulation contained within Rumsey's
21 tribal MICS. The Rumsey tribal MICS in turn exceed the
22 requirements of the federal MICS. So the question here is if
23 the State Gaming Agency already has in power under the compact
24 to ensure Cache Creek's compliance with the SIC and the SIC is
25 a specific application of the MICS, then why is CGCC-8

1 necessary? The answer is that it's not. Whatever the CGCC
2 seeks through CGCC-8, it is not compact compliance. Rather,
3 CGCC-8 appears to be yet one more calculated attempt by the
4 State to impose control over and violate the sovereignty of
5 California's Indian tribes. We will not allow that.

6 In any event, during the last hearing on this matter,
7 Chairman Shelton stated that while the overwhelming majority
8 of tribes operate under strong regulatory controls without
9 problem, the CGCC knew of tribes that did not. My response to
10 that comment is that the State has the authority, as I just
11 explained, to ensure that all tribes comply with their tribal
12 state compacts. The CGCC should avail itself of that authority
13 as it has done and will do again beginning tomorrow at Cache
14 Creek. Just as there is no lack of state oversight at Cache
15 Creek, there is no lack of federal oversight.

16 CGCC staff and commissioners, including
17 Commissioner Shelton, have argued at various times that the
18 Colorado River Indian Tribes decision left a regulatory vacuum
19 by displacing the NIGC from its traditional role of regulating
20 Class III gaming. While the point seems moot in light of the
21 State's regulatory role under the compact, Rumsey along with
22 other tribes erase the perception of any federal regulatory
23 vacuum by enacting a tribal gaming ordinance specifically
24 recognizing that NIGC's regulatory role as if the CRIT
25 decision did not exist.

1 The CGCC's detailed response to the Tribal-State
2 Association recognizes the adoption of these ordinances by
3 several tribes, but discounts the ordinances because as the
4 CGCC claims they are voluntary and therefore subject to change
5 at
6 tribal whim. This assertion demonstrates a lack of
7 understanding of the gaming ordinance process. Like any other
8 ordinance, the gaming ordinance is a tribal law. More
9 importantly, gaming ordinances cannot be modified without the
10 NIGC's approval. Thus, any tribe subjecting itself to NIGC
11 oversight through an amended gaming ordinance cannot relieve
12 itself of that oversight at any time as the CGCC suggests.

13 The California Gambling Control Commission also asserts
14 that the NIGC may not have the power to approve or deny a
15 change to a gaming ordinance to the extent it deals with
16 Class III regulation, that assertion is nothing more than rank
17 speculation without the benefit of research.

18 CGCC's detailed response also suggests the NIGC lacks
19 resources to conduct MICS compliance reviews, particularly in
20 the post-CRIT environment. This again is not true. Between
21 1995 and 2005 the NIGC performed nine MICS compliance audits,
22 site visits and two license compliance visits at Cache Creek.
23 More important, since the CRIT decision, the NIGC has performed
24 three MICS compliance site visits at Cache Creek. Clearly,
25 the NIGC has no problem conducting MICS compliance reviews at

1 tribal casinos.

2 Thank you for your time. I'm joined today by a member of
3 the Rumsey Tribal Council who would also like to make a brief
4 statement.

5 CHAIRMAN SHELTON: Thank you.

6 MR. ROBERTS: Good morning. My name's Anthony Roberts.
7 I'm a member of the Rumsey Rancheria Tribal Council as well as
8 the tribe's treasure. And I'm also a commissioner on the
9 Rumsey TGA. Speaking on behalf of Rumsey's tribal government,
10 we find CGCC-8 to be an affront to the tribe's sovereignty and
11 just one more example of the CGCC's high-handed, disrespectful
12 approach to its relations with California tribes. It seems no
13 coincidence that the Bureau of Gambling Control, the other
14 half of the state's gaming agency under the compact between
15 our tribe and the state of California disapproves of the
16 proposed regulation and the manner in which the CGCC is
17 attempting to force it on tribes.

18 The fundamental point here is that as drafted, CGCC-8
19 provides the CGCC with powers to which it is not entitled
20 under our compact. The compact defines the limits of the
21 tribes and the State's rights and obligations with the respect
22 to the tribe's gaming operations. Just as tribes cannot
23 without consequence stop paying to the state monies due as
24 specified by the compact, the state cannot impose regulatory
25 powers that are not spelled out in the compact.

1 For example, I challenge the CGCC to locate any mention
2 much less a requirement for the tribe to perform an agreed
3 upon procedures audit and to forward the results of that audit
4 to the CGCC. That provision -- that provision does not exist
5 in the compact. It can, however, be found at Section F of
6 CGCC-8. Not content with that unwarranted expansion of the
7 compact in Section G of the proposed regulations, the CGCC
8 expands the access to documents it currently has under Section 7
9 of the compact to include such things as the right to interview
10 and consult an independent certified public accountant
11 performing the agreed upon procedures. Where exactly in the
12 compact does the CGCC find authority for that expansion?

13 The same is true with respect to financial audits.
14 Section 8.1.8 of Rumsey's current compact requires the Tribal
15 Gaming Agency to ensure that an independent certified public
16 accountant annually audit the tribe's gaming operations. To
17 meet this compact obligation, the Rumsey Tribal Gaming Agency
18 has annually provided to the state documentation demonstrating
19 that the audits Section 8.1.8 requires was performed. That is
20 all the compact requires. Nothing in the compact provides the
21 CGCC, or any other state agency for that matter, the right to
22 receive actual copies of the audits which after all contain
23 the tribe's most sensitive financial information. Yet, that
24 is exactly what CGCC-8 requires.

25 This is a critical point. Under the compact Section

1 7.4.4. The state is entitled to inspect the gaming operation's
2 records, but only as reasonably necessary to ensure compliance
3 with the compact. Receiving actual copies of the gaming
4 operation's financial audits is not required to meet that
5 standard. I would also like to point out that nothing in the
6 regulatory landscape has altered the obligations by tribes to
7 submit to the NIGC copies of their financial audits. Thus, at
8 least in this respect CGCC-8 is clearly duplicative.

9 In addition, in its detailed response to the Tribal-State
10 Association objections at page 5, the CGCC claims CGCC-8 is
11 not an expansion of the CGCC's authority, but rather an exercise
12 of authority that has existed all along. If that is true and
13 CGCC-8 is not an amendment to the 1999 compacts, perhaps the
14 CGCC can explain why new compacts that the state has entered
15 into with among others the North Fork Rancheria, have
16 provisions that mirror those in CGCC-8.

17 In closing, CGCC-8 is a compact amendment which can only
18 be effected through government-to-government negotiations
19 between tribes and the governor of California. The CGCC
20 should cease in its improper denigration of tribal sovereignty.
21 Thank you.

22 CHAIRMAN SHELTON: Thank you very much.

23 MR. LAWHON: Good morning. My name's Sam Lawhon.

24 CHAIRMAN SHELTON: I'm sorry. I couldn't hear you.

25 MR. LAWHON: My name's Sam Lawhon. I'm a member of the

1 Picayune Rancheria Tribal Council. Picayune Rancheria of
2 Chukchansi Indians Tribal Council opposes this proposed
3 language of CGCC-8. We previously submitted comments and
4 submit them again today, which we've given to Herb Bolz just
5 minutes ago. The proposed regulation allows CGCC to expand
6 its authority beyond the terms set forth in the tribal-state
7 compact. These proposed regulations therefore would amount to
8 the state unilaterally usurping the tribal authority as its
9 primary entity responsible for carrying out the tribe's
10 regulatory responsibilities. The tribal-state compact
11 specifically provides that the Tribal Gaming State Agency shall
12 be the primary entity responsible for administering and
13 enforcing tribal regulations, regulatory requirements of the
14 compact.

15 If the State wishes to expand its authority under the
16 compact, it must first enter into tribal state negotiations
17 for an amendment to the compact and provide the meaningful --
18 to the tribe exchange for such expanded authority. In addition,
19 the CGCC issued its formal detailed response to the
20 Tribal-State Association objections to the minimum internal
21 controls, MICS CGCC-8. The detailed response on October 9th,
22 2008, the detailed response lists the comments submitted to
23 the Tribal-State Association as exhibits. These comments did
24 not include specific objections from the Tribal-State
25 Association.

1 The Picayune Rancheria of Chukchansi Indians submitted
2 formal comments both orally and in writing at the Association
3 meeting where the minutes -- I'm sorry -- at the Association
4 meeting where they were voted down. The Picayune Rancheria of
5 Chukchansi Indians opposes any adoption of the CGCC-8 as its
6 proposed regulations not only on substantive grounds found in
7 our written comments, but also procedural grounds, failure to
8 address the formal objections of the State Association which
9 incorporate individual tribal comments with specific
10 objections to CGCC-8.

11 We, again, provide detailed written comments of both
12 State, Tribal-State Association and the CGCC to our concerns
13 and sincerely hope that the Commission will review and
14 consider these comments rather than disregard the legitimate
15 concerns the tribes have raised since the proposed regulations
16 was first introduced. We at Picayune Rancheria of the
17 Chukchansi Indians have MOU with the federal government so
18 then again these would be duplicative. We don't understand
19 why if the tribes went through so much to negotiate compacts
20 that the state doesn't have to follow them.

21 MR. WALKER: Good morning. My name's Thomas Walker,
22 Picayune Rancheria of Chukchansi Indians, Tribal Gaming
23 Commission chairman. The Tribal Gaming Commission and the
24 Picayune Rancheria of Chukchansi Indians oppose the language
25 for CGCC-8 and joins with the comments of our tribal counsel.

1 We also would like to add our concern regarding the
2 misinformation transmitted to the media concerning the lack of
3 regulation in the area of tribal gaming. Tribal gaming is highly
4 regulated. In fact, tribes are required to comply with more
5 regulatory authorities and requirements than any other form of
6 gaming nationwide. Tribes have been instrumental in educating
7 the state on gaming regulation, including development and
8 implementation of minimum internal control standards. The
9 tribes and California do an excellent job in regulating Indian
10 gaming. The State's attempt
11 to portray tribal regulation of gaming as nonexistent is
12 insulting and shows a complete lack of respect for our role as
13 the primary regulatory entity for Indian gaming under the
14 tribal state compact.

15 Again, I'd like to note that on your California Gambling
16 Control Commission detailed response to Tribal-State Association
17 objections our comments were not listed. I'd like to state
18 that for the record. Thank you.

19 MR. BARNES: Good morning, Chairman, Commissioners.

20 CHAIRMAN SHELTON: Good morning.

21 MR. BARNES: How are you doin? I'm Anthony Barnes
22 chairperson of the gaming commission. And I'm submitting some
23 written comments on behalf of the Pala Gaming Commission and
24 also would like to address a few points at this time.

25 First of all, the Association's disapproval of proposed

1 regulation CGCC-8 means it does not take effect, period. We
2 believe compact Section 8.4.1 clearly requires Association
3 approval of CGCC-8 to become effective. This means that if
4 CGCC readopts CGCC-8 and sends it to the tribes for comment,
5 it must thereafter go back to the Association for
6 consideration and approval.

7 Second, CGCC-8 exceeds the legal authority granted to the
8 state in the compact and is unnecessarily duplicative, unduly
9 burdensome and unfairly discriminatory. The Pala Gaming
10 Commission believes that the state has authority to perform
11 reviews as allotted by the compact and has and will continue
12 to comply with the compact reviews by the state in regards to
13 those areas authorized by our compact.

14 On the other hand, it is also our duty to ensure that the
15 state also respects the compact and limits itself to items
16 that were agreed upon by our tribe and the state as documented
17 in the compact. CGCC-8 is an attempt to change the terms of
18 our compact that were not agreed to by our tribe. The Pala
19 tribe has granted the NIGC jurisdiction to monitor and enforce
20 the MICS at Pala Casino through an amendment to our gaming
21 ordinance approved by the NIGC under federal law which is in
22 effect and enforceable.

23 The Pala Gaming Commission has adopted and has always
24 required the tribe's gaming operation to comply with the NIGC
25 MICS even when the CRIT decision was decided and then upheld.

1 The Pala Band's compact provides for flat-fee payments to the
2 state. And as such, the stated CGCC objective of securing the
3 state's revenue share clearly do not apply and are unnecessary.
4 State MICS monitoring is not necessary to ensure an accurate
5 counting of number of machines.

6 We also wanna reiterate that the Pala band's compact does
7 not provide the state with authority to conduct financial
8 reviews of any kind. We note that the proposed CGCC-8
9 presented here today is not the same one that was submitted to
10 the Association. There are still many changes that need to be
11 made to bring it into compliance with the compact.

12 Finally, the Pala Gaming Commission supports effective
13 regulation on Indian gaming -- of Indian gaming authorized by
14 the compacts. We cannot support the proposed regulation
15 CGCC-8 which is fatally flawed. We urge you today to table
16 this item and have your staff go back to the Association with
17 a mandate to work with tribal and state delegates to draft a
18 regulation that is consistent with the compact or alternatively
19 to amend substantially the proposed regulation to comply with
20 the compact and thereafter submit it to the Association.

21 At this time, I'd like to introduce Jane Zerbi, our
22 tribal attorney. She has some additional comments.

23 MS. ZERBI: Good morning. On behalf of the Pala Gaming
24 Commission as well as the United Auburn Tribal Gaming Agency,
25 the Jackson Rancheria Tribal Gaming Agency and the Trinidad

1 Rancheria Tribal Gaming Agency, I wanted to address in a
2 little more detail one of the points that Chairman Barnes here
3 addressed. And I think it's a -- we believe it's a fundamental
4 point in the compacts and that's the regulatory process which
5 we believe to be a important process for Indian gaming and for
6 strong regulation. Section 841 defines that regulatory process
7 and strikes the balance between tribal government sovereignty
8 over their lands and state jurisdiction.

9 Without the compact or other express agreement by the
10 tribe, as you know, and I know that your legal counsel has
11 advised you, the state would not have civil jurisdiction to
12 impose a reg such as CGCC-8. So the compact or separately
13 outside of compact an agreement by the tribe is really the
14 benchmark as to whether or not authority exists. We believe
15 that Section 841 established the Association process very
16 clearly in subdivision (a). It's read previously, but I'm
17 gonna repeat it because I think it's that important.

18 No state regulation shall be effective with respect to
19 the tribe's gaming operation unless it has first been approved
20 by the Association and the tribe has had an opportunity to
21 review and comment on the proposed regulation. In the two
22 recent memorandums issued by CGCC staff, they've taken the
23 position that subdivision (b) which is under (a) creates a
24 clear exception because of the second sentence talking about
25 if a reg is disapproved then the state can readopt the reg and

1 send it out to tribes for comment and says that any other
2 reading other than yours would be mere surplusage.

3 We disagree and think that (a) is quite clear. The
4 Association must approve a reg, therefore, for the request
5 that this go back to the Association after you've achieved
6 comments. We don't think that (b) creates any kind of
7 surplusage. In fact, if a reg today is readopted and sent out
8 to tribes for comments, those comments would be useful to the
9 State Gaming Agency as it looks at redrafting a reg for
10 submission to this Association, as well as to Association
11 delegates as they analyze that regulation. We also think that
12 it's clear in 841 that when an exception was granted to meeting
13 Association approval such as with exigent circumstances in the
14 first instance, it was put clearly in the language. There is
15 no such language in (b).

16 And, finally, while this is not a full legal presentation,
17 I do wanna note that the long line of Indian cases holding up
18 the Indian cannon of construction where there's an ambiguity,
19 courts will resolve that in favor of tribes. We feel that the
20 compacts are clear that regulations which our state civil
21 jurisdiction which wouldn't otherwise be granted to the state
22 must go to and be approved by the Association. And for that
23 reason, we urge you to keep that in mind today and ultimately
24 resubmit a revised reg there..

25 CHAIRMAN SHELTON: Thank you.

1 MR. LARSON: Good morning, Commission. My name is
2 Peter Larson. I'm from Lewis & Roca. I'm speaking today on
3 behalf of the Rincon Luiseno Band of Indians. The Rincon band
4 opposes this effort by the CGCC in the strongest of terms for
5 the following reasons: One, the substance of the regulation
6 is more properly the subject of government-to-government
7 negotiations and compact amendment. The band understands the
8 concern of the CGCC that internal control standards be in
9 place. That's precisely why the Rincon Gaming Commission has
10 promulgated tribal MICS and enforces those tribal regulations.

11 However, the Rincon band objects in the strongest of terms
12 to the substance of CGCC and the process by which the
13 Commission purports to adopt this regulation as a State Gaming
14 Agency regulation. The action to adopt this reg without
15 Association approval is a clear attempt to circumvent the
16 compact amendment provisions of the existing compact. The
17 proposed regulation is a rewrite of Sections 7 and 8 which
18 designate the tribal gaming agency as the primary regulator
19 and the entity in charge of establishing internal controls and
20 enforcing those controls.

21 The proposed regulation completely supines the authority
22 of the tribal gaming agency regarding promulgation of tribal
23 regulations and enforcement. As the substance of CGCC-8 is
24 more properly the subject of the compact amendment process,
25 government-to-government negotiations are appropriate in this

1 instance.

2 Second, there's no void in regulation. The compact
3 provides that each gaming agency is vested with the authority
4 to promulgate and enforce regulations regarding on-site gaming
5 regulation. That's why the Rincon band -- the Rincon Gaming
6 Commission promulgated our tribal MICS and enforces those
7 MICS. The Rincon Gaming Commission's extremely vigilant in
8 its enforcement of those MICS.

9 Additionally, and as required by Section 8.1.8 of the
10 compact, the gaming commission ensures that an independent CPA
11 conducts an audit of the gaming operation no less than annually.
12 The State Gaming Agency has access to certification from the
13 tribal gaming agency that the audit has been completed and
14 complies with that section, there are no additional requirements
15 for auditing within the 1999 compact for Rincon. As there's
16 no void in regulation, there's no need for CGCC-8.

17 Third, reflective of other comments this morning, the
18 compact just doesn't provide the CGCC with unilateral authority
19 to amend the compact. Subsection (a) of 8.4.1(a) has two
20 requirements. One, Association approval of a regulation. And,
21 two, tribal opportunity to review and comment on any proposed
22 regulation. Without both of those requirements being met, any
23 proposed regulation would be ineffective if enforcement were
24 attempted on behalf by the Commission.

25 Those are the clear and plain terms of 8.4.1(a). Any

1 argument that Sections (b) or (c) of 8.4.1 can serve to override
2 the clear and very specific terms of Section (a) would result
3 in a completely unreasonable reading of the compact. Under
4 the Commission's reading, the language requiring approval by
5 the Association would have no effect. The plain and specific
6 terms of (a) cannot be negated merely upon unilateral demand
7 by the Commission. As such, a reading is unreasonable and
8 would result in absurd results. It should be clear to the
9 Commission that the compact has not authorized the State
10 Gaming Agency to unilaterally adopt regulations over the
11 objection of the Association.

12 Fourth, the CRIT decision didn't change anything. Just
13 like the Indian Gaming Regulatory Act does not serve as a
14 general source of power for the NIGC to have undefined and
15 unlimited regulation -- regulating authority, similarly, the
16 compact does not provide that general and infinite authority
17 to the Commission or to the State Gaming Agency. The
18 relationship by which the band and the state is governed is
19 the express terms of the compact, nothing more.

20 Fifth and finally, government-to-government discussions
21 are appropriate in this instance, proper forum within which to
22 discuss the State Gaming Agency authority over the MICS auditing
23 and other enforcement authority is a compact amendment process.
24 Any other effort other than government-to-government negotiation
25 is void ab initio.

1 While the band is encouraged by the fact that at least
2 the CGCC would like to see changes to the compact, we suggest
3 -- I'm sorry. The band is encourage by the fact that the
4 Commission would like to see changes to the compact; we'd also
5 like to see changes in the compact. We suggest that out of
6 respect for the sovereignty of both the tribe and the state
7 that the Commission immediately cease its efforts to adopt the
8 regulation and instead the governor's office seek amendment to
9 the compact to address issues of concern by the Commission.

10 At a minimum, should the Commission feel strongly about
11 the need for promulgation of CGCC-8, we encourage the State
12 Gaming Agency to comply with the express terms of the compact
13 and submit a revised regulation to the Association for its
14 consideration and possible approval pursuant to 8.4.1(a).

15 MR. LARSON: Thank you.

16 CHAIRMAN SHELTON: Thank you.

17 MR. LARSON: And who do I submit these to?

18 COMMISSIONER SHIMAZU: I just had one quick comment. I
19 think you mentioned that -- I'm sorry -- that the Commission
20 would like to see changes to the compact. I'm not really sure
21 where that came from because we're not -- that's not what
22 we're advocating.

23 MR. LARSON: Well, it's our position that the regulation
24 is in excess of the authority of the Commission and not provided
25 for within the compact. Accordingly, any such regulation in

1 excess of the structure and authority provided within the
2 compact would be a compact amendment.

3 COMMISSIONER SHIMAZU: Okay. So I guess it's your
4 interpretation of --

5 MR. LARSON: CGCC-8 as if --

6 COMMISSIONER SHIMAZU: -- of what we're doing.

7 MR. LARSON: Yeah. If the Commission were to attempt to
8 promulgate and enforce CGCC-8, that would be a unilateral
9 amendment to the compact.

10 COMMISSIONER SHIMAZU: Okay. Well, just for the record,
11 I don't think we were -- we don't believe that there should be
12 any changes to the compact, just to clarify. I understand
13 that you're saying that ultimately -- well, that's how you're
14 interpreting what we're doing, but we don't see it that way.

15 MR. LARSON: Difference of opinion.

16 COMMISSIONER SHIMAZU: Right.

17 MR. LARSON: Thank you.

18 COMMISSIONER SHIMAZU: Thank you.

19 MR. LEVINE: Good morning, Commissioner Shelton,
20 Commissioners, Counsel. My name is Jerry Levine and I'm an
21 attorney and I'm here this morning on behalf of Dry Creek. I
22 represent several other tribes, some of which have actually
23 signed the amendment to the compact that has a commitment with
24 regard to the MICS and, of course, those are not an issue in
25 my remarks.

1 I think the last question that you asked was one of the
2 best ones because it goes to the very heart of what is the
3 goal of this process and what you're trying to do. What I
4 understand the goal to be is, first of all, to get some kind
5 of a baseline for what the compact really does require. There's
6 no question the compact requires the tribal gaming agency to
7 adopt a set of regulations that do a whole host of things. As
8 we said in our comments, virtually every corner of the gaming
9 operation has to be addressed by the tribal gaming agency.
10 And indeed I think most of the tribal gaming agencies, if not
11 all of them, have done that and ironically most of them have
12 used the MICS that were promulgated by the NIGC as the basis
13 for doing that because it does provide a standard and I don't
14 think there's any debate about that.

15 Indeed, those MICS were created by tribes leading a
16 process with the NIGC to come up with a set of standards
17 because tribal governments are concerned about regulation.
18 They spend millions of dollars every year on regulation and
19 often their systems are more advanced than the casinos that
20 you're familiar with in Las Vegas or New Jersey. So I don't
21 think this is about regulation. I don't think it's about
22 resistance to regulation by tribes. And I don't think it's
23 the CGCC necessarily trying to amend the compacts, but the
24 compacts are very specific about where the authority to
25 regulate is and where the rules are supposed to be promulgated

1 in regard to that regulation and it vests that through
2 negotiation.

3 And I might add that negotiation started some six years
4 before the '99 compacts came to be, thus, all that authority
5 and the tribal gaming agencies. There's no question though
6 also that the state has the authority to inspect and to
7 inspect to ensure that the tribe is in compliance with its
8 compact. Then the question is whether or not, not whether or
9 not the tribe has regulations in effect that regulate the
10 gaming operation, but are those regulations essentially
11 effective?

12 Now, under the compact that was left to the tribes and
13 theoretically I suppose a tribe could adopt a set of regulations
14 that comes out of Australia or Austria or anywhere else where
15 they've got gaming that might be even better than the MICS.
16 That was left to the tribes to do. But we do have a set of
17 standards that's kind of an industry standard; those are the
18 MICS that the NIGC promulgated and most of the tribes are
19 pretty comfortable with and are reliable.

20 So we proposed a system that accomplishes your having
21 that kind of baseline that you can measure compliance with
22 without what we consider to be an amendment to the compact
23 which substitutes your judgment for what is appropriate for
24 the tribes. And that is to use kind of a safe harbor concept
25 in which you acknowledge that if a tribe is following those

1 standards, the MIC standards, then you will consider that to
2 be in compliance. That removes the uncertainty in terms of
3 what it is you're looking for and it provides a certainty to
4 tribes that if they follow the MICS at least there won't be a
5 debate about whether or not their standards are appropriate
6 standards or not. It also leaves intact the prerogatives that
7 were built into the compact for the tribal gaming agency. The
8 practical effect of that is going to be that tribes without
9 being mandated by regulation that you probably don't have the
10 authority to pass, to follow the very standard that I think
11 your goal is to see adopted.

12 You know, normally when an agency adopts a regulation, it
13 follows a statute. The statute in this case is the compact.
14 And the compact is pretty explicit about who has the authority
15 to pass regulations and the regulations with regard to
16 regulating the tribal operation are clearly vested in the
17 tribal gaming agency so why not give them an incentive to do
18 that, an incentive that is almost already self-executing and
19 that is simply a declaration by the agency.

20 And that's what we propose, that if the MICS are followed
21 that they would be deemed to be in compliance. You come close
22 to that, but the devil's in the details. The nuance of what
23 you've proposed here is to mandate that following those MICS
24 and then to impose time lines and ultimately potential
25 breaches of compact for not doing that. That's not your

1 authority under the MICS and that's the basis of our opposition.

2 I would ask you to go back and look not only at our
3 proposal, but the part of the submission from the Attorney
4 General that talks about the safe harbor. I think the
5 Attorney General didn't quite get what we were talking about,
6 but at least it's an approach that is joined in by the Attorney
7 General in suggesting that simply setting a standard by which
8 things could be measured without mandating it might be the way
9 to skin this cat. Thank you.

10 CHAIRMAN SHELTON: Thank you.

11 MS. HOUSE: Good morning. I'd like to respectfully thank
12 you for allowing me to speak before you. And I'm here on
13 behalf of the Santa Rosa Katchi and the Pauma Gaming Commission.

14 CHAIRMAN SHELTON: For the record, please state your name.

15 MS. HOUSE: That's minor. I didn't sign in because I'm
16 objecting to the sign in.

17 CHAIRMAN SHELTON: You don't have to sign in.

18 MS. HOUSE: Where it says public, it's public. And this
19 should be a government-to-government basis. And for your
20 consideration, I think we would request that the Commission
21 yourself -- oh, Sharon House. I'm sorry.

22 CHAIRMAN SHELTON: Making sure.

23 MS. HOUSE: I would request that -- I'm an attorney for a
24 number of other commissions also, but I would request that you
25 come to a hearing before one of my clients because that's the

1 way government-to-government operation works is you should be
2 presenting your issues also. We have processes. My clients
3 have processes just like you do. And this is a compact just
4 like a contract between two entities but with the issue of
5 sovereignty attached to it.

6 I would not like to go into the same or read the same
7 statements, but I think I have to because that's what I was
8 authorized to do. Just as Jane had read her statement, I
9 believe that many of the other tribes read their statement
10 also. But before I do that, I would like to, for once, agree
11 with Jerry Levine who just spoke. And this is a little bit of
12 a history lesson.

13 In 1995, I was apart of the first MICS group and I said
14 I'd never do that again. But the first MICS group was
15 introduced by the National Indian Gaming Association and all
16 of those tribes. And they developed the initial MICS. They
17 took it from various auditors. They had tribal CFOs and those
18 who work on a day-to-day regulations in regards to this. And
19 that's important because it's been 20 years and we're back at
20 the same point saying wait a minute, the tribes can do their
21 own MICS. They know what minimum internal control standards
22 are. They were the first ones that brought it forward and
23 said wouldn't it be good if the tribes had uniformity and they
24 had resources and ordered to follow internal control standards
25 and guidelines and then they're able to develop their own.

1 And we're still at their point.

2 20 years, the federal government is doing the same thing.
3 20 years, they're trying to force some of the tribes to follow
4 certain guidelines that are day-to-day regulatory aspects.
5 And, again, here we are with this MICS and the way it's being
6 proposed. So with that, I'm gonna say the history lesson is
7 over and I'm going to read this statement because it goes back
8 to everything that's been said here so far.

9 The CGCC does not have the authority to unilaterally
10 impose CGCC-8 after it has been rejected by the Association.
11 Section 8.4.1(a) of our tribal state compact makes it clear
12 that no State Gaming Agency regulation shall be effective with
13 respect to the tribe's gaming operation unless it has first
14 been approved by the Association and the tribe has an
15 opportunity to review and comment on the proposed regulation.

16 We understand that CGCC may be relying on Subdivision (b)
17 of Section 8.4.1 which contemplates that the CGCC may readopt
18 a regulation that is disapproved by the Association, but the
19 remainder of the subdivision and the section read as a whole
20 makes it clear that Subdivision (b) contemplates the CGCC being
21 able to do so only when it is able to amend the regulation in
22 a manner that overcomes the objections of the Association.

23 With that, I would like to say that the Santa Rosa Cacchi
24 Gaming Commission and Tribe and the Pauma Gaming Commission ask
25 that CGCC not readopt CGCC-8 and if it does so that it submit

1 that amended regulation to the Association in conformity with
2 Subdivision (a) of Section 8.4.1. Thank you.

3 CHAIRMAN SHELTON: Thank you.

4 MS. HOUSE: If you have any questions. How bout history
5 questions? Thank you.

6 MR. PATA: Good morning, Chairman Shelton and Members of
7 the California Gambling Control Commission. My name is
8 Theodore Pata and I'm the chairman of the gaming commission at
9 Paskenta of the Paskenta Band of Nomlaki Indians. The
10 Paskenta Band operates the Rolling Hills Casino pursuant to
11 its 1999 tribal tribal-state gaming compact. I'm here today
12 representing the Paskenta Tribal Gaming Commission. For the
13 following reasons the Paskenta Tribal Gaming Commission strongly
14 opposes the Gaming Commission's readoption of CGCC-8 as
15 embodied in proposed Uniform Tribal Gaming Regulation CGCC-8
16 amended form dated October 1st, 2008:

17 Number one, although proposed amended form CGCC-8
18 includes various modifications, the main version of the
19 proposed regulation remains unchanged. Thus, the Paskenta
20 Tribal Gaming Commission opposes CGCC-8 for reasons set forth
21 in the September 11th, 2008 Paskenta Band Tribal Gaming
22 Commission letter, my March 27th, 2008 statement to the
23 Commission and the February 13th, 2008 tribal-state task force
24 final report.

25 Two, the various modifications in the proposed amended

1 form CGCC-8 do not provide any authority its promulgation.
2 Three, proposed amended form CGCC-8 continues to represent a
3 unilateral amendment to the Paskenta Band's compact; such
4 action is not effective without the Paskenta band's consent.

5 Four, the Paskenta Tribal Gaming Commission adopted the
6 National Indian Gaming Commission's minimum internal control
7 standards for Class III gaming prior to its opening of Rolling
8 Hills Casino. In addition, the NIGC approved amendment of the
9 Paskenta Band's gaming commission ordinance to include the
10 NIGC MICS as part of the gaming ordinance and to authorize the
11 NIGC to monitor and enforce compliance with the MICS. The
12 Paskenta Band gaming operation is subject to independent
13 oversight by the MICS.

14 Five, based upon regulations of oversight of the Paskenta
15 Band Gaming Commission operation by the Paskenta Tribal Gaming
16 Agency and the NIGC, proposed amended form CGCC-8 is unnecessary,
17 duplicative, unduly burdensome and discriminatory. It should
18 also be mentioned that in its September 11th, 2008, letter,
19 the Paskenta Tribal Gaming Commission recommended that the
20 Commission not readopt CGCC-8 or if it chooses to readopt
21 CGCC-8, to place appropriate conditions on the application --
22 on the application of the proposed regulation identical to the
23 Bureau of Gambling Control's position stated at the
24 September 4th, 2008 Tribal-State Association meeting.

25 At the September 4th meeting, the Bureau proposed in

1 essence that, one, individual tribes may consent to state
2 oversight. Or, two, individual tribes take steps to ensure
3 application of the NIGC MICS -- of the NIGC MICS. Proposed
4 amendment form CGCC-8 does not include this proposal.

5 The Bureau's proposed amendment of Section B of CGCC-8 as
6 set forth in its September 30th, 2008 letter to the Commission
7 appeared to go beyond what the Paskenta Tribal Gaming Commission
8 understood the Bureau's position to be at the September 4th
9 meeting. Therefore, the Paskenta Tribal Gaming Commission
10 only supports the position offered by the Bureau at the
11 September 4th meeting and nothing more.

12 Finally, the Tribal-State Association disapproval of
13 CGCC-8 at the September 4th meeting -- at the September 4th
14 meeting the proposed regulation is not effective. If the
15 Commission readopts CGCC-8 in its amended form, the Commission
16 must submit the proposed amended form CGCC-8 to the Paskenta
17 Band for comment.

18 In addition, the proposed amended form CGCC-8 would need
19 to be resubmitted to the Association for its consideration and
20 approval under Section 8.4.1, the Paskenta band compact, no
21 State Gaming Agency regulation may become effective unless the
22 proposed regulation has been approved by the Association and
23 the Paskenta Band has no -- has had no -- an opportunity to
24 review and comment on the proposed regulation. The compact
25 that proposed amended form CGCC-8 may no longer be in a form

1 considered by the Association also necessitates resubmittal of
2 the proposed amended form CGCC-8 to the Association for its
3 consideration on behalf of the Paskenta Tribal Gaming
4 Commission.

5 Thank you for this opportunity to present this statement.

6 CHAIRMAN SHELTON: Thank you. Commissioners?

7 Do we have any other speakers?

8 MR. LaCOSTA: Good morning, Commissioner -- Chairman
9 Shelton, Commissioners. My name is Mike LaCosta. I'm the
10 general counsel and executive director of gaming for the Bear
11 River Band Rancheria in Humboldt County, California. We
12 obviously concur with all of our colleagues in the room
13 regarding the interpretation of 8.4.1. As a lawyer, I can see
14 the route of readoption is adoption and therefore 8.4.1 was
15 meant to be read in a circular fashion looping back to Section
16 8, not in a linear fashion, which would render it -- which
17 would render Section 8 fairly nonsensical.

18 But stepping out of my lawyering shoes, one more comment
19 on CRIT's basis of all of this. The CRIT decision, exigent
20 circumstances cannot be create by case law. The opinion of a
21 federal judge did not create exigent circumstances.

22 No one at the NIGC since the CRIT decision has been laid
23 off. Those regulatory resources are still there and we still
24 work with them on a day-to-day basis. I don't know if your
25 staff has increased since the CRIT decision, but I'm pretty

1 sure no one was laid off at NIGC. And we have never shut the
2 door in NIGC's face when they showed up. They were there two
3 weeks ago at our property and we led them through the process
4 of doing their annual audit.

5 Let me give you another example just as a day-to-day
6 regulator, not as a lawyer. But your representative from the
7 state showed up last week and asked to do a review of the
8 compact and we led her through that process and she did her
9 job. We offered to show her how we were in MICS compliance.
10 We volunteered that and she told us no, that was beyond her
11 mandate. Well, she could have done the other thing which is
12 said sure I will make a record for you with the state that
13 you're in MICS compliance. She could have accepted that offer
14 to look at our camera malfunction log, to look at our router
15 configuration, which MICS IT standards, to observe our drop
16 and count for MICS compliance. We offered her all these things
17 and she could have done the simply thing and made a record for
18 us that we were MICS compliant. But instead she told us no,
19 it's not my mandate.

20 So this is sort of a trickle-down theory that you're
21 going to pass this and it's gonna increase cooperation on the
22 ground level and it's gonna increase the perception of
23 integrity in the public. I don't think it's gonna do that. I
24 think what you're gonna do if you readopt this and adopt the
25 interpretation of 8.4.1 today that read in the linear fashion

1 what you're gonna do is go down a path of imminent litigation
2 which is going to decrease both the ground level of
3 cooperation as a day-to-day regulator that I have with your
4 day-to-day regulators. And you're also gonna decrease the
5 perception of confidence and integrity in gaming in the public's
6 eyes because we're gonna be in litigation with each other.
7 And that's not a good thing for the public. It's not a good
8 thing for our patrons. It's not a good thing for our
9 day-to-day regulators.

10 So I would encourage you to reexamine this approach of
11 sort of trickle down who has more power in the room or in the
12 courts, not give up the authority of our bodies and your
13 bodies -- our entities to negotiate a resolution that works
14 for the ground day-to-day regulators and not throw this up to
15 a judge to see who's right on their interpretation of 8.4.1,
16 because that will not accomplish your overarching objection.

17 And one more comment is that through this entire process
18 there's never been a finding nor a showing that there is an
19 actual threat to the integrity of Indian gaming in California.
20 So it's really we're dealing with perceptions here. And so we
21 wanna lend the perception to the public together as your
22 colleagues and regulators that there is effective regulation
23 of Indian gaming in California. And we're willing to do that
24 with your day-to-day regulators. We're willing next week if
25 Amber Moore or Judy Rhodes shows up in my office to cooperate

1 fully with whatever she wants to see.

2 CHAIRMAN SHELTON: I'm sorry. Who?

3 MR. LaCOSTA: These are your staff.

4 CHAIRMAN SHELTON: No. No. What were the names?

5 MR. LaCOSTA: Amber Moore, Judy Rhodes.

6 CHAIRMAN SHELTON: Well, they don't work -- they don't
7 work for the Commission.

8 MR. LaCOSTA: Okay. Well, they work for the state of
9 California. Okay? So --

10 CHAIRMAN SHELTON: Well, they don't work for the
11 Commission. I don't know who you're talking about.

12 MR. LaCOSTA: Okay. If any of your staff were to come to
13 our door, my point is that we wouldn't slam the door in their
14 face. Okay? We would fully cooperate and work with them to
15 accomplish your objectives and I just see this going down a
16 path that will not lead to that. So we would encourage you to
17 if you're going to readopt it to resubmit this to the
18 Association and work with us in spirit of that section to come
19 to some conclusion that is agreeable to both sides rather than
20 ending the process saying it's a linear reading of 8.4.1 and
21 then we go to court and there's no cooperation.

22 So thank you for your time. I appreciate it.

23 CHAIRMAN SHELTON: Thank you. No other speakers? If
24 not. . . .

25 MR. JAEGER: Yeah.

1 CHAIRMAN SHELTON: Are there any other speakers that are
2 going to come up after this speaker? I'd like to see a hand.
3 Thank you.

4 MR. JAEGER: Commissioner Shelton, Members of the
5 Commission, Legal Counsel: My name is Ron Jaeger. I am the
6 chairman of the Tribal Gaming Agency for United Auburn Tribe.
7 For the record, Commissioner, I'd like to say that
8 United Auburn Tribe submitted written statements on CGCC-8 at
9 the last Association meeting in Rolling Hills and it was not
10 included in your CGCC staff's detailed report to the
11 objections so we'd like to have that included.

12 My comments will be very brief. I have a four-page letter
13 that I will submit again today on United Auburn's issues and
14 concerns on CGCC-8 and I would just say that we support the
15 comments that were made here today, particularly by the
16 Pala Gaming Agency and our legal attorney, Jane Zerbi. And
17 without taking time to repeat and taking the time of everybody
18 else, I would just end my comments with that and submit my
19 written report.

20 CHAIRMAN SHELTON: Thank you very much.

21 He wants another bite.

22 AUDIENCE MEMBER: Yeah. Can I just submit this?

23 CHAIRMAN SHELTON: You certainly may.

24 MS. RODRIGUEZ: Good morning, Commissioners, Commissioner
25 Shelton. My name is Sherry Rodriguez. I'm the gaming

1 commissioner for La Jolla. We are the smallest by far tribe
2 trying to do gaming right now. We have 30 machines which are
3 nonoperative right now because of the fire we had last year.
4 So our commission has been down for about a year. We're back
5 up and running and we are looking forward to going into
6 gaming. My comments are not -- I'm not gonna try to even touch
7 what my esteemed colleagues have said because they are all
8 very articulate in what they said. I stand behind them. But --

9 And I'm sorry. I don't know your name, Commissioner.

10 COMMISSIONER SHIMAZU: Stephanie Shimazu.

11 MS. RODRIGUEZ: I'm sorry. You were saying this has
12 been a 20-month process and I know that seems like a very long
13 time to you. I've been a member of the tribal association
14 since day one. Since the first day it became like a lot of my
15 colleagues in here. So this has been many, many years for us.
16 It is hard and we all wanna do the right thing, but we all
17 have to stand behind what we came into office to do also,
18 protect our public, to protect our tribal assets, which is
19 extremely important to us, and the integrity of our gaming is
20 gonna do that. And to protect our sovereignty because we
21 still believe so firmly that we have the right to govern
22 ourselves notwithstanding you have oversight. I'm not gonna
23 be one to say that.

24 Because I welcome oversight. It is a check and balance
25 for all of us. And I just needed to say that we are the

1 smallest. We don't have any great big casino to back it up,
2 but our integrity is true. Thank you.

3 CHAIRMAN SHELTON: Thank you.

4 MR. BURRIS: Mr. Chairman, Commissioners: My name's
5 Tracy Burris. I'm the gaming commissioner for the Viejas Band
6 of Kumeyaay Indians. Mr. Chairman, I agree with all the
7 speakers before me, with all their comments, but one thing I
8 wanna add, and it's just an observation, I served on the first
9 MICS advisory committee by the NIGC. I spent the two years it
10 took and dozens of meetings and documents. Your notebooks
11 that you guys carried in, that was every bit that we did with
12 that first document.

13 My observation would be from an operational perspective.
14 We've read the legal aspect of this stuff. And by no means
15 I'm not an attorney. I'm the person along with everyone else
16 that has to make this work and so we work hard at doing that.
17 And when we do that, we take these documents and we read them
18 diligently.

19 As others have said, we've taken the best in the industry.
20 And this is an industry, no one argues that. This is an
21 industry for these tribal nations. What's important about it
22 is that when we did that, we get the best and the brightest.
23 We have dialog, we've had it. The danger is with an agency at
24 times is that it takes a certain path. It has certain
25 blinders at times that believes it has to work within. At

1 times it needs to take those blinders off. The CRIT decision
2 came about because of what we did in the first MICS deal. Even
3 though we used seven different jurisdictions to determine how
4 to come up with this document, it had its flaws. And that's
5 what the CRIT decision revealed, the flaws that we did on the
6 first round.

7 I wasn't on the second round in 2001, but I was on the
8 round in 2003 to 2008. Just recently served three and a half
9 years again on that MICS advisory. They've set up another
10 one. I've been doing it for over ten years. I've been
11 looking at this type of document, internal controls for ten
12 years -- over ten years and trying to make them work. That's
13 the importance of here that I would suggest before you move
14 forward. You know, there's still talk about risk assessment,
15 quantitative analysis on the document itself. How many
16 standards exist in it? Has it been thoroughly thought thru?
17 Those are the real questions.

18 You know, again, the legal part's the legal part. But
19 the part that the operators see and that the people that this
20 will have the greatest amount of impact to is the important
21 part. Has that been given consideration and properly analyzed,
22 a risk assessment done, the levels of risk and all of those
23 things and I believe the tribes can do that, with some of the
24 previous speakers with that documentation to with that
25 information, but that's the way the study of this document of

1 this type goes forward and it gives it strength because it
2 overcomes litigation and everything else in the future.

3 Thank you very much.

4 CHAIRMAN SHELTON: Thank you.

5 MS. AVILA: I guess I'm the last one. Good morning. My
6 name is Tracy Avila. I'm the chairperson for Robinson
7 Rancheria located in Lake County, California. You know, we
8 were the first tribe to have gaming in Northern California. I
9 was very fortunate to be on our council and I was there at the
10 very beginning when we did the negotiations and our chairman
11 signed the compact with the governor. To me, that was shown
12 government-to-government.

13 Now, I know that you guys are not the governor, you're a
14 part of the entity of that government and you guys have
15 something to do and so does our tribal gaming commission and we
16 treat them with that respect. We as a tribe designated them
17 to do gaming regulations and to regulate our casino and we
18 treat them that way and that's what they do.

19 When we signed that compact, I know that we didn't
20 address every issue or first issue or any future issues that
21 are gonna come about, which is why I suppose we're here today,
22 but we spent a lot of time, a lot of money in composing,
23 drafting and adopting our ordinance, our MICS, and every other
24 document that needs to go ahead and operate our casino. We
25 are probably more stringent on our regulations than I believe

1 that even any other gaming entity, whether it's in Nevada,
2 New Jersey or wherever else it is. And that to me is time
3 consuming. We have offered every information, every statistics,
4 every financial report that the tribe has obligated itself.
5 We have kept our word and we are still trying to please the
6 State.

7 I don't know what more we can do more. I've looked at
8 these regulations, our commissioners have come back and
9 reported. I really think it's unnecessary. I think it's just
10 more burdensome on you guys to be spending all of this time on
11 it. It's burdensome and time-consuming for us. It's repeated
12 information. It's duplicating everything we've already done.
13 You wanna see our audits, ask for it. We have nothing to
14 hide. I think it's just another entity that's coming in and
15 saying who's got more power or authority or authority over the
16 other. We're a government as you guys are. And I really
17 honestly believe that this is trying to change our compact.
18 And if that's the case, then we need to be sitting down
19 talking to the governor about it and change it.

20 We still have a 1999 compact. It's working for us now.
21 So I just think that you guys need to go back just like the
22 regulations are on the proposals. You need to go back and get
23 some input from the tribe. I was also fortunate enough to be
24 a commissioner as well as the tribal chairperson and I was
25 looking out for my people. And I'm sure that's what you guys

1 are doing too, but you need to sit down with the tribes and
2 talk to them like human beings and persons and come to a
3 conclusion, not saying I have more power over you or we have
4 more power over you guys. I think that we can sit down and
5 talk about it. You need information, ask us. I think we're
6 willing to give it to you guys.

7 That's my comment.

8 CHAIRMAN SHELTON: Thank you.

9 MS. AVILA: Do you have any questions because it looked
10 like you wanted to say something.

11 COMMISSIONER SHIMAZU: Just listening.

12 MS. AVILA: Okay. Thank you.

13 COMMISSIONER SHIMAZU: Thank you.

14 MS. ZERBI: Jane Zerbi, attorney. A brief procedural
15 comment that I've been asked to make by the Jackson Rancheria
16 Tribal Gaming Agency and the Trinidad Rancheria Tribal Gaming
17 Agency. These agencies, like several others in the room that
18 we've heard today, submitted a written statement at the
19 Association meeting of September 4th, which was included in
20 the minutes, telling why they oppose CGCC-8, but it was not
21 included in the CGCC's staff detailed response and should have
22 been.

23 Thank you.

24 MS. MATTEUCCI: Mr. Chair and Commissioners, I'd like to
25 put just for the record. I'm not sure, Jane, if you're just

1 saying that they made an oral comment at the meeting, but
2 there were no documents attached to the minutes that we
3 received and we received no written comments from the tribes
4 that you just mentioned or from Picayune or from United Auburn.
5 They were not sent to here. And we asked at that meeting, and
6 it's in the minutes, that they be sent here to my attention.
7 Those were not sent here, never received. We only responded
8 to the written comments that we received and we did not get
9 any. If they were sent to the Association, they were not
10 forwarded to me. All I got were the minutes from the
11 Association.

12 MS. HOUCK: Can I respond to Picayune Rancheria. At the
13 Association meeting ---

14 CHAIRMAN SHELTON: State your name.

15 MS. HOUCK: I'm Darcy Houck for Picayune Rancheria,
16 tribal attorney. There were tribes that had comments that
17 they submitted to the Association, written comments that were
18 handed out at the meeting. They were incorporated into the
19 record. And the two weeks were given for tribes that did not
20 have written comments at the meeting to submit them and an
21 address was given by CGCC that those tribes that did not have
22 their written comments at the meeting could send them to.

23 The tribes that Ms. Zerbi mentioned, Picayune Rancheria and
24 United Auburn Rancheria, Trinidad and Jackson, had formal
25 written comments that were copied and handed out at the

1 Association meeting and they were E-mailed out to all the
2 Association representatives as part of the minutes and were
3 incorporated as official objections to the Association.

4 MS. MATTEUCCI: Those were not given to the Commission.
5 They were not attached to the minutes. They were not given to
6 me. The only written ones that were handed to me were from
7 Rumsey and those were answered. Those were the only written
8 ones we received. If someone wanted those to get to us, then
9 they needed to give them to us. The Association faxed to me
10 on October 2nd the minutes. There is nothing attached to the
11 minutes. There were no written comments handed to me at that
12 meeting other than Rumsey.

13 MS. HOUCK: There were stacks of them there. I can
14 forward the E-mails

15 CHAIRMAN SHELTON: Wait. We're on record. You said you
16 have them.

17 MS. HOUCK: Yes.

18 CHAIRMAN SHELTON: But we don't have them so that doesn't
19 help very much. I would suggest the Association get them to
20 us.

21 MS. MATTEUCCI: Also Chair Shelton, we are a member of
22 the Association. And if things were E-mailed to all of the
23 members of the Association, they should have been E-mailed to
24 the other commission also. I received no E-mail.

25 CHAIRMAN SHELTON: That would be nice if that occurred.

1 It doesn't always occur.

2 MR. ROSER: Mr. Chairman, may I respond to that?

3 CHAIRMAN SHELTON: Yes.

4 MR. ROSER: Mr. Chairman, Ron Roser, tribal attorney for
5 the Paskenta Band of Nomlaki Indians and also the Paskenta
6 Tribal Gaming Commission. It's our recollection that -- and
7 Paskenta is the entity that sent out the minutes of the
8 September 4th, 2008 meeting and attached along with the
9 minutes were also the comments received by Paskenta Band at
10 the meeting and within the 14-day period. We attached those
11 exhibits to the E-mail that was sent out along with the
12 Association's meeting.

13 And I did get the E-mail address for Ms. Matteucci and as
14 I recall I seen your name in the distribution list that went
15 out. So when the minutes were sent out, they also included
16 all exhibits of the comments that were received at the meeting
17 and within the 14-day period that at least came to Paskenta.
18 That's our recollection.

19 CHAIRMAN SHELTON: Well, you know, I'm just telling you,
20 you're probably a lot better at the computer than I am, but if
21 you put reliance on the E-mail and attachments coming through
22 that fails quite frequently for a lot of us who try to do that.
23 And a follow-up mailing would have secured the information
24 coming forward. We're not doubting that you say you did it.
25 You did it, but we don't have them.

1 MR. ROSER: They went out all right.

2 MS. ZERBI: Hi, Jane Zerbi. We had delivered the
3 United Auburn statements, Jackson Rancheria TGA, Trinidad TGA,
4 and the Pala Gaming Commission. We had those hand-delivered.
5 here and we're happy to have it hand-delivered again today.

6 MS. MATTEUCCI: We at least looked at the Picayune ones
7 and I asked Mr. Bolz to review them. That's the only one that
8 we received this morning that we had time to look at. And
9 from our review, there's no additional comments that haven't
10 already been addressed in our response.

11 CHAIRMAN SHELTON: Commissioners?

12 COMMISSIONER SHIMAZU: Yeah. I guess I'll start. First,
13 I'd like to thank everyone who came today to provide input on
14 the reg and those who provided written comments before the
15 meeting. We do appreciate them and read them. You know, over
16 the last 20 months we've heard a lot of your concerns and your
17 objections to what's in the reg. And you know I personally
18 have gone through them over and over. But while I respect
19 those, I do plan on voting for readoption of the reg and I
20 kinda just wanted to provide some comments as to maybe where
21 the Commission is coming from and where I'm coming from.

22 First, I wanna stress that we do believe that we have
23 authority under the compact, you know, to follow this path of
24 the regulation and I know that I was gonna say some, but
25 probably most or all of you don't agree with us and certainly

1 it's your right to do so, but we have looked at it and really
2 believe that 8.4.1(b) provides us with that authority. So we
3 do believe we're compliant with the compact as well as that
4 process in 8.4.1(b).

5 As Ms. Matteucci stated earlier, the Commission felt that
6 it had kinda two ways to go if we could not get the Association
7 to agree with us on the reg, that being the exception for
8 exigent circumstances or to go the route we chose which is,
9 you know, a lot more time consuming and tedious, but we chose
10 that route because we want to get input from the tribes. We
11 wanted to be able to cooperate. And we wanted to come out
12 with a regulation that was clear and that was concise and
13 hopefully fair for everyone.

14 And we knew it'd irritate some people because some -- I
15 know some probably wanted us to have the reg in place right
16 now, but you know it was our respect for the tribes and your
17 operations and our desire to have, you know, a really strong
18 reg why we took this route. Also I think people have spoke
19 about the MICS. So we understand the history behind it that
20 the tribes had a lot of input, spent a lot of time going over
21 it with the federal government, with NIGC. I mean, that's the
22 reason why we chose that as the minimum standard. And, you.
23 know, as Jerry said, if a tribe wanted to choose Australia's
24 MICS, as long as it was going to be equal to or exceed the
25 NIGC MICS, we're fine with it. I know personally in working

1 on the card room MICS. We understand how difficult it is and
2 it is time consuming and we chose that because it was
3 something the tribes are familiar with and you know wouldn't
4 be adding requirements. It would be something that we thought
5 would be, you know, easy to adopt.

6 We've heard a lot about how people think this is an
7 affront to sovereignty. You know, this commission respects
8 and understands tribal sovereignty. I know these guys up here
9 and I know that's true. But, you know, the state is also
10 sovereign and it signed those compacts. And the Commission
11 has been given the responsibility to ensure that certain
12 provisions in those compacts are being complied with by the
13 tribes. So that's our job. It doesn't come out of any desire
14 to take over the responsibilities of the TGAs and it's just a
15 matter of insuring compliance.

16 I know I'm probably gonna say that a bunch of times, but
17 that's what we're trying to do, ensure the state that it is
18 receiving the revenue its supposed to receive, that crime and
19 corruption is not in tribal casinos, and that when citizens of
20 our state go into play that they're treated fairly and
21 protected. So that's our interest and where we're coming
22 from. And we think, you know, the state has a right to demand
23 compliance with the compacts and also to conduct inspections
24 to make sure that's happening.

25 I can sense kinda from the tone and from other meetings

1 that there seems to be kinda an element of distrust that maybe
2 we're gonna come in, try and take over the TGA's duties or
3 we're gonna disrupt business or even that we're gonna come in
4 and not know what we're doing and make a mess of things. We
5 know what you're saying.

6 So let me just say that we know how much time and effort
7 and resources the TGA devotes to operating the casinos day to
8 day and that's not our intention to take that over. It's not
9 anything we could do in any event. And we know that when we
10 go out to do our reviews things will run a lot smoother if we
11 have the cooperation and coordination with the TGA. So we
12 really plan on working with them. And we certainly don't plan
13 to come in and cause a big commotion and try and disrupt your
14 businesses. You know, we understand how important tribal
15 gaming revenue is to support your governments, to help your
16 members and to, you know, actually donate to charities and
17 things in your community.

18 So it's not our intention to harm your businesses, but
19 again, the state has a right and it wants to ensure, you know,
20 compliance. I think the regulations are important because it
21 sets up a process, a kind of a back and forth, so that the
22 tribes have a lot of opportunity if you don't agree with our
23 findings to come and tell us and to work with our staff. And
24 if you don't think you're making yourselves heard with our
25 staff, then there's an option where you can come to the

1 Commission and tell us so we are able to hear you.

2 And just really quickly. With our staff, you know, we
3 have great faith in them, but if there is a problem -- we can't
4 be with them every time they go out to the casino -- we want
5 you to be able, you know, to come to us and tell us so we can
6 address it.

7 I know I said this at the last meeting, but I'll say it
8 again. Our intent is not to embarrass a tribe. The goal is not
9 to shut down casinos. We simply want to, again, ensure
10 compliance with the compacts like it's our right to do. You
11 know, we expect that when we do go out and conduct those
12 compliance reviews we expect that many -- most of the tribes
13 will be in compliance and then we won't have a problem. And
14 we would also expect that you would be able to use our findings
15 to support your TGAs and support what you're doing in terms of
16 public perception. For those that aren't, then we want to
17 work with them. You know, we really think we can be of help
18 with some. And, you know, the goal is to try and get them
19 into compliance.

20 You know, make no mistake, that if after, you know, a lot
21 of time's spent and our efforts have failed, then what our
22 remedy is to go to the governor's office. Not to go, but we
23 will forward the matter to the governor's office for their
24 consideration for possible breach. So we hope -- I mean, I
25 worked there and I know that I would not want to submit any

1 unsupportable findings or go there if we had not completely
2 vetted with the tribe and tried to work things out ahead of
3 time. So we kinda have a -- that's something that we wanna do
4 too.

5 Probably just rambling. I guess bottom line is since the
6 CRIT decision, we have been asked by, you know, people,
7 legislatures, and the public about how do we know if, you
8 know, everything is good in the tribal casinos, are MICS being
9 complied with? And you know, originally, I would say, you
10 know, yeah, we think so. Why do you think so? Well, because
11 we know how much time they spent and how diligent they are and
12 it's really in the tribes' best interest to have those MICS in
13 place because you're protecting tribal assets. But when
14 pressed hard, how do you know, we really don't know because we
15 haven't been out there and we haven't conducted our own
16 reviews.

17 So I think this reg is a way for us to answer the
18 question and I think it would be helpful to the State and also
19 to the tribes so we can definitively say that we've been out
20 there and we know what's going on. And it's not a matter of
21 taking over the operations and trying to say who has more
22 power and we wanna, you know, enforce this. We're just trying
23 to find a hopefully the easiest way possible to have a minimum
24 standard and to ensure that everything's being complied with
25 and we have done our job and we can feel good about that.

1 COMMISSIONER VUKSICH: I will echo Commissioner Shimazu's
2 comments and thank you all again for coming up here. I know
3 this is not the way you wanna spend a beautiful day in
4 October. And I know that every minute spent here is a minute
5 not spent taking care of your business, which is running your
6 casinos.

7 You have all spoken very eloquently and most passionately
8 about protecting your interests and the interests of tribal
9 governments and Indian county in California and I am very
10 respectful of that. I do believe -- and I'm the nonlawyer --
11 I don't have any alphabet behind my name -- member of the
12 Commission so I tend to speak in very simple terms. I do
13 believe that it is the Commission's responsibility as the
14 State Gaming Agency to protect the sovereignty of the state of
15 California and the people of the state of California.

16 And that is a very broad task. And I think my measure of
17 that is to be able with a straight face -- if I'm ever, God
18 forbid, something should go wrong with the relationship between
19 the State and the tribes -- to be able when out in public to
20 answer the questions so where were you guys? Why didn't you
21 see this coming? I'd like to be able to say we had our eyes
22 open and we were doing our jobs.

23 And to me, CGCC-8 is about a tool for us to be able to do
24 our jobs. We will disagree probably on various sections of
25 the compact and legal language and that is -- and that will

1 happen as people craft legal documents and are no longer around
2 to ask what did you mean by that. The words have to speak for
3 themselves and will be interpreted and reinterpreted as time
4 goes on.

5 So, again, I thank you all for coming here today and
6 letting us know how you feel on this issue and being able to
7 process that in my decision. Thank you.

8 Yes?

9 AUDIENCE MEMBER: Can you identify yourself?

10 COMMISSIONER VUKSICH: My name is Alexandra Vuksich.

11 AUDIENCE MEMBER: Thank you.

12 CHAIRMAN SHELTON: Cheryl, do you have anything to say?

13 COMMISSIONER SCHMIDT: My name is Cheryl Schmidt and I am
14 in support of the comments that have been just made by my
15 fellow commissioners. I would like to thank those who did
16 come and express their concerns and we do recognize your
17 sovereignty. But having the background of an auditor, I believe
18 that CGCC-8 is merely a clarification of the ability of the
19 Commission to ensure that the compact is in compliance -- the
20 tribes are in compliance with the compact and minimum internal
21 control standards. And in no way does the Commission want to
22 take over the duties of the tribal gaming authorities, we just
23 want to ensure that the interest of all of the citizens of the
24 state of California are met.

25 CHAIRMAN SHELTON: It's not gonna be rebuttal time. Do

1 you have something that's new and consequential?

2 AUDIENCE MEMBER: What's her name?

3 COMMISSIONER SHIMAZU: Shimazu.

4 AUDIENCE MEMBER: You said for the record you guys chose
5 this path, rather than under exigent circumstances --

6 CHAIRMAN SHELTON: Okay. Thank you.

7 AUDIENCE MEMBER: Just thank you and that's it?

8 CHAIRMAN SHELTON: I'm not gonna sit here and get in
9 arguments with you. You know, I respect you --

10 AUDIENCE MEMBER: As a tribe --

11 CHAIRMAN SHELTON: -- people so much. We started this
12 process at the glass full. You know, I'm the guy who wanted
13 to come to the Association and I still wanna go to the
14 Association and I still have desires to work with you, but the
15 respect has to be mutual back to us, too.

16 AUDIENCE MEMBER: Correct.

17 CHAIRMAN SHELTON: Okay?

18 AUDIENCE MEMBER: In a manner of concern, this has been
19 the whole process. How this is going right now, it's purely
20 been a one-way street. We've submitted comments in your
21 statement of need. We've challenged all of those, we never
22 got any answers from the CGCC how you came up with any of it.
23 It's always been we've put comments out and it comes back the
24 same or a little change, but it doesn't say why our comments
25 as tribes weren't put in. There's never been anything like

1 that. It's like we're putting stuff up. We're hosting the
2 meetings. We're spending all the tribal time, all the tribal
3 assets to do this and you're not -- you're not even listening.
4 That's what it seems like.

5 CHAIRMAN SHELTON: Well, I certainly agree that's how you
6 perceive it, but I will assure you that's not how this
7 commission perceives it.

8 I'll entertain a motion.

9 COMMISSIONER SHIMAZU: I'll move to approve Staff's
10 recommendation which is pursuant to compact Section 8.4.1(b)
11 that we readopt Uniform Tribal Gaming Regulation CGCC-8
12 regarding MICS in the amended form dated October 1st, 2008 and
13 also to adopt the detailed response to Tribal-State Association
14 objection to CGCC-8 dated October 9th, 2008.

15 CHAIRMAN SHELTON: Do I hear a second?

16 COMMISSIONER VUKSICH: Second.

17 CHAIRMAN SHELTON: Call for the vote.

18 MS. RAMSAY: Commissioner Schmidt?

19 COMMISSIONER SCHMIDT: Aye.

20 MS. RAMSAY: Commissioner Shimazu?

21 COMMISSIONER SHIMAZU: Aye.

22 MS. RAMSAY: Commissioner Vuksich.

23 COMMISSIONER VUKSICH: Aye.

24 MS. RAMSAY: Chairman Shelton.

25 CHAIRMAN SHELTON: Aye.

1 MS. RAMSAY: Motion carries.

2 CHAIRMAN SHELTON: I know we made nobody happy today.
3 We'll keep working and try to get resolved the issues.

4 Thank you very much for coming. Thank you very much for
5 your patience.

6 (Proceedings were recessed until the afternoon session.)

7 ---oOo---

8 (Begin the afternoon session.)

9 THE COURT: Call the meeting to order and resume from the
10 morning's meeting. It's 1:30 p.m. and all commissioners are
11 present and accounted for, I think.

12 Move to Item No. 4, approval of commission hearing
13 minutes for September the 10th, 2008.

14 Commissioners?

15 No corrections.

16 Any public input?

17 Hearing none, I'll entertain a motion.

18 COMMISSIONER VUKSICH: Move to approve.

19 COMMISSIONER SCHMIDT: Second.

20 CHAIRMAN SHELTON: Call for the vote.

21 MS. RAMSAY: Commissioner Schmidt.

22 COMMISSIONER SCHMIDT: Aye.

23 MS. RAMSAY: Commissioner Shimazu.

24 COMMISSIONER SHIMAZU: Aye.

25 MS. RAMSAY: Commissioner Vuksich.

1 COMMISSIONER VUKSICH: Aye.

2 MS. RAMSAY: Chairman Shelton.

3 CHAIRMAN SHELTON: Aye.

4 MS. RAMSAY: Motion carries.

5 CHAIRMAN SHELTON: Item Number 5.

6 MS. LITTLETON: Good afternoon. Good afternoon,
7 Chairman, Commissioners. Tina Littleton, licensing manager.

8 Item No. 5: Application for approval for initial state
9 gambling license, including all associate applicants and
10 endorsees.

11 5-A: Commerce Casino, California Commerce Club, Inc.
12 Saatchian Revokable Trust. Kasar Saatchian, trustee, trustor
13 and beneficiary. Susan Saatchian, trustee, trustor and
14 beneficiary.

15 Staff recommends that the Commission approve the initial
16 application for the applicants to be endorsed on the state
17 gambling license.

18 CHAIRMAN SHELTON: Commissioners, any questions?

19 COMMISSIONER SCHMIDT: No.

20 COMMISSIONER VUKSICH: No.

21 CHAIRMAN SHELTON: Public input?

22 Motion, please.

23 COMMISSIONER SHIMAZU: Move to approve Staff's
24 recommendation.

25 COMMISSIONER VUKSICH: Second.

1 CHAIRMAN SHELTON: Call for the vote.

2 MS. RAMSAY: Commissioner Schmidt.

3 COMMISSIONER SCHMIDT: Aye.

4 MS. RAMSAY: Commissioner Shimazu.

5 COMMISSIONER SHIMAZU: Aye.

6 MS. RAMSAY: Commissioner Vuksich.

7 COMMISSIONER VUKSICH: Aye.

8 MS. RAMSAY: Chairman Shelton.

9 CHAIRMAN SHELTON: Aye.

10 MS. RAMSAY: Motion carries.

11 MS. LITTLETON: Agenda Item 5-B. Diamond Jim's Casino,
12 Wizard Gaming, Inc. George Deitch, trustee of the
13 Zephyr Inter Vivos Trust.

14 Staff recommends that the Commission approve the initial
15 application for the applicant to be endorsed on the state
16 gambling license.

17 And there are representatives here should
18 the commissioners have any questions.

19 CHAIRMAN SHELTON: Commissioners?

20 Public input?

21 COMMISSIONER VUKSICH: Let him speak first.

22 CHAIRMAN SHELTON: You wanna hear from him?

23 COMMISSIONER VUKSICH: Yes.

24 CHAIRMAN SHELTON: Please state your name, spell your
25 last name for the record.

1 MR. BLACKMAN: Steve Blackman, B-L-A-C-K-M-A-N.

2 Commissioner Shelton and Members of the Commission: I'm
3 representing Wizard Gaming, Inc. and Emily Quickie who's the
4 president. I wanna thank you for the opportunity to speak to
5 you this afternoon.

6 We're opposing the request of Mr. Deitch for a license as
7 trustee. The reason is this: Wizard's been a well-run company.
8 It's been profitable. It's been in compliance with the
9 Commission's rules and regulations and we want that to continue.
10 We're very concerned that appointing Mr. Deitch -- approving
11 his license as trustee will put an end to that.

12 Wizard has a few shareholders, not that many. One of the
13 shareholders is this Zephyr Inter Vivos Trust. In the past,
14 the Commission has put a wall of separation between the
15 beneficiary of that trust, who's George Hardy, Junior, and the
16 operation of Wizard. The -- there has been that separation
17 all this time. That was imposed in December of 2006 and
18 January of 2008 this year. Mr. Hardy, Junior through counsel
19 along with his father, Hardy, Senior and Mr. Deitch appeared
20 here in front of the Commission to ask that the restrictions
21 be lifted. The restrictions were that Mr. Hardy, Junior have
22 no input, influence or control. There's some other restrictions
23 as well, but the critical ones are that he have no input,
24 influence, or control over the operation of Diamond Jim's.

25 In January, they asked that that be lifted and the

1 Commission said no. The Commission said we recall that we had
2 some serious reservations about Mr. Hardy, Junior, about his
3 maturity, about his income, gaps in income and employment
4 information. If he wants to lift those restrictions, what he
5 needs to do is start the application process. He did not
6 start the application process, to the best of my knowledge.
7 What he did is he went outside in the hallway and signed a
8 piece of paper making George Deitch the trustee and removing
9 the existing trustee.

10 And on the following Monday, which was three days later,
11 Mr. Deitch sent out a notice to the management at Wizard saying
12 I am -- in my capacity as trustee, I'm calling for a
13 shareholders meeting to vote out the directors and vote in new
14 directors. What was happening was very clear. Mr. Hardy,
15 Junior came into this commission and said I wanna be able to
16 exercise input, influence, or control, the Commission said no.
17 So immediately afterwards he did exactly that. He did exactly
18 that by appointing Mr. Deitch as trustee and having Mr. Deitch
19 right away send a notice saying we're taking over the company.

20 Now what happened next was that Wizard said wait a
21 minute. You're not licensed as trustee. The Commission said
22 you're not licensed as trustee. So Mr. Deitch then had his
23 counsel submit a letter to the Commission and that was in May.

24 Now, let me point out that there's a March 20th letter
25 from the Commission that says to Mr. Deitch you are not to

1 exercise control over -- as trustee over the card room shares,
2 the casino shares or the income from those shares. Mr. Deitch
3 then came in here to say well, we wanna have control over that.
4 And that's I think what's eventually led to this hearing. But
5 what happened in the interim was not a respect for this
6 commission's directive that he not have control over the card
7 room income. What's happened is just the opposite.

8 What's happened is a series of letters from his counsel
9 to Wizard -- to Wizard's counsel, to me, a series of letters
10 that say -- one after another that say that money that otherwise
11 would go to a shareholder, send us that money. Wizard said
12 no. You're not a licensed trustee. We're not allowed to send
13 you that money. We're not going to send you that money. And
14 first we got a letter that said well, send it to Mr. Deitch.
15 Then it was well, send it to Jean Quickie, Emily Quickie, the
16 former trustee and let her send it to the beneficiary. And
17 then it was well send it to Emily Quickie, let her send it to
18 George Deitch and let Mr. Deitch send it to Mr. Hardy, Junior.

19 There were all these different routes to try and get
20 around the Commission's restrictions and that's sort of the
21 situation we're in, is we've got someone who's repeatedly trying
22 To get around the Commission's restrictions. They filed a
23 cross-complaint and a lawsuit. We filed a lawsuit; the lawsuit
24 said we want declaratory relief. The Commission's rules are
25 such and such, we're gonna comply with those. We want the

1 court to confirm that we're not violating anybody's rights
2 when we do that. What we saw is a cross-complaint. The
3 cross-complaint says we want an order that forces Wizard to
4 turn over the money to Hardy, Junior or to Deitch. We see
5 these things over and over again.

6 Now, the question here that we're most concerned about is
7 will Mr. Deitch serve as a trustee who will honor this wall of
8 separation or is he gonna be somebody who's kind of secretly
9 going along with the Hardy plan.

10 If I could take you back a little bit, you know, the
11 situation with Mr. Hardy, Junior being licensed is that there's
12 another Hardy in the picture, there's Mr. Hardy, Senior. He's
13 had a long history with this commission. He was essentially
14 banned from holding a license by this commission in the '90s.
15 He had to pay a fine and after a three-year period if he wanted
16 to reapply, there was certain findings of fact that were to be
17 established.

18 When Wizard sought to get a license, Mr. Hardy, Senior
19 was told you cannot be a part of this. So he set up the
20 Zephyr Trust and he made his son a part of it. As you know,
21 the Zephyr Trust there were similar restrictions -- other
22 restrictions placed on Hardy, Junior with the Commission
23 basically saying the Hardys are not to be involved. But the
24 Hardys have -- really Hardy, Senior has pushed himself into
25 this thing repeatedly. It wasn't Hardy, Junior who was pushing

1 the Zephyr Trust, it was always Hardy, Senior who was pushing.
2 Hardy, Senior retained counsel to represent Hardy, Junior in
3 this matter. Hardy, Senior has gone to Wizard management and
4 said you have to bump up your distributions so that more goes
5 to the Zephyr Trust so that more goes from the Zephyr Trust to
6 Hardy, Senior.

7 Hardy Senior is the one who founded -- sorry -- the
8 funded Zephyr Trust. It was all his money. There's no
9 dispute about any of that.

10 We have submitted some papers and they were submitted very
11 late in the day and late on Friday. You probably haven't had
12 a chance to look at them, but we did submit papers to all of
13 you which back up the things I'm saying. In other words, it's
14 not just me saying this, there's documents that back this all
15 up. One question -- so the situation we have is a question
16 before ya which is if you license Mr. Deitch, are you licensing
17 somebody who's gonna act independently or are you licensing
18 somebody who's gonna act really as the alter ego or the
19 surrogate of the Hardys?

20 In the papers that we submitted to you, we pointed to
21 instances in which he's clearly acting simply as the surrogate.
22 He's clearly acting as the surrogate on January 10th and 14th
23 when he decided that he's gonna take over and in the months
24 afterwards when he said he's gonna ignore the Commission's
25 rulings. But there are other instances as well that we

1 pointed to.

2 There's a whole situation with a parking lot at Wizard.
3 Mr. Hardy, Senior owned this other land. He wanted to sell it
4 for half a million dollars. Wizard's management said we're
5 not gonna pay half a million dollars for a parking lot.
6 Mr. Deitch though jumped on the side of Mr. Hardy, Senior, so,
7 you know, we had a situation where we could end up with money
8 being syphoned out of Wizard at the behest really of
9 Mr. Hardy, Senior through the hospices of Mr. Deitch.

10 Wizard
11 made arrangements for an alternative parking lot, but Mr. Deitch
12 who was the person who fronted that, that is Mr. Deitch
13 purchased the land for that parking lot on behalf of Wizard.
14 And then when Wizard said okay, turn it over to us, Mr. Deitch
15 said no. There was a whole -- there was a whole lawsuit over
16 that other piece of property and Wizard paid for pursuing that
17 lawsuit.

18 That lawsuit had nothing to do with Mister -- nothing to
19 do with the relationship between Mr. Deitch and Wizard. It
20 had to do with the prior owner of the land, but the point is
21 that when Mr. Deitch had a chance to choose between his
22 loyalties whether it was to Wizard or to Mr. Hardy Senior, he
23 chose Mr. Hardy, Senior. So we've seen this happen over and
24 over again.

25 Now, when the Commission makes its decision as to

1 licensing, it's gonna also have to decide whether or not
2 Mr. Deitch and Mr. Hardy, Junior have been square with the
3 Commission and we believe they really have not been. We look
4 back at the January 10th hearing in front of this commission.
5 I've looked through the transcript of that. And the
6 representations made by them through their counsel was that
7 Mr. Hardy, Junior wanted to participate in the corporation.
8 He wanted to have input. He wanted to be able to review
9 documents, sit in on shareholders meetings. That's the
10 representation that was made. Now the Commission was
11 skeptical of that. The Commission said we put these
12 restrictions for a reason and now you just wanna walk away
13 from them without giving us any basis for that. So the
14 Commission refused that.

15 But the point I'm making is that the representations made
16 before this commission was the simple matter of participation.
17 What happened within a few days was not a simple matter of
18 participation, it was an announcement we're taking over. The
19 trust has 42 percent of the shares. Mr. Deitch has 14 percent.
20 You've got a majority. We're holding a shareholders meeting.
21 We're electing new directors. That's not what was said to the
22 Commission. Now, a few months later when Mr. Deitch and
23 Mr. Hardy, Junior say to the Commission well, we need to change
24 things so that money can go to Mr. Deitch and Mr. Hardy, Junior.
25 When they say that, that's presented in the letter of May 2nd.

1 And at that time, a representation -- several representations
2 are made to the Commission. For example, you're told that in
3 late 2007 Mr. Hardy, Junior replaced the previous trustee with
4 a new trustee. Not true. That was done on January 10th.

5 In fact, one of the documents that we have submitted to
6 you has a fax date on it. So not only is it dated January 10th,
7 you can see it happened at I think 12:40. It happened just
8 right after they walked outta here. But they give you the
9 impression that well, they made this decision long before or
10 at least before the Commission said anything about lifting the
11 restrictions on Mr. Hardy, Junior. It's just an independent
12 separate act. But, of course, it wasn't. It wasn't.

13 If they had told you on January 10th right after this
14 commission said no, we're not gonna lift the restrictions,
15 right after that, that's when we got rid of the old trustee
16 and brought in a new trustee, that would have -- that would
17 have been the correct statement and it would have caused this
18 commission to sit back and say wait a minute, that's kind of a
19 suspicious act there.

20 Another thing that this May 2nd letter told you was that
21 Mr. Hardy, Junior had replaced the trustee because of concerns
22 about her compliance with the fiduciary responsibilities. Well,
23 Mister -- the appearance here on January 10th didn't have
24 anything to do with fiduciary responsibilities. And one
25 thing, you know, that if Mr. Hardy, Junior was here telling

1 you he needed to have more participation in a company, if he
2 had any basis at that time for saying that the people running
3 the company were doing something wrong, he would have said it.
4 So when he says to you in May oh, well, we changed trustees
5 for that reason, that can't be true.

6 CHAIRMAN SHELTON: I think -- you know, I hate to interrupt
7 you, maybe I'm wrong it, but it seems like we're going afield
8 here and we're talking facts and a lot of supposition.

9 Do the commissioners agree with me?

10 Do you wanna hear the supposition?

11 COMMISSIONER VUKSICH: No. Actually, Mr. Blackman, I
12 believe that your comments as I'm listening to them. I don't --
13 I'm interested, but it really doesn't address the issue that's
14 before us today, which is concerning Mr. Deitch and his
15 suitability as a trustee, which we would be hard-pressed to
16 deny since he's already been licensed as a shareholder. So
17 there would have to be some infraction that we can point a
18 finger to and say this is what he did incorrectly. This is
19 why he should not receive a license for this function.

20 There are other things that you bring up that I'll
21 probably address later on, but right now before us -- and I
22 have to keep reminding myself of this because, you know, my
23 first exposure to this was at the point these conditions were
24 put on and the picture I had of Mr. Hardy, Junior and
25 Mr. Hardy, Senior was far different from what turns out to be

1 reality. I had a picture of this dutiful son taking care of a
2 father who wanted to take care of his son via this trust. So
3 life is -- reality is turning out to be a little bit different
4 here. But, again, the issue before us is Mr. Deitch's
5 suitability for licensure.

6 MR. BLACKMAN: And what we think is the critical point
7 there is, is Mr. Deitch someone who is going to honor the no
8 input, influence, or control restriction? Will he honor that?
9 And what has he been doing in the nine months since he was
10 appointed trustee? Has he been honoring that or has he been
11 trying to evade the restrictions of the Commission? Is he
12 trying to evade those restrictions?

13 And what he's done is he's joined a lawsuit. He shares
14 counsel with Mr. Hardy, Junior in the lawsuit and what he's
15 done is to repeatedly to go to court and say to the judge I
16 want an order that forces Wizard to pay the money to me. Pay
17 the money to Jean Quickie and then from Quickie to Deitch. Now,
18 how can he be asking a court to do -- now, when he does that,
19 he doesn't tell the court that this commission has entered an
20 order that says don't do that.

21 If this Commission had said, Mr. Deitch, until you're
22 licensed, you cannot exercise control over the card room
23 income, but that's not -- he didn't tell the court about that,
24 we told the court about that. But what he did in his papers
25 he said -- I'll read it. (Reading): Deitch is asking the

1 court for limited and specific authority to collect a cash
2 distribution from the corporation on behalf of the trust. The
3 limits of the Gambling Commission -- this is his reply papers
4 so it's after we had raised this -- the limits of the Gambling
5 Commission above are inapposite here.

6 Deitch is not seeking to vote shares or authorize a
7 distribution of corporate profits. What he told the court is
8 that what the Commission was really saying is that when it
9 said, Mr. Deitch, you're not allowed to grab a hold of money
10 from Wizard in your capacity as trustee, what he was saying --
11 what he's telling the court is that's not what the Commission
12 said. The Commission said if I don't vote on the amount of a
13 distribution, then I can grab as much of the money as I can.
14 That's not -- that's just not the right thing to do. And that's
15 playing -- that's playing fast and loose with the restrictions
16 of this commission.

17 Mister -- the trustee needs to stand up to the Hardys.
18 The trustee needs to be the person that says wait a minute.
19 I'm not here to do just anything ya tell me to do. I'm here
20 to do my job, to comply with the Commission's restrictions and
21 then to make a decision as to what goes to Mr. Hardy, Junior
22 and what doesn't.

23 The things that have been happening since the January 10th
24 hearing have demonstrated the importance -- the importance of
25 having an independent trustee. We have a situation where

1 Mr. Hardy, Junior is, the last I heard, in prison in Mexico on
2 attempted murder charges. Now, regardless of whether those
3 charges are well-founded or not, the underlying situation I
4 think was not disputed and that is that Mr. Hardy, Junior was
5 a vice president of a gambling casino down in Belize. And he
6 then engaged in an armed pursuit across the border from
7 Belize to Mexico; that's when he was captured and arrested for
8 attempted murder charges.

9 Now, regardless of this, of the accuracy of the charges,
10 and I think that gives some concern, you need to have a
11 trustee who's not going to just listen to Mr. Hardy, Junior.

12 CHAIRMAN SHELTON: Well, you know, I just have to stop it.
13 You're going in an area where we have no concerns. There's no
14 facts before this commission. It's very interesting, but it's
15 nothing we can make a decision on. So -- and if he's
16 adjudicated and he's applying for a license, he's convicted of
17 a felony, he's not going to be licensed. If he's clean, he's
18 gonna be licensed. And if he's licensed, then he probably has
19 a right to vote on the distribution of funds of your company.

20 Am I far afield here, Legal? Have I missed something?
21 Correct me, please.

22 MS. MATTEUCCI: No. You're absolutely right,
23 Chairman Shelton.

24 Mr. Blackman, you need to know that the stuff that was
25 sent, the four E-mails that were sent on Friday, I asked the

1 commissioners -- they were sent directly to the commissioners,
2 which is a violation of the Gambling Control Act 19872(c).
3 You're not supposed to have direct communication with the
4 commissioners. And I asked them to not open those E-mails and
5 to not read them, which they all agreed to do. They sent me
6 an E-mail confirming that they did not look at that.

7 The stuff that was -- a lot of it was sent, it was sent
8 earlier and it's all hearsay information, things that the
9 Commissioners should not be considering. We have no idea
10 whether or not Mr. Hardy -- you know, if he's arrested, not
11 arrested. Whatever's going on with the charges, it should not
12 be something that the Commissioners should consider here at all
13 with regard to Mr. Deitch and whether or not he should be the
14 trustee.

15 So I wanted to let you know that, that those documents
16 up to Exhibit 20, which was already in their binders and they
17 had looked up to Exhibit 20, those things were presented to
18 the commissioner, but the rest of it was not and we really
19 would appreciate that you not do that again where you send
20 E-mails directly to the commissioners. Because this is all
21 supposed to go through the executive director and obviously
22 through counsel so that we can look at things like this so we
23 don't want to have the commissioners prejudiced and have to
24 recuse themselves from voting on things like this.

25 So it was very disturbing to have received those E-mails

1 late on Friday afternoon at 4:00 on the day before a holiday
2 and then expect the commissioners, number one, to look at them.
3 And, number two, that those would be sent basically in ex parte
4 mode without anyone else having any knowledge of what you
5 sent. So they have not looked at those documents other than
6 through Exhibit 20 and they did not look at your brief that
7 you filed. And we -- I feel very strongly about not having
8 them look at things like somebody's arrest record or anything
9 like that when there's no -- there's no -- that's all hearsay.
10 Newspaper articles, that's all hearsay. That should not be
11 relied on and you should not have sent those to the
12 commissioners.

13 MR. BLACKMAN: First of all, my apologies for the direct
14 communication. My office -- my understanding from my office
15 was that this was something that was permitted. So if it's
16 not permitted, my apologies for the direct communication. In
17 terms of the -- in terms of the arrest itself, we're not
18 asking that --

19 CHAIRMAN SHELTON: We don't even wanna hear about it.

20 MR. BLACKMAN: We're not asking --

21 CHAIRMAN SHELTON: All I wanna hear about is what he's
22 done wrong that he shouldn't be licensed that you can prove:
23 Character, loyalty, dishonesty, arrest record, anything of
24 that nature.

25 MR. BLACKMAN: What we pointed to as the critical point

1 is his relationship with the Hardys. And what we point to and
2 in terms of facts I read to you that are part of the court
3 record. We've submitted records that I guess you haven't
4 gotten that have been sent by the counsel for --

5 CHAIRMAN SHELTON: Nor should we have or we would of had
6 them. So you're going far afield again.

7 MR. BLACKMAN: Well, but the letters --

8 CHAIRMAN SHELTON: I would suggest ya listen to chief
9 legal counsel so you don't get yourself in any trouble here.

10 MR. BLACKMAN: What I'm talking about is letters that are
11 written by counsel for Mr. Deitch and Mr. Hardy, Junior. That's
12 what I'm talking about. And those letters should be considered
13 by the Commission to see what position Mr. Deitch has taken,
14 what assertions he's made. Is he someone who has honored the
15 restrictions of the Commission or is he someone who hasn't?
16 And you look at his own lawyer's letters to see that.

17 COMMISSIONER VUKSICH: Mr. Chairman, may I make a
18 suggestion?

19 CHAIRMAN SHELTON: I'd love it.

20 COMMISSIONER VUKSICH: It seems that we have, again, two
21 issues going on. One, which you're speaking to, which really
22 goes to the intent of the conditions placed on Mr. Hardy,
23 Junior's license. And the other is Mr. Deitch's suitability
24 to be licensed as a trustee. I for one am prepared to make a
25 decision on that issue which is before us today. However, I

1 would ask, if we could, to revisit the issue of the conditions
2 placed on the license to see if we can make them a little
3 clearer at a date hopefully before the end of the year.

4 MS. CIAU: We're gonna try to get it on the agenda before
5 the end of the calendar year.

6 COMMISSIONER VUKSICH: Is that --

7 MS. CIAU: As a separate agenda item.

8 COMMISSIONER SHIMAZU: Maybe I could just say something
9 too. I echo Commissioner Vuksich's statements. We're looking
10 at two separate issues. And, you know, I don't see any
11 problem with Mr. Deitch's suitability. But I know what you're
12 saying, that you're saying, that it may violate one of the
13 conditions placed on Hardy, Junior's license and that's a
14 separate issue we'd have to take up with Mr. Hardy, Junior's
15 license. So I don't think the -- the issue is not dead, we
16 can revisit it when we look at the license, but we have to
17 keep the two things separate even though, yeah, they're kind
18 of intertwined because it appears, you know, that maybe this
19 action effects that action, but we're trying to separate the
20 two.

21 So I just don't -- again, it is interesting. And it may
22 be factors that we wanna consider later on with respect to
23 Mr. Hardy, Junior's license, it's just that right now we're
24 looking at Mr. Deitch and if there's something that prohibits
25 him from being licensed after we've already done his background

1 and you know looked at all those factors and that's something
2 you wanna speak to. But it sounds like you're speaking more
3 to Hardy, Junior's license and a violation of one of those
4 conditions that was placed on him.

5 MR. BLACKMAN: Well -- and I respect the time of the
6 Commission, I'm not gonna belabor it, but let me just say the
7 difference that I seem to have on this. And that is that it
8 seems to me that when you're deciding whether or not somebody
9 should be a trustee, licensed as a trustee, you're asking more
10 than well, you know, generally is he in a sound financial
11 position and has he been arrested. I mean, one thing you
12 wanna know is what is the trustee supposed to do in this
13 connection and is he likely to do it, or is there some concern
14 that we have that's he's not gonna do what he's supposed to do?

15 COMMISSIONER VUKSICH: But, Mr. Blackman, that is the
16 function of the trustee which falls under the governance of
17 the trust. So it's a trust issue, it's not an issue that --
18 the way that trust is structured is not our concern.

19 MR. BLACKMAN: No. What I'm asking to do is this: And
20 you may reject the conclusions that I've drawn, but if you
21 came to the conclusion that based on the facts in front of you
22 you thought that Mr. Deitch was likely to whenever decisions
23 came up concerning Wizard he was likely to call up Mr. Hardy,
24 Junior or Mr. Hardy, Senior and ask them what they wanted to
25 do and do whatever they wanted him to do.

1 I mean, if you came to that conclusion, it seems to me
2 you'd have to say well, he's not qualified to be a licensed
3 trustee. Because one of the essential qualifications is that
4 you comply with the Commission's orders and somebody who shows
5 that he's not going to do that because he doesn't do it. Over
6 and over again he doesn't do it. That goes to his
7 qualifications to be trustee.

8 That's the initial question for the Commission is whether
9 it agrees with me on that. That is if you came to that
10 conclusion. If you came to the conclusion that, look, this
11 guy is not gonna act independently, he's gonna do whatever the
12 Hardys ask him to do, would that be -- would that be a ground
13 for denying his license?

14 CHAIRMAN SHELTON: I thank you very much. That's the
15 decision we have to make. Okay. I think we've gone far enough.

16 MR. BLACKMAN: All right. Thank you.

17 CHAIRMAN SHELTON: Thank you.

18 Further input?

19 MR. GOODSON: Thank you, Mr. Chair, Commissioners.
20 Harlan Goodson on behalf of George Deitch the applicant. I
21 was -- I brought the binder to read, but I think we've probably
22 taken up enough time. This matter was on for a hearing on
23 July 10th and I wanna thank the Commission and staff for
24 working with me during a time when I couldn't make it and for
25 putting this off until this date.

1 Counsel, I would also ask for the record that it appears
2 to me that the ex parte communication may also have created a
3 violation of the Bagley-Keene Act and I wanted to establish
4 that for the record also.

5 I thank the Commission for focusing on the very narrow
6 issue which is you have a trust document before you which has
7 been reviewed by the Division, or the Bureau, and the Commission.
8 and approved. You have an applicant who has already been
9 vetted by the Bureau and approved by the Commission for
10 licensure. This is a very narrow issue which is whether or
11 not Mr. Deitch is suitable to be endorsed on the license of
12 Diamond Jim's Casino to act as the trustee of the Zephyr Inter
13 Vivos Trust. It is that simple and thank you very much for
14 recognizing that. Thank you.

15 Mr. Deitch is here if you would like to ask any questions
16 of him.

17 CHAIRMAN SHELTON: Well, I have a statement to make. You
18 heard the proceedings and you heard Mr. Blackman and you know
19 the concerns we have with the Hardys. And I understand you
20 may have a relationship with them. I don't know. But if this
21 Commission has asked individuals not to participate in the
22 decision-making of a gambling establishment, we would expect
23 anybody that we license to honor that.

24 MR. DEITCH: Yes, sir.

25 CHAIRMAN SHELTON: And if the evidence came back to us

1 that it hadn't been honored, then I promise you you'd be back
2 before this Commission.

3 MR. GOODSON: Mr. Chair, I understand that and we
4 appreciate that. I think the one thing that hasn't been
5 pointed out is that Mr. Deitch has an interest in this casino.
6 He's a 14 percent interest holder.

7 CHAIRMAN SHELTON: I saw that.

8 MR. GOODSON: It's his interest that the license be in
9 effect. Any violation of the Gambling Control Act could
10 implicate the very license for which he's a shareholder. He
11 also as the trustee sits as a fiduciary. His decision making
12 is in the best interest of the trust. And it's in the best
13 interest of the trust as the 41.95 percent interest holder to
14 maintain that license and not violate the Gambling Control Act
15 or any of the orders of the Commission; that includes the
16 restrictions on Mr. George Hardy, Junior's license.

17 When we met in San Diego, I committed to you to cooperate
18 with and work with the Commission on any issues that this
19 Commission has with Mr. Hardy's license; that commitment
20 remains.

21 CHAIRMAN SHELTON: Thank you.

22 Commissioners, any further questions?

23 Any further public input?

24 Entertain a motion. Very silent.

25 COMMISSIONER SHIMAZU: Move to approve Staff's

1 recommendation.

2 CHAIRMAN SHELTON: Call for a second.

3 MS. RAMSAY: Was that a second?

4 CHAIRMAN SHELTON: I called for a second.

5 MS. RAMSAY: Oh, you called for a second.

6 CHAIRMAN SHELTON: For the lack of enthusiasm, I'll
7 second it.

8 Call for the vote.

9 MS. RAMSAY: Commissioner Schmidt.

10 COMMISSIONER SCHMIDT: Aye.

11 MS. RAMSAY: Commissioner Vuksich.

12 COMMISSIONER VUKSICH: No.

13 MS. RAMSAY: Commissioner Shimazu.

14 COMMISSIONER SHIMAZU: Aye.

15 MS. RAMSAY: Chairman Shelton.

16 CHAIRMAN SHELTON: Aye.

17 MS. RAMSAY: Motion carries.

18 CHAIRMAN SHELTON: Item C.

19 MS. LITTLETON: 5-C. Commerce Casino: California

20 Commerce Club, Inc. Marsha Gold, Contingent Beneficiary of
21 the Anter Family Trust.

22 Staff recommends that the Commission approve the initial
23 application for the applicant to be endorsed on the state
24 gambling license.

25 CHAIRMAN SHELTON: Commissioners?

1 Public input?

2 Motion, please.

3 COMMISSIONER VUKSICH: Move to approve Staff's
4 recommendation.

5 COMMISSIONER SHIMAZU: Second.

6 CHAIRMAN SHELTON: Call for the vote.

7 MS. RAMSAY: Commissioner Schmidt.

8 COMMISSIONER SCHMIDT: Aye.

9 MS. RAMSAY: Commissioner Shimazu.

10 COMMISSIONER SHIMAZU: Aye.

11 MS. RAMSAY: Commissioner Vuksich.

12 COMMISSIONER VUKSICH: Aye.

13 MS. RAMSAY: Chairman Shelton.

14 CHAIRMAN SHELTON: Aye.

15 MS. RAMSAY: Motion carries.

16 MS. LITTLETON: Agenda Item No. 6: Applications for
17 renewal of state gambling license including all associated
18 applicants and endorsees. Poker Flats Casino, Terry Vargas,
19 Sole proprietor.

20 Staff recommends that the Commission approve the renewal
21 license for the remainder of the licensure period through
22 July 31st, 2010 with the removal of the existing condition.
23 The club has met their conditions. They did submit their
24 financial statements.

25 CHAIRMAN SHELTON: So there are no conditions being

1 recommended, right?

2 MS. LITTLETON: Correct.

3 CHAIRMAN SHELTON: Commissioners?

4 Public input?

5 Move to approve Staff's recommendation.

6 COMMISSIONER VUKSICH: Second.

7 CHAIRMAN SHELTON: Call for the vote.

8 MS. RAMSAY: Commissioner Schmidt.

9 COMMISSIONER SCHMIDT: Aye.

10 MS. RAMSAY: Commissioner Shimazu.

11 COMMISSIONER SHIMAZU: Aye.

12 MS. RAMSAY: Commissioner Vuksich.

13 COMMISSIONER VUKSICH: Aye.

14 MS. RAMSAY: Chairman Shelton.

15 CHAIRMAN SHELTON: Aye.

16 MS. RAMSAY: Motion carries.

17 MS. LITTLETON: Agenda Item 7: Request for additional
18 permanent authorized tables. Bankers Casino, Cap's Enterprises,
19 Inc.

20 Staff recommends that the Commission approve the request
21 to add two tables for a total of nine.

22 CHAIRMAN SHELTON: Commissioners?

23 Public input?

24 MR. TABOR: Mr. Chairman, Commissioners: Robert Tabor on
25 behalf of Bankers Casino. Obviously, we support Staff's

1 recommendation. The primary reason for my getting up and
2 making any comments today is really just to give you the
3 Commission an update on the status of the casino.

4 As you may recall, a couple months ago this commission
5 granted the club a temporary license. The Bureau's still going
6 through their full investigation; everything's going just fine.
7 We've got a meeting set up with the Bureau for October 22nd.
8 My clients apologize for not being here, but they actually are
9 meeting today with the city manager and mayor of Salinas,
10 actually giving them an update on the status of the casino.

11 The club is in a brand-new facility. You may remember
12 that it was known as Cap's Saloon. It did not have the best
13 reputation. It is actually now a thriving facility in Salinas.
14 It has 40 employees. On weekends, usually Thursday through
15 Sunday it's operating anywhere from five to six tables
16 24 hours a day. There have been absolutely no incidents of
17 any negative nature that have been associated with the casino
18 at this point and there's been just a major amount of very
19 positive feedback from the community both in the press and
20 otherwise to the casino and the new owners and how they're
21 operating. So just wanted to give you an update on that.

22 CHAIRMAN SHELTON: That's good to hear.

23 MR. TABOR: Thank you.

24 CHAIRMAN SHELTON: Positive news is always welcome.

25 Any further public input?

1 Motion, please.

2 COMMISSIONER SCHMIDT: Motion to approve.

3 COMMISSIONER VUKSICH: Second.

4 CHAIRMAN SHELTON: Call for the vote.

5 MS. RAMSAY: Commissioner Schmidt.

6 COMMISSIONER SCHMIDT: Aye.

7 MS. RAMSAY: Commissioner Shimazu.

8 COMMISSIONER SHIMAZU: Aye.

9 MS. RAMSAY: Commissioner Vuksich.

10 COMMISSIONER VUKSICH: Aye.

11 MS. RAMSAY: Chairman Shelton.

12 CHAIRMAN SHELTON: Aye.

13 MS. RAMSAY: Motion carries.

14 MS. LITTLETON: Agenda Item No. 8: Applications for
15 initial key employee portable license.

16 Since Staff is recommending approval for Agenda Items
17 Number 8-A and 8-B, do the commissioners wish to consider them
18 together?

19 CHAIRMAN SHELTON: That's fine with me.

20 Commissioners, do you have any questions?

21 That's great.

22 MS. LITTLETON: Staff recommends that the Commission
23 approve the initial applications for the personal key employee
24 licenses for the period of October 14th, 2008 through
25 October 31st, 2010 as listed in your reports and on the agenda.

1 CHAIRMAN SHELTON: Commissioners?

2 No questions. Any public input?

3 Motion, please.

4 COMMISSIONER VUKSICH: Move to approve.

5 COMMISSIONER SCHMIDT: Second.

6 CHAIRMAN SHELTON: Call for the vote.

7 MS. RAMSAY: Commissioner Schmidt.

8 COMMISSIONER SCHMIDT: Aye.

9 MS. RAMSAY: Commissioner Shimazu.

10 COMMISSIONER SHIMAZU: Aye.

11 MS. RAMSAY: Commissioner Vuksich.

12 COMMISSIONER VUKSICH: Aye.

13 MS. RAMSAY: Chairman Shelton.

14 CHAIRMAN SHELTON: Aye.

15 MS. RAMSAY: Motion carries.

16 MS. LITTLETON: Agenda Item 9: Conversion of endorsed

17 key employee licenses to personal portable licenses.

18 Staff recommends that the Commission approve the

19 conversion of the endorsed key employee licenses to a personal

20 key employee license for the key employees listed in your

21 reports and on the agenda.

22 CHAIRMAN SHELTON: Commissioners?

23 Public input?

24 Motion, please.

25 COMMISSIONER SHIMAZU: Move to approve Staff's

1 recommendation.

2 COMMISSIONER VUKSICH: Second.

3 CHAIRMAN SHELTON: Call for the vote.

4 MS. RAMSAY: Commissioner Schmidt.

5 COMMISSIONER SCHMIDT: Aye.

6 MS. RAMSAY: Commissioner Shimazu.

7 COMMISSIONER SHIMAZU: Aye.

8 MS. RAMSAY: Commissioner Vuksich.

9 COMMISSIONER VUKSICH: Aye.

10 MS. RAMSAY: Chairman Shelton.

11 CHAIRMAN SHELTON: Aye.

12 MS. RAMSAY: Motion carries.

13 MS. LITTLETON: Agenda Item No. 10: Applications to
14 convert gambling business owner registration to a license.

15 Since staff is recommending approval for Agenda Items 10
16 and 11, do the commissioners wish to consider them together?

17 CHAIRMAN SHELTON: That's fine.

18 Any questions on those?

19 Go ahead.

20 MS. LITTLETON: Staff recommends that the Commission
21 approve the application to convert gambling business owner and
22 third party provider of Proposition Player Services registration.
23 to a license for the licensure period of October 14th, 2008
24 through August 31st, 2010. I need to read Network Management
25 Group, Inc., Jamie Tierney, beneficiary and community property

1 interest holder.

2 CHAIRMAN SHELTON: Any public input?

3 Move to approve Staff's recommendation.

4 COMMISSIONER VUKSICH: Second.

5 CHAIRMAN SHELTON: Call for the vote.

6 MS. RAMSAY: Commissioner Schmidt.

7 COMMISSIONER SCHMIDT: Aye.

8 MS. RAMSAY: Commissioner Shimazu.

9 COMMISSIONER SHIMAZU: Aye.

10 MS. RAMSAY: Commissioner Vuksich.

11 COMMISSIONER VUKSICH: Aye.

12 MS. RAMSAY: Chairman Shelton.

13 CHAIRMAN SHELTON: Aye.

14 MS. RAMSAY: Motion carries.

15 MS. LITTLETON: Agenda Item 12: Applications for initial
16 Tribal-State Compact gaming resource supplier finding of
17 suitability. Sealaska Properties, LLC. Richard Rinehart, Jr.,
18 co-manager, vice president, CFO.

19 Staff recommends that the Commission approve the initial
20 finding of suitability application for the period of
21 October 14, 2008 through March 31st, 2010.

22 CHAIRMAN SHELTON: Commissioners, any questions?

23 COMMISSIONER SHIMAZU: No.

24 CHAIRMAN SHELTON: Is there any public input?

25 Motion, please.

1 COMMISSIONER VUKSICH: Move approval of Staff's
2 recommendation.

3 COMMISSIONER SCHMIDT: Second.

4 CHAIRMAN SHELTON: Call for the vote.

5 MS. RAMSAY: Commissioner Schmidt.

6 COMMISSIONER SCHMIDT: Aye.

7 MS. RAMSAY: Commissioner Shimazu.

8 COMMISSIONER SHIMAZU: Aye.

9 MS. RAMSAY: Commissioner Vuksich.

10 COMMISSIONER VUKSICH: Aye.

11 MS. RAMSAY: Chairman Shelton.

12 CHAIRMAN SHELTON: Aye.

13 MS. RAMSAY: Motion carries.

14 MS. LITTLETON: Agenda Item 13: Application for
15 Tribal-State Compact gaming resource supplier finding of
16 suitability, request to withdraw.

17 Since Staff is recommending approval for Agenda Items
18 13-A and 13-B, do the commissioners wish to consider them
19 together?

20 CHAIRMAN SHELTON: Please.

21 MS. LITTLETON: Staff recommends that the Commission
22 approve the applicant's request to withdraw without prejudice
23 as listed in your reports and on the agenda.

24 CHAIRMAN SHELTON: Commissioners?

25 Public input?

1 Motion, please.

2 COMMISSIONER SCHMIDT: Motion to approve Staff
3 recommendation.

4 COMMISSIONER VUKSICH: Second.

5 CHAIRMAN SHELTON: Call for the vote.

6 MS. RAMSAY: Commissioner Schmidt.

7 COMMISSIONER SCHMIDT: Aye.

8 MS. RAMSAY: Commissioner Shimazu.

9 COMMISSIONER SHIMAZU: Aye.

10 MS. RAMSAY: Commissioner Vuksich.

11 COMMISSIONER VUKSICH: Aye.

12 MS. RAMSAY: Chairman Shelton.

13 CHAIRMAN SHELTON: Aye.

14 MS. RAMSAY: Motion carries.

15 MS. LITTLETON: Consent calendar items. I need to
16 request to table Agenda Item 15-E: Pit River Casino,
17 Pit River Tribe, Boyd Taylor. And this will be rescheduled on
18 the 23rd agenda.

19 CHAIRMAN SHELTON: You wanna do all those items, 14, 15,
20 and 16?

21 MS. LITTLETON: Yes. Staff recommends that the
22 Commission approve Agenda Items 14, 15, and 16, as listed in
23 your reports and on the agenda, excluding 15-E.

24 CHAIRMAN SHELTON: Commissioners, any questions on those
25 items?

1 COMMISSIONER VUKSICH: None.

2 CHAIRMAN SHELTON: Public input?

3 Motion, please.

4 COMMISSIONER VUKSICH: Move approval of Staff's
5 recommendation on Items 14, 15, and 16.

6 CHAIRMAN SHELTON: I'll second it.

7 Call for the vote.

8 MS. RAMSAY: Commissioner Schmidt.

9 COMMISSIONER SCHMIDT: Aye.

10 MS. RAMSAY: Commissioner Shimazu.

11 COMMISSIONER SHIMAZU: Aye.

12 MS. RAMSAY: Commissioner Vuksich.

13 COMMISSIONER VUKSICH: Aye.

14 MS. RAMSAY: Chairman Shelton.

15 CHAIRMAN SHELTON: Aye.

16 MS. RAMSAY: Motion carries.

17 CHAIRMAN SHELTON: We're to public comment.

18 The Commission affords an opportunity to members of the
19 public to address the Commission on items of interest that are
20 the commission's jurisdiction. And the Commission is not
21 permitted to take action on items that are not identified on
22 the agenda. The Commission reserves the right to limit
23 speakers if necessary.

24 If anybody would like to address the Commission, please
25 come forward.

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Weren't that bashful this morning.

Motion to adjourn.

COMMISSIONER VUKSICH: Second.

CHAIRMAN SHELTON: Call for the vote.

MS. RAMSAY: Commissioner Schmidt.

COMMISSIONER SCHMIDT: Aye.

MS. RAMSAY: Commissioner Shimazu.

COMMISSIONER SHIMAZU: Aye.

MS. RAMSAY: Commissioner Vuksich.

COMMISSIONER VUKSICH: Aye.

MS. RAMSAY: Chairman Shelton.

CHAIRMAN SHELTON: Aye.

MS. RAMSAY: Motion carries.

CHAIRMAN SHELTON: Thank you everybody for attending.

(Meeting was adjourned at 2:16 p.m.)

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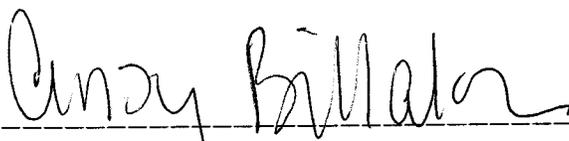
STATE OF CALIFORNIA

I, CINDY M. BILLALON, CSR No. 10618,
hereby certify:

That I am a Certified Shorthand
Reporter in and for the State of California.

Said proceedings were taken at the
time and place therein set forth and was taken
down by me in stenotype and thereafter
transcribed into typewriting by me and is a true
record of the
testimony.

I further certify that I am neither
counsel for, nor related in any way to any party
to said action, nor otherwise interested in the
result or outcome thereof.



CINDY M. BILLALON, CSR No. 10618

Date: OCTOBER 23, 2008

Gaming Commission



October 9, 2008

Richard Estrada
Chairperson

VIA U.S. MAIL
Governor Arnold Schwarzenegger
1 Capital Mall

Victor Estrada
Commissioner

Sacramento, CA 95814

Re: CGCC-8 Minimum Internal Control Standards

Kaila Hill
Commissioner

Dear Governor Schwarzenegger,

Troy Teague
Executive Director

It has come to the attention of the La Posta Band of Mission Indians Gaming Commission (Gaming Commission) that despite overwhelming opposition by the Tribal-State Association (Association), including opposition by the Bureau of Gambling control, the State of California (State), through the California Gambling Control Commission (CGCC), is preparing to re-adopt the proposed Uniform Tribal Gaming Regulation CGCC-8 (CGCC-8) on October 14, 2008. The Gaming Commission is deeply concerned with the CGCC's announced re-adoption of CGCC-8 especially in light of the more than eighteen months of discussion, debate and dialog at numerous Association meetings and gatherings wherein the deficiencies of CGCC-8 were clearly identified. Additionally, in light of the Association's *Regulatory Standards Taskforce Final Report Statement of Need Re. CGCC-8*, dated February 13, 2008, the Gaming Commission believes CGCC-8 remains seriously flawed (Taskforce Report) (copy attached).

The Gaming Commission views CGCC-8, as outlined in the Taskforce report, as a unilateral attempt to modify the Tribal-state Compact between the La Posta Band of Mission Indians and the State of California (Compact). Specifically, CGCC-8 provides for an unequivocal expansion of the CGCC's oversight role by impermissibly establishing State Mandated Minimum Internal Control Standards (MICS)—which are currently within the sole regulatory authority of the Tribe's gaming agency pursuant to the Section 8.1 of the Compact. The Commission finds that CGCC-8 is unnecessary, unduly burdensome and duplicative in light of the requirements contained in the La Posta Band of Mission Indians Gaming Ordinance (Ordinance) which was last approved by the National Indian Gaming Commission (NIGC) Chairman Philip Hogen on February 5, 2007, in accordance with the Indian gaming Regulatory Act. Specifically, Section 4.17.1(a) of the NIGC approved Ordinance provides the Gaming Commission shall promulgate such regulations, policies and procedures as are necessary to carry out the orderly performance of its duties and powers, including, but not limited to, MICS at least as stringent as those issued by the NIGC (25 CFR 542). Furthermore, the Ordinance is entirely consistent

Page 2 of 2

CGCC-8 Minimum Internal Control Standards

October 9, 2008

with the agreed upon duties and authority granted to the Gaming Commission pursuant to Compact Section 8.1. Copies of the Gaming Ordinance and relevant correspondence with the NIGC are attached hereto for your information.

Pursuant to the terms of the Compact, the best and most appropriate approach to addressing the State's MICS concerns would be through compact negotiations with the La Posta Band of Mission Indians—not through regulatory and political bureaucracy. Moreover, addressing the State's MICS concerns through an amendment of the Compact is the only true means of maintaining respect for tribal sovereignty, and is consistent with the State's established practice in dealing with other California gaming tribes. In the absence of respecting tribal sovereignty, the Commission will have no choice but to recommend to the governing body of the La Posta Band of Diegueno Mission Indians that it seek all means of protecting and defending its interests from what the Commission believes is a unilateral and unnecessary expansion of the State's regulatory role over tribal gaming through the proposed CGCC-8.

We respectfully urge you, as Governor of the State of California, to intervene in this matter and stop the CGCC from moving forward with CGCC-8 and address MICS in the only appropriate manner—government-to-government negotiations.

Sincerely,



Richard Estrada, Chairman

La Posta Band of Mission Indians-Gaming Commission

cc: Gwendolyn Parada, Chairperson, La Posta Band of Mission Indians
Philip Hogen, Chairman, National Indian Gaming Commission
Jerry Brown, Attorney General, State of California
Robert Lytle, Director, Bureau of Gambling Control
Dean Shelton, Chairman, California Gambling Control Commission
Rosette & Associates, PC

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October 13, 2008

BY FAX (916-263-0452)

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

RE: CGCC Meeting on October 14, 2008

Dear Chairman Shelton:

The Pauma Gaming Commission of the Pauma Band of Mission Indians submits this letter for the CGCC's consideration at its meeting on October 14, 2008, and requests that this letter be made part of the record for said meeting.

By letter dated February 19, 2008, the Pauma Band of Mission Indians and the Pauma Gaming Commission submitted its comments on CGCC-8 to the CGCC and asked that the letter be made part of the record for the February 21, 2008, meeting at which the CGCC was going to vote on CGCC-8. While the CGCC initially refused to make our comment letter part of the record, it reversed itself and sent us a letter dated September 24, 2008, in which it stated that it would make our comment letter "part of the overall CGCC-8 record" and assured us "it will be responded to along with all the other CGCC-8 letters."

However, the CGCC did not address our comment letter in its "Detailed Response to Tribal-State Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8)" or include our letter with the tribal comment letters appended to the Detailed Response. We are therefore writing to ensure that our original comment letter dated February 19, 2008, is included among the documents considered by the CGCC in formulating its decision. In addition, we ask that the CGCC trail this matter to a later date in order to ensure that our comment letter and all the other tribal comment letters concerning CGCC-8 received by the CGCC-8 prior to September 2008, which were not included in the Detailed Response or attached exhibits.

In addition, we would like to add the following additional comments: First, we have reviewed the proposed amendments to CGCC-8 dated October 1, 2008, and we do not believe the amendments adequately address the concerns we set forth in our letter of

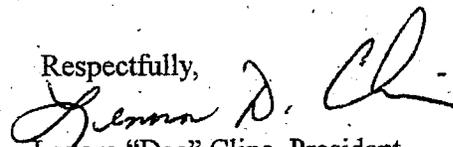
February 19, 2008, or the concerns set forth in the Association's Regulatory Standards Taskforce Final Report and Statement of Need dated February 13, 2008, which we incorporated by reference in our comment letter. We therefore stand by our original comments and reiterate our request that the CGCC not re-adopt the amended regulation CGCC-8.

Secondly, the CGCC does not have the authority to unilaterally impose CGCC-8 after it has been rejected by the Association. Section 8.4.1, subdivision (a) of our Tribal-State Compact makes it clear that "no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation *unless it has first been approved by the Association* and the Tribe has an opportunity to review and comment on the proposed regulation" (emphasis added). The only exception to the requirement for Association approval is subdivision (d), which permits the adoption of regulations without Association approval in exigent circumstances. Since CGCC-8 was disapproved by the Association on September 4, 2008, it is our position that CGCC-8, even if re-adopted by the CGCC, will be ineffective as to the Pauma Gaming operation.

We understand that the CGCC may be relying on subdivision (b) of section 8.4.1, which contemplates that the CGCC may re-adopt a regulation that is disapproved by the Association, but the remainder of that subdivision and the section read as a whole makes it clear that subdivision (b) contemplates the CGCC being able to do so only when it is able to amend the regulation in a manner that overcomes the objections of the Association. As stated above, the proposed amendments to CGCC-8 fail to overcome the objections expressed at the Association meeting on September 4, 2008. The only valid option for the CGCC is to submit the amended CGCC-8 to the Association and seek the Association's approval of the amended regulation.

In summary, the Pauma Gaming Commission of the Pauma Band of Mission Indians asks that the CGCC not re-adopt CGCC-8 and, if it does so, that it submit the amended regulation to the Association in conformity with subdivision (a) of section 8.4.1.

Respectfully,



Lenora "Dee" Cline, President
Pauma Gaming Commission



TRIBAL GAMING AGENCY

October 14, 2008

California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

Dear California Gambling Control Commissioners:

The United Auburn Indian Community Tribal Gaming Agency submits the following written statement today on the proposed regulation CGCC-8 being considered today at your meeting.

- I. The Tribal-State Gaming Association's disapproval of proposed regulation CGCC-8 on September 4, 2008, rendered it ineffective; any proposed regulation adopted by the CGCC today and sent to tribes for comment must thereafter go to the Association for review and approval.**

While the Compact enables the State Gaming Agency to readopt and submit to Tribes for comment a proposed regulation that was *disapproved* by the Association, we disagree that it could thereafter become effective, as asserted in the CGCC staff's recent Public Legal Memorandum and Detailed Response to Tribal-State Association Objections. Such a proposed regulation, whether in its original or amended form, would have to be resubmitted to the Association for approval to become effective. Section 8.4.1(a) expressly states that, except for exigent circumstances, "no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation *unless it has first been approved by the Association* and the Tribe has had an opportunity to review and comment on the proposed regulation." Therefore, the Association's disapproval of the proposed regulation CGCC-8 rendered it ineffective.

Contrary to recent CGCC staff assertions, subdivision (b) of Section 8.4.1 cannot be read to negate or render meaningless the requirement of Association approval under subdivision (a). Specifically, we disagree with CGCC staff assertions that subdivision (b) "provides a clear exception to the general proposition in subsection (a) of 8.4.1 that the regulation has to be approved by the Tribal-State Association" and "any other interpretation would render subdivision (b) mere surplusage." Subdivision (b) implements subdivision (a) by expressly providing the manner in which the proposed regulation is submitted to each tribe for review and comment. If the Association

disapproves a regulation, the State Gaming Agency may submit it to each tribe for comment only upon readoption, in its original or amended form, with a detailed written response to the Association's objections. These comments from tribes are useful to the State Gaming Agency as it considers redrafting and/or resubmitting a proposed regulation to the Association for consideration, as well as to Association delegates upon any resubmission. Indeed, the proposed regulation may no longer be in a form considered by the Association delegates initially, again supporting the need to submit it to the Association.

If Compact Section 8.4.1 were intended to allow a proposed state regulation to become effective without Association approval, it would clearly provide for this. To the contrary, the only place where this is allowed is under subdivision (d) under exigent circumstances, which is later subject to Association disapproval. In contrast, there is no exception language that supports the CGCC's interpretation that subdivision (b) provides an exception to subdivision (a). The Compact never intended or envisioned that the CGCC would have authority to unilaterally promulgate and enforce regulations governing tribal gaming operations without Association approval. Instead, the first subdivision of Section 8.4.1 clearly sets out the jurisdictional compromise agreed to between the State and the United Auburn Indian Community in our Compact: "Except as provided in subdivision (d) [pertaining to exigent circumstances], no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation."

While this is not a legal brief, we further want to note that under the Indian Canon of construction, courts will read any ambiguity liberally in favor of the Indians. (See e.g., City of Roseville v. Norton, 348 F.3d 1020 (D.C. Cir. 2003)).

II. CGCC-8 exceeds the legal authority granted to the State in the Compact and is unnecessary, duplicative, unduly burdensome and unfairly discriminatory.

The CGCC lacks legal authority to adopt the proposed regulation CGCC-8. While the proposed amended version before the CGCC today contains some minor revisions, those revisions do not cure the fatal legal flaws. The United Auburn Indian Community Tribal Gaming Agency submitted written comments for the record at the September 4, 2008, Association meeting, clearly within the 14 day time period, which we incorporate by reference here. We also incorporate by reference the Association Regulatory Standards Taskforce Final Report Statement of Need re: CGCC-8 February 13, 2008 ("Task Force Report"). Our statement today is intended to set our position in summary fashion but is not exclusive, and any point or argument not made herein is not waived.

United Auburn has adopted MICS at least as stringent as the federal standards, with which our Tribal Gaming Agency has always required the gaming operation to comply. Moreover, United Auburn has granted the NIGC jurisdiction to monitor and enforce the MICS at the Tribe's Thunder Valley Casino through an amended gaming ordinance, approved by the NIGC under the Indian Gaming Regulatory Act. The NIGC has performed a comprehensive MICS audit post-CRIT appellate decision. Contrary to recent CGCC staff assertions, the NIGC has performed routine site inspections for MICS compliance prior to and following the Thunder Valley Casino opening in 2003. Further, we disagree with the recent statements of CGCC staff regarding lack of NIGC authority to monitor and enforce MICS compliance through our amended gaming ordinance and further note that the language proposed for addition to CGCC-8 by the Association TaskForce attorney work group as well as our Association delegate expressly provided that the proposed CGCC-8 would not apply to any gaming operation over which the NIGC exercised *enforceable* MICS jurisdiction.

The recent statements by CGCC staff that it would be "absurd" to delegate to the federal government the role of MICS compliance ignore entirely the role of the federal government in Indian affairs and Indian gaming. Not only is gaming regulation first and foremost a matter of federal law through the Indian Gaming Regulatory Act but also the Tribal-State Gaming Compacts executed pursuant to IGRA in several places expressly provide for oversight regulation by state, county or *federal* officials, leaving it to the option and sovereignty of the tribe to choose which agency. (See for instance Compact Sections 10.2(a) and (b)). Moreover, unlike those Compact provisions expressly providing for oversight in areas such as food and beverage and water quality inspections, our Compact does not include any reference to the MICS or state oversight compliance thereof, in sharp contrast to more recently executed compacts and agreements.

United Auburn's Compact provides for flat fee payments to the State, and as such, the stated CGCC objective of securing the state's revenue share clearly does not apply and is unnecessary. We reject the most recent CGCC staff assertions that state MICS monitoring is necessary to ensure an accurate counting of number of machines. At our casino, this proposition is not supported and is overbroad; moreover, this stated purpose could be accomplished by a number of less burdensome alternative ways.

We acknowledge CGCC's staff recommendation for deletion of the word "full" before "financial audit" in CGCC-8's subsection (h), as requested by our Association delegate. We made this request to help eliminate additional ambiguity and a possible implication that a financial audit (albeit not quite "full") was intended to be authorized, which we were told orally was not the case. However, we want to reiterate that United Auburn's Compact does not provide the state with authority to conduct financial reviews of any

kind. We also disagree that review of the independent financial audit is necessary for review of MICS compliance.

Finally, the proposed regulation CGCC-8 is unfairly discriminatory, as gaming activities over which the state has plenary authority are not subject to as rigorous regulation as that proposed here. In fact, the CGCC staff's most recent comments point out that cardrooms and racetracks are required to have external independent audits, just as currently performed at our casino. We note that the state lottery is not mentioned.

III. Conclusion.

We always have strongly supported effective regulation of Indian gaming authorized by the IGRA and the Compacts and continue to do so. We cannot support the proposed regulation CGCC-8, which is fatally flawed.

We urge you to direct your staff to work with Association delegates to develop a proposed regulation consistent with the state's regulatory authority under the Compact, or alternatively, to adopt a substantially amended proposed regulation compliant with the Compact to be submitted ultimately to the Association for consideration.

Sincerely,



Ronald Jaeger

United Auburn Indian Community Tribal Gaming Agency Chairperson

STATEMENT OF THEODORE PATA

Commission Chairman – Paskenta Band of Nomlaki Indians
Tribal Gaming Commission

California Gambling Control Commission

October 14, 2008

Good morning Chairman Shelton and members of the California Gambling Control Commission. My name is Theodore Pata and I am the Commission Chairman of the Paskenta Band of Nomlaki Indians Tribal Gaming Commission. The Paskenta Band Operates the Rolling Hills Casino pursuant to its 1999 Tribal-State Gaming Compact. I am here today representing the Paskenta Tribal Gaming Commission.

For the following reasons, the Paskenta Tribal Gaming Commission strongly opposes the Commission's re-adoption of CGCC-8 as embodied in Proposed Uniform Tribal Gaming Regulation CGCC-8 Amended Form dated October 1, 2008:

1. Although Proposed Amended Form CGCC-8 includes various modifications, the main provisions of the Proposed Regulation remain unchanged. Thus, the Paskenta Tribal Gaming Commission opposes CGCC-8 for the reasons set forth in the September 11, 2008 Paskenta Band Tribal Gaming Commission letter, my March 27, 2008 statement to the Commission, and the February 13, 2008 Tribal-State Task Force Final Report.
2. The various modifications in Proposed Amended Form CGCC-8 do not provide any authority for its promulgation.
3. Proposed Amended Form CGCC-8 continues to represent a unilateral amendment of the Paskenta Band's Compact. Such action is not effective without the Paskenta Band's consent.
4. The Paskenta Tribal Gaming Commission adopted the National Indian Gaming Commission's minimum internal control standards for Class III gaming prior to the opening of the Rolling Hills Casino. In addition, the NIGC approved the

amendment of the Paskenta Band's Gaming Ordinance to include the NIGC MICS as part of the Gaming Ordinance and to authorize the NIGC to monitor and enforce compliance with the MICS. The Paskenta Band's Gaming Operation is subject to independent outside oversight by the NIGC.

5. Based upon the regulation and oversight of the Paskenta Band's Gaming Operation by the Paskenta Tribal Gaming Agency and the NIGC, Proposed Amended Form CGCC-8 is unnecessary, duplicative, unduly burdensome and discriminatory.

It should also be mentioned that, in its September 11, 2008 letter, the Paskenta Tribal Gaming Commission recommended that the Commission not readopt CGCC-8, or if it choose to readopt CGCC-8 to place appropriate conditions on the application of the proposed regulation identical to the Bureau of Gambling Control's position stated at the September 4, 2008 Tribal-State Association meeting.

At the September 4th meeting, the Bureau proposed, in essence, that: (1) individual tribes may consent to State oversight; or (2) individual tribes take steps to ensure application of the NIGC MICS. Proposed Amended Form CGCC-8 does not include this proposal.

The Bureau's proposed amendment of subsection (b) of CGCC-8 as set forth in its September 30, 2008 letter to the Commission appears to go beyond what the Paskenta Tribal Gaming Commission understood the Bureau's position to be at the September 4th meeting. Therefore, the Paskenta Tribal Gaming Commission only supports the position offered by the Bureau at the September 4th meeting and nothing more.

~~For purposes of clarifying the record, the "Safe Harbor" alternative approach referenced in the Commission's "Detailed Response to Tribal State Association Objections to Minimum Internal Control Standards" was offered by Dry Creek Rancheria Band of Pomo Indians and not the Paskenta Tribal Gaming Commission.~~

Finally, the Tribal-State Association disapproved CGCC-8 at the September 4, 2008 meeting. The Proposed Regulation is not effective. If the Commission readopts CGCC-8 in its Amended Form, the Commission must submit the Proposed Amended Form CGCC-8

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30 day
comment
period.
Red Peter

to the Paskenta Band for comment. In addition, the Proposed Amended Form CGCC-8 would need to be re-submitted to the Association for its consideration and approval.

Under Section 8.4.1 of the Paskenta Band's Compact, no State Gaming Agency regulation may become effective unless the Proposed Regulation has been approved by the Association and the Paskenta Band has had an opportunity to review and comment on the Proposed Regulation. The fact that Proposed Amended Form CGCC-8 may no longer be in a form considered by the Association also necessitates re-submittal of Proposed Amended Form CGCC-8 to the Association for its consideration.

On behalf of the Paskenta Tribal Gaming Commission, thank you for the opportunity to present our statement in opposition to Proposed Amended Form CGCC-8.

Pala Gaming Commission

ATTACHMENT F

35008 Pala Temecula Rd. PMB43 Pala, CA. 92059-0043 Office (760) 510-4574 * Fax (760) 510-4566

* E-Mail: PGC@Palagc.org



Commissioners:

Anthony J. Barnes, Chairperson

James Castillo, Commissioner

Darlene Vega, Commissioner

resubmission. Indeed, the proposed regulation may no longer be in a form considered by the Association delegates initially, again supporting the need to submit it to the Association.

If Compact Section 8.4.1 were intended to allow a proposed state regulation to become effective without Association approval, it would clearly provide for this. To the contrary, the only place where this is allowed is under subdivision (d) under exigent circumstances, which is later subject to Association disapproval. In contrast, there is no exception language that supports the CGCC's interpretation that subdivision (b) provides an exception to subdivision (a). The Compact never intended or envisioned that the CGCC would have authority to unilaterally promulgate and enforce regulations governing tribal gaming operations without Association approval. Instead, the first subdivision of Section 8.4.1 clearly sets out the jurisdictional compromise agreed to between the State and the United Auburn Indian Community in our Compact: "Except as provided in subdivision (d) [pertaining to exigent circumstances], no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation."

While this is not a legal brief, we further want to note that under the Indian Canon of construction, courts will read any ambiguity liberally in favor of the Indians. (See e.g., City of Roseville v. Norton, 348 F.3d 1020 (D.C. Cir. 2003)).

II. CGCC-8 exceeds the legal authority granted to the State in the Compact and is unnecessary, duplicative, unduly burdensome and unfairly discriminatory.

The CRIT decision held that the NIGC exceeded its authority granted to them by Congress under IGRA by establishing MICS. Now the CGCC is attempting to follow in NIGC's footsteps by attempting to exceed the authority that was agreed upon by our Tribe and the State in our Tribal-State Compact. CGCC-8 is an attempt to change terms of our compact that were not agreed to by our Tribe. CGCC-8 exceeds the legal authority granted to the State through our Tribe's Tribal-State Gaming Compact, as amended in 2004. (See Association Regulatory Standards Taskforce Final Report Statement of Need re: CGCC-8 February 13, 2008, incorporated herein by reference).

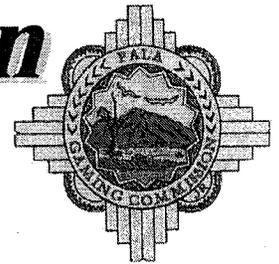
The Pala Gaming Commission believes that the State has authority to perform reviews as allotted by the Compact and has and will continue to comply with the Compact reviews by the State in regards to those areas authorized by our Compact. On the other hand, it is also our duty to ensure that the State also respects the Compact and limits itself to items that were agreed to by our Tribe and the State as documented in the Compact.

"Protecting the Integrity of the Game"

Pala Gaming Commission

35008 Pala Temecula Rd. PMB43 Pala, CA. 92059-0043 Office (760) 510-4574 * Fax (760) 510-4566

* E-Mail: PGC@Palagc.org



Commissioners:

Anthony J. Barnes, Chairperson

James Castillo, Commissioner

Darlene Vega, Commissioner

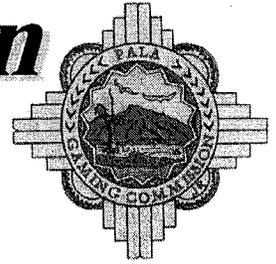
In addition, the Pala Tribe has granted the NIGC jurisdiction to monitor and enforce the MICS at Pala Casino through an amended gaming ordinance approved by the NIGC under federal law; as such CGCC-8 is duplicative, unnecessary, redundant and unduly burdensome. The Pala Tribe has adopted the NIGC MICS, and the Pala Gaming Commission has always required the Tribes Gaming Operation to comply with the NIGC MICS even when the CRIT decision was first decided and then upheld. Further we believe that the NIGC has the expertise and experience to do qualified compliance reviews. In fact, contrary to recent CGCC staff assertions, the NIGC has performed routine site inspections for MICS compliance prior to and following the Pala Casino opening in 2001. Further, we disagree with the recent statements of CGCC staff regarding lack of NIGC authority to monitor and enforce MICS compliance through our amended gaming ordinance and further note that the language proposed for addition to CGCC-8 by the Association TaskForce attorney work group expressly provided that the proposed CGCC-8 would not apply to any gaming operation over which the NIGC exercised *enforceable* MICS jurisdiction. We find particularly disappointing the recent statements by CGCC staff that it would be "absurd" to delegate to the federal government the role of MICS compliance. Not only is gaming regulation first and foremost a matter of federal law through the Indian Gaming Regulatory Act but also the Tribal-State Gaming Compacts executed pursuant to IGRA in several places expressly provide for oversight regulation by state, county or *federal* officials, leaving it to the option and sovereignty of the tribe to choose which agency. (See for instance Compact Sections 10.2(a) and (b)). Moreover, unlike those Compact provisions expressly providing for oversight in areas such as food and beverage and water quality inspections, our Compact does not include any reference to the MICS or state oversight compliance thereof, in sharp contrast to more recently executed compacts and agreements.

The Pala Band's Compact provides for flat fee payments to the State, and as such, the stated CGCC objective of securing the state's revenue share clearly do not apply and are unnecessary. We reject the most recent CGCC staff assertions that state MICS monitoring is necessary to ensure an accurate counting of number of machines. At our casino, where the number of machines has remained relatively consistent, this proposition is not supported and is overbroad; moreover, this stated purpose could be accomplished by a number of less burdensome alternative ways. Additionally, while we agree that the deletion of the word "full" before "financial audit" in CGCC-8's subsection (h) helped to eliminate ambiguity and a possible implication that something less than a full audit was intended to be authorized, we want to reiterate that the Pala Band's Compact does not provide the state with authority to conduct financial reviews of any kind.

We also believe that the proposed regulation CGCC-8 is unfairly discriminatory, as gaming activities over which the state has plenary authority are not subject to as rigorous regulation as that proposed here. In fact, the CGCC staff's most recent comments themselves point out that cardrooms and racetracks are required to have external independent audits, just as currently performed at our casino. We note that the state lottery is not mentioned.

"Protecting the Integrity of the Game"

Pala Gaming Commission



35008 Pala Temecula Rd. PMB43 Pala, CA. 92059-0043 Office (760) 510-4574 * Fax (760) 510-4566
* E-Mail: PGC@Palagc.org

Commissioners:

Anthony J. Barnes, Chairperson
James Castillo, Commissioner
Darlene Vega, Commissioner

We note that the proposed CGCC-8 presented here today is not the same one that was submitted to the Association. There were some changes made to the proposed CGCC-8 presented here today for reasons explained in the Public Legal Memorandum from Evelyn Matteucci, Chief Counsel, dated October 1, 2008. There are still many changes that need to be made to bring it into compliance with the Compact.

III. Conclusion

We support effective regulation of Indian gaming authorized by the Compacts. We cannot support the proposed regulation CGCC-8, which is fatally flawed. We urge you today to table this item and have your staff go back to the Association with a mandate to work with tribal and state delegates to draft a regulation that is consistent with your Compact authority, or alternatively, to adopt a substantially amended proposed regulation compliant with the Compact to be submitted ultimately to the Association for consideration.

This statement today is intended to set our position in summary fashion but is not exclusive, and any point or argument not made herein is not waived.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony Barnes", is written over a horizontal line.

Anthony Barnes, Chairperson, Pala Gaming Commission

“Protecting the Integrity of the Game”



TWENTY-NINE PALMS GAMING COMMISSION

October 10, 2008

VIA U.S. MAIL
 Governor Arnold Schwarzenegger
 1 Capitol Mall
 Sacramento, CA 95814

Re: CGCC-8 Minimum Internal Control Standards

Dear Governor Schwarzenegger,

It has come to the attention of the Twenty-Nine Palms Band of Mission Indians Gaming Commission (Gaming Commission) that despite overwhelming opposition by the Tribal-State Association (Association), including opposition by the Bureau of Gambling control, the State of California (State), through the California Gambling Control Commission (CGCC), is preparing to re-adopt the proposed Uniform Tribal Gaming Regulation CGCC-8 (CGCC-8) on October 14, 2008. The Gaming Commission is deeply concerned with the CGCC's announced re-adoption of CGCC-8 especially in light of the more than eighteen months of discussion, debate and dialog at numerous Association meetings and gatherings wherein the deficiencies of CGCC-8 were clearly identified. Additionally, in light of the Association's *Regulatory Standards Taskforce Final Report Statement of Need Re. CGCC-8*, dated February 13, 2008, the Gaming Commission believes CGCC-8 remains seriously flawed (Taskforce Report) (copy attached).

The Commission views CGCC-8, as outlined in the Taskforce report, as a unilateral attempt to modify the Tribal-state Compact between the Twenty-Nine Palms Band of Mission Indians and the State of California (Compact). Specifically, CGCC-8 provides for an unequivocal expansion of the CGCC's oversight role by impermissibly establishing State Mandated Minimum Internal Control Standards (MICS)—which are currently within the sole regulatory authority of the Tribe's gaming agency pursuant to the Section 8.1 of the Compact. As outlined in the Taskforce Report, the Commission believes that CGCC-8 is unnecessary, unduly burdensome and duplicative.

Moreover, in light of the recent amendment to the Twenty-Nine Palms Band of Mission Indians Gaming Ordinance, the Commission believes the doctrine of federal preemption precludes the CGCC from enforcing its MICS on the Tribe. Specifically, on January 11, 2008, the National Indian Gaming Commission (NIGC) Chairman Philip Hogen, in accordance with the Indian gaming Regulatory Act, approved an amendment to the Twenty-Nine Palms Band of Mission Indians Gaming Ordinance which provides for and maintains the "status quo" between the Tribe and the NIGC with regard to MICS compliance and enforcement pursuant to 25 CFR 542.3(g). Copies of the Gaming Ordinance amendment and relevant correspondence with the NIGC are attached hereto for your information.

Pursuant to the terms of the Compact, the best and most appropriate approach to addressing the State's MICS concerns would be through compact negotiations with the Twenty-Nine Palms Band of Mission Indians—not through regulatory and political bureaucracy. Moreover, addressing the State's MICS concerns through an amendment of the Compact is the only true means of maintaining respect for tribal sovereignty, and is consistent with the State's established practice in dealing with other California gaming tribes. In the absence of respecting tribal sovereignty, the Commission will have no choice but to recommend to the governing body of the Twenty-Nine Palms Band of Mission Indians that it seek all means of protecting and defending its interests from what the Commission believes is a unilateral and unnecessary expansion of the State's regulatory role over tribal gaming through the proposed CGCC-8.

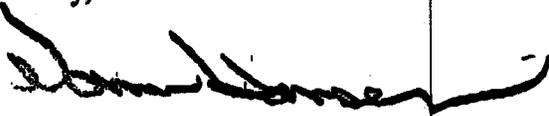
Equally disturbing is the CGCC's announcement in a *Public Legal Memorandum* dated October 1, 2008, wherein Evelyn Matteucci, CGCC Chief Legal Counsel, states:

"These changes if adopted by the Commission, do not need to be sent back to the Association for comment(sic). Compact Section 8.4.1(b) authorizes the Commission to re-adopt CGCC-8 following Association disapproval in "its original or amended form, with a detailed, written response to the Associations objections."

The Tribe believes Compact Section 8.4.1(a), could not be clearer with regard to whether or not a proposed CGCC regulation requires Association approval. Specifically, Compact Section 8.4.1(a) provides that with the exception of an exigent circumstance based regulations promulgated pursuant to Compact Section 8.4.1(d), "*no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation*"[emphasis added].

Therefore, we respectfully urge you, as Governor of the State of California, to intervene in this matter and stop the CGCC from moving forward with CGCC-8 in violation of the Compact and address the MICS issue in the only appropriate manner—government-to-government negotiations.

Sincerely,



Norm Hansen, Chairman
Twenty-Nine Palms Gaming Commission

cc: Darrell Mike, Chairman, Twenty-Nine Palms Band of Mission Indians
Philip Hogen, Chairman, National Indian Gaming Commission
Jerry Brown, Attorney General, State of California
Mathew J. Campoy, Acting Director, Bureau of Gambling Control
Dean Shelton, Chairman, California Gambling Control Commission
Gary Kovall, Attorney at Law
Rosette & Associates, PC

RINCON LUISEÑO BAND OF INDIANS

PO Box 68 • Valley Center • CA 92028 • (760) 749-1051 • Fax: (760) 749-8901



October 14, 2008

California Gambling Control Commission
2399 Gateway Oaks Drive #100
Sacramento, California 95833

Re: Opposition to CGCC-8

Members of the California Gambling Control Commission:

The Rincon Band opposes this effort by the CGCC in the strongest of terms for the following reasons:

1. The Substance of CGCC-8 is More Properly the Subject of Government to Government Negotiations and Compact Amendment.

The Rincon Band understands the concerns of the CGCC that Minimum Internal Control Standards ("MICS") be in place. That is precisely why the Rincon Gaming Commission ("RGC") has promulgated tribal MICS and enforces those tribal regulations. However, the Rincon Band objects in the strongest of terms to the substance of CGCC-8 and the process by which the CGCC purports to adopt CGCC-8 as a State Gaming Agency regulation.

The action to adopt CGCC-8 without Association approval is a clear attempt to circumvent the Compact amendment provisions of the existing Compact. This proposed regulation is a rewrite of sections 7 and 8, which designate the Tribal Gaming Agency as the primary regulator and the entity in charge of establishing internal controls and enforcing those controls. The proposed regulation completely supplants the authority of the Tribal Gaming Agency regarding promulgation of tribal regulations and enforcement. As the substance of CGCC-8 is more properly the subject of the Compact amendment process, government to government to government negotiations are appropriate.

2. There is no Void in Regulation.

The Compact clearly provides that each Tribal Gaming Agency is vested with the authority to promulgate and enforce regulations regarding on-site gaming regulation. The terms of the Compact were not altered by the CRIT decision. Tribal Gaming Agencies, including the Rincon Gaming Commission ("RGC") continue to regulate Indian gaming. As further evidence, the regulations of the RGC include MICS which are no less rigorous that those found at 25 CFR § 542.2-200. As the primary regulator, the RGC is vigilant in its enforcement of our tribal MICS.

Vernon Wright
Tribal Chairman

Bo Mazzetti
Vice Chairman

Stephanie Spencer
Council Memeber

Gilbert Parada
Council Memeber

Charlie Kolb
Council Memeber

Additionally, and as required by Section 8.1.8 of the Compact, the RGC ensures that an independent CPA conducts an audit of the Gaming Operation no less than annually. The State Gaming Agency has access to certification from the Tribal Gaming Agency that the audit has been completed and complies with the requirements of 8.1.8. Other “papers, books, and records” are available to the State Gaming Agency upon request.

As there is no void in regulation, there is no need for CGCC-8.

3. The Compact does not Provide the CGCC Authority to Amend the Compact.

The Compact specifies a very limited role to the State Gaming Agency when considering regulations. That limited and very specific role is to submit proposed regulations to the Association for approval. Pursuant to Section 8.4.1(a):

Except as provided in subdivision (d) [Exigent Circumstances], no State Gaming Agency regulation shall be effective with respect to the Tribe’s Gaming Operation unless it has been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation.

Again, the express terms of the Compact provide that, except in exigent circumstances, a State Gaming Agency regulation **cannot** be effective unless it is both (1) approved by the Association and (2) the Tribe has an opportunity to review and comment on the proposed regulation. These are the clear and plain terms of Section 8.4.1(a).

Any argument that sections 8.4.1(b) or 8.4.1(c) can serve to override the clear terms of 8.4.1(a) would result in a completely unreasonable reading of the Compact. Under the CGCC’s reading of 8.4.1, the language requiring approval by the Association would have no effect. The plain and specific terms of 8.4.1(a) cannot be negated merely upon unilateral demand by the CGCC. As such a reading is unreasonable and would result in absurd results, it should be clear to the Commission that the Compact does not authorize the State Gaming Agency to unilaterally adopt regulations over the objection of the Association.

4. The CRIT decision did not change the terms of the Compact.

IGRA does not serve as a source of power for the NIGC to have undefined and infinite rulemaking authority, similarly, the express terms of the Compact do not provide the CGCC or the State Gaming Agency with authority to regulate by fiat or rewrite the Compact. The

relationship between the Rincon Band and the State is governed by the express terms of the Compact, not by the terms of proposed regulations adopted by the CGCC.

5. Government to Government Discussions are Appropriate in this Instance.

The proper forum within which to discuss State Gaming Agency authority over MICS, auditing and additional enforcement authority is the Compact amendment process. Any effort other than a government to government negotiation for amendment of the Compacts is void ab initio.

The Rincon Band is encouraged by the fact that that at least the CGCC would like to see changes to the Compact. The Rincon Band would like to see changes to the Compact as well. We suggest that out of respect for the sovereignty of both the Tribe and the State that the CGCC immediately cease its efforts to adopt CGCC-8, and instead the Governor's office seek amendment to the Compact to address the issues raised in CGCC-8.

At a minimum, should the CGCC feel strongly about the need for promulgation of CGCC-8, we encourage the State Gaming Agency to comply with the express terms of the Compact and submit a revised proposed CGCC-8 to the Association for its consideration and possible approval pursuant to Section 8.4.1(a).

Respectfully,



DeLisle Calac
Chairman
Rincon Gaming Commission



BISHOP PAIUTE GAMING COMMISSION

1335 Rocking W Drive
Bishop, California 93514
Phone: 760.872.6005
Fax: 760.872.6604

October 13, 2008

State of California
California Control Commission
2399 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833-4231

Comments on Proposed Uniform Tribal Gaming Regulation CGCC-008

Dear Honorable Mr. Dean Shelton, Chairman and Commission Members:

Enclosed for your review are the comments on the "Proposed" Uniform Tribal Gaming Regulation CGCC-008 Minimum Internal Control Standards on behalf of the Bishop Paiute Gaming Commission (BPGC).

The Tribal/State Gaming Compact (Compact) between the state of California and various tribal governments in 1999 provided that the Tribal Gaming Agency would be the primary regulator of Indian gaming.

However, the Compact also provided that the state through the State Gaming Agency (SGA) had various responsibilities, one of which was to monitor the tribal gaming operations in order to determine whether or not there was compliance with applicable internal minimum control standards, and other enumerated issues.

The proposed CGCC-008 regulation is an attempt by the CGCC to put into place a uniform method that would be used throughout California in performing its monitoring obligations and duties.

The present March 13, 2008 draft is the third draft proposed by the CGCC. The Tribes have generated at least two drafts/revisions which have been submitted to the CGCC.

The main point being that has apparently been accepted by the CGCC is that the majority of tribes will not consent to a general financial audit of their Class III Gaming operations. The reason being, that the audit authority is not granted to the state in the Compact.

The present proposed CGCC-008 regulation would provide that the tribes would have in place, internal control standards that would equal or exceed the minimum internal control standards

4. Submission of tribal financial audits of Class III gaming to the CGCC within one-hundred and twenty (120) days after completion of the audit.
5. An Agreed-upon Procedures audit submitted to the CGCC staff within one-hundred and twenty (120) days of the completions of the audit.
6. A tribe must provide records *deemed necessary* for compliance review by the SGA staff. There is a request and notice requirement provision required of SGA staff.
7. Compliance review authorized by the regulation (and Compact) *is not to be construed as authorizing a full financial audit as required by section 8.1.8 of the Compact (applies to those tribes that contribute to the Special Distribution Fund)*.
8. If a compliance review is conducted, a draft Compliance Review Report will be provided to the tribe. The tribe then has sixty (60) days to respond to the Report.
9. If the tribe accepts the draft report, the CGCC staff has twenty (20) days to finalize the Report.
10. Within forty-five (45) days of receipt of the final Report and if findings require, the Tribe will provide a written plan of action.
11. If the tribe after the sixty (60) day review contests the draft Report, then CGCC staff and tribal representatives will meet and confer. If no resolution CGCC staff will finalize and deliver the report to the tribe.
12. Within thirty (30) days of receipt of the Report, the Tribe will provide written explanations of its reasons for disputing the Report findings.
13. The Report and Tribe's reasons for disputing the finding will be referred to the full CGCC.
14. In the event after consideration by the full CGCC a dispute still exists, then the tribe can pursue Compact section nine (9) dispute resolution alternatives.
15. In the event a dispute involving the application or interpretation of this regulation occurs, the following procedures would be followed:
 - (A) Meeting and confer sessions between the parties.
 - (B) The dispute if not settled by meet and confer would be referred to the full CGCC.
 - (C) If there is still a dispute after the full CGCC makes its decision, the tribe may then go to Compact section nine (9) dispute resolution procedures.
 - (D) If the Tribe declines to follow the CGCC decision, the state may then invoke Compact section nine (9) dispute resolution procedures.

To arrive at the present proposed CGCC-008, it has taken a journey from April 2007 to basically April 2008.

In the Bishop Paiute Tribe's and the Bishop Paiute Gaming Commission's opinion, if the proposed regulation was motioned for approval by the Association and then adopted by the CGCC, the Bishop Paiute Tribe (gaming operation) would be basically in the same position it was during the period of time when the NIGC was exercising its jurisdiction over Class III gaming.

As you will recall, the Colorado River litigation determined that the NIGC did not have jurisdiction to regulate Class III gaming. The held that the regulation of Class III gaming was to be done through the respective Tribal/State Class III Gaming Compacts.

The Bishop Paiute Tribe holds a favorable and non-favorable opinion of the proposed CGCC-008 regulation. The Tribe favors:

- 1) protocol or protocol policy of guidelines to be proposed in order to conduct the State Distribution Fund compliance reviews in a adequately and organized structure (following the Compact procedures for notification to Tribal Gaming Agency, adequate timeframe, adequate CGCC staffing, across the table distribution of revenues formula, using certified audits not quarterly general ledger sheets, following the 2005 state guideline protocol, etc.).
- 2) Section 6.0 of the 1999 Compact that each Tribe will conduct its Gaming Operation in compliance with a Gaming Ordinance adopted by the Tribe, and rules, regulations, procedures, specifications and standards adopted by the Tribal Gaming Agency (TGA).
- 3) Compact Section 8.1 of the 1999 Compact charges the TGA with responsibility to promulgate such rule, regulations and specifications and ensure their enforcement.

The Bishop Paiute Tribe has a non-favorable opinion of the following:

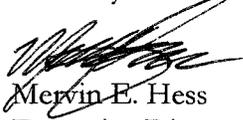
- 1) The CGCC must have the adequate and experienced staffing in order to ensure the proper and correct findings if any in their regulatory role.
- 2) The CGCC must have the adequate budget to ensure their regulatory role in monitoring Class III gaming of the California Tribes.
- 3) The statement of need must include the economic impact on gaming operations, including whether the proposed regulatory standards impact small operations differently than the large operations.
- 4) Whether the standard or policy embodied by these proposed regulatory standards is or will be applied to gaming facilities other than Indian casinos, such as card rooms and race tracks; if not whether there is any disparate impact or discriminatory effect created by the proposed regulatory standards.
- 5) Whether the proposed regulatory standards fosters uniformity.
- 6) Provide a statement of legal authority.
- 7) If the basis for regulatory standards is factual rather than policy based, address whether the proposed regulatory standards are duplicative.

- 8) And in closing there has not been a legal decision if the Wide Area Progressive Machines should or would be included in the Net Revenue of the gaming operation for the SDF audits, in which is allowed in the 2005 guideline protocol of CGCC.

Thank you for the opportunity to present these comments and concerns on behalf of the Bishop Paiute Tribe. Should you require additional information or require additional detail of the stated comments and concerns, please do not hesitate to call the Bishop Paiute Gaming Commission office at the above telephone number.

We look forward to a government-to-government good faith response to these comments and concerns.

Sincerely submitted,



Mervin E. Hess
Executive Director

Cc: Bishop Indian Tribal Council
Bishop Paiute Gaming Commission
Bishop Paiute Development Corporation
Ms. Gloriana Bailey, General Manger PPC



PICAYUNE RANCHERIA OF THE
CHUKCHANSI INDIANS
TRIBAL GAMING COMMISSION

Phone: (559) 683-6505 • Fax: (559) 642-4683
46575 Road 417 #B • Coarsegold, CA 93614

no date

Dear Tribal/State Regulators:

On September 10th, 1999, California Governor, Gray Davis and Roger Davis, Chairperson of the Chukchansi Indians signed the Tribal State Compact between the state of California and the Chukchansi Indians. Fifty-seven federally recognized tribes in the State of California (the "State") also entered into a government-to-government relationship with the State under the terms of the 1999 Tribal State Compact (the "1999 Compact"). Since that time, various Tribes have elected to renegotiate their compacts allowing more gaming devices, additional revenue disbursements for those devices, and State regulatory oversight beyond that set forth in the 1999 Compact, as those sovereign tribes and the State were entitled to do. These tribes negotiated terms with the State on a government to government basis. Each received its negotiated for benefit through this process.

amendment

The 1999 Compact established a government to government relationship between the Chukchansi Indians and the State. According to the preamble the system of regulation of Indian gaming fashioned by Congress in IGRA rests on an allocation of regulatory jurisdiction among three sovereigns: the federal government, the state in which a tribe has land, and the tribe itself. No where in the preamble does it state subdivisions of these sovereigns have the authority to unilaterally re-negotiate the terms set forth in the agreed upon compact. Any changes to the terms set forth in the 1999 Compact must be renegotiated between the two sovereigns, and new or additional regulatory requirements must be agreed to through government to government negotiations. Specifically Section 12.0 of

amendment

the 1999 Compact establishes specific procedures and authority for any amendments and renegotiations of the terms of the compact.

On or about March 26, 2007, the California Gambling Control Commission (the "CGCC") notified the California tribes with tribal-state compacts that they intended to submit to the State Association a uniform tribal gaming regulation, CGCC -8, establishing further regulatory oversight, interpretation and changes to certain sections of the Compact. According to the Draft Statement of Need issued by the CGCC:

A basic premise of the Tribal-State Indian Gaming Compact ("Compact") was that pursuant to the Indian Gaming Regulatory Act, regulatory jurisdiction would rest with three sovereigns, the federal government, the state, and the Tribe. The decision of the District of Columbia Circuit Court of Appeals in *Colorado Indian Tribes v. NIGC*, changed that basic premise and altered the regulatory landscape for tribal gaming by concluding that the NIGC was not authorized to promulgate regulations establishing minimum internal control standards ("MICS") for Class III gaming, or to enforce compliance with those regulations. The purpose of CGCC-8 is to preserve the benefits of the MICS system that has been in place since 1999.

On April 11, 2007, in good faith, the California Tribal Regulators Network held a meeting where representatives from the CGCC were also present, including Mr. Cy Rickards, then Chief Counsel for the CGCC, Mr. Herb Bolz, commission attorney for many years and author of the draft regulation CGCC-008, as well as Ms. Heather Hoganson, to begin a dialogue on CGCC -8. In Mr. Rickards introductory remarks he informed the group that, "As a result of the *Colorado River Indian Tribes v. NIGC*, 466 F.3d 134 (2006) (the "CRIT Decision) decision a vacuum has been created regarding regulatory oversight responsibilities. This has created pressure on the commission to develop an emergency MICS Regulation."

Since this meeting, further discussion regarding the proposed regulations, CGCC-8, continued, and the topic of the Colorado River Indian Tribes Court decision impact became such a concern that the Assembly Governmental Organization Committee held an information hearing on May 14, 2007. Again, according to the Compact preamble the system of regulation of Indian gaming fashioned by Congress in IGRA rests on an allocation of regulatory jurisdiction among the three sovereigns involved: the federal government, the state in which a tribe has land, and the tribe itself. Testimony for this informational hearing was provided by: Mr. Phil Hogen, Chairman of the NIGC, Mr. Dean Shelton, Chairman, CGCC, Mr. Paul Bullis, Director, Arizona Department of Gaming, and Ms. Sylvia Cates, Deputy Legal Affairs Secretary, Office of the Governor. Although IGRA provides that tribes are to have the exclusive right to regulate gaming activity on Indian lands, not one member or representative from any tribe was allowed to provide testimony.

On September 10, 2007 the Rose Institute of State and Local Government at Claremont McKenna College provided a study of "Gaming Regulatory Agency Expenditures of Tribes in California" for the Tribal Alliance of Sovereign Indian Nations. The 64 tribes that are covered in the report projected Tribal Gaming Commission budgets totaling \$90,282,837. The California Tribal Gaming Regulatory Agencies surveyed employ approximately 1,833 employees. The State has yet to identify any actual need or concern that would require adoption of proposed CGCC-8.

need

On July 11, 2007, prior to its adoption by the CGCC, the State Association, in accordance with its adopted Protocol for Submission of Proposed State Regulatory Standards to the Association, created an Association Regulatory Standards Taskforce (the "Taskforce") to review CGCC-8. The first meeting was held on August 8, 2007. The CGCC then submitted a revised proposed regulation to the Taskforce on September 7, 2007. Subsequent meetings were held on September 11, 2007, November 7, 2007, January 9, 2008, and February 13, 2008.

These meetings were attended by a majority of the Tribal Regulators and representatives from the State. Throughout all of these meetings, most, if not all, of the Tribes have adamantly concluded that the CRIT Decision did not change anything within the regulatory jurisdiction because most of the Tribes had adopted the MICS in their tribal gaming ordinances, which are approved by the NIGC. Furthermore, on January 11, 2008 NIGC approved amendments to five tribal gaming ordinances, Picayune Rancheria included, that require compliance with the NIGC MICS. This was achieved through a government-to-government relationship which fully addressed the exact concern that led to the drafting of CGCC -8.

*ordinance
approved
by
NIGC*

The last Taskforce meeting, held on February 13, 2008 produced a Final Report, which was provided to every member of the Taskforce, including, the State representatives. This report was delivered to the State Association on May 7, 2008 per the Protocol. The Taskforce recommendation to the State Association found that the draft CGCC-8 is unnecessary, unduly burdensome, and unfairly discriminatory.

*un.
h. b
u. d.*

Since February 13, 2008, the CGCC has released two new versions of CGCC-8. The first on March 11, 2008, and the second after a "closed" session meeting of the CGCC held on March 13, 2008. The current proposed version does not provide a legitimate basis for its need. The current version also does not address the CRIT Decision, which was the main basis of need stated by the CGCC throughout this process. The new version specifically states,

Nothing in this regulation shall modify or affect the rights and obligations of the SGA under the Compact, including but not limited to, the SGA entities' ability to share documents provided pursuant to this regulation, subject to the Compact's confidentiality provisions.

The Regulation itself is saturated with Compact citations implicating an interpretation that the CGCC already has these authorities. However, there is no

discussion of why, almost ten years after the 1999 Compacts went into effect, the State now has to exercise some new authority that it has not asserted in the past. There is also no discussion of why four tribes that recently renegotiated their compacts specifically agreed through government to government negotiations to allow the State the very oversight set forth in CGCC-8, while the tribes that have not chosen to renegotiate their 1999 Compacts are being told they must comply with this regulation, yet get nothing in exchange for this new assertion of authority by the State.

not
exercise
in power

amendment

The regulation as currently drafted exceeds the authority granted to the State in the Compact by proposing to allow the CGCC authority that is specifically reserved to the Tribe through the Indian Gaming Regulatory Act ("IGRA"), and the Compact. IGRA specifically provides that "Indian tribes have the *exclusive right* to regulate gaming activity on Indian lands". See 25 USC § 2101 (emphasis added). Specific provisions of IGRA require Tribes to enter into compacts with the state in which the Tribe resides for class III gaming. See 25 USC § 2710 (d). The CRIT Decision held that the minimum internal control standards (MICS) are governed by the tribal state compacts for class III gaming, and that federal MICS regulations promulgated by the National Indian Gaming Commission ("NIGC") apply only to class II gaming. There is nothing in the CRIT Decision that authorizes a state to unilaterally assume regulatory responsibility of tribal gaming based on a "perceived" change in the regulatory landscape that resulted from a court decision interpreting existing law. Both IGRA and the 1999 Compact vest in the Tribe exclusive rights to regulate gaming on Indian lands with certain safeguards in place. These safeguards for class III gaming include a tribal gaming ordinance approved by the NIGC, a tribal state compact, and enforcement provisions at the federal level through NIGC adopted federal regulations. See 25 USC § 2710(d)(2)(A); Tribal Gaming Ordinance of the Picayune Rancheria of Chukchansi Indians; Tribal-State Compact Between the State of California and the Chukchansi Indians dated October 2, 1999; and 25 C.F.R. Part 573.

tribe -
exclusive

These latest versions of CGCC-8 were put forth without any consultation or consideration by the tribes that will supposedly have to comply with the regulations, despite the language set forth in the Compact requiring consultation and consideration by the Tribal State Association. The Taskforce has wasted nearly a year analyzing and providing comments to CGCC on the proposed ~~regulations~~. Traveling to many meetings in various locations state-wide, utilizing attorneys and auditors to provide recommended language for the proposed draft regulations issued in March, 2007 and September, 2007. The proposed regulation is unduly burdensome and has cost California tribes thousands of dollars. The result is that the CGCC has blatantly ignored the legitimate issues and concerns raised by California tribes. This is particularly concerning when the State has openly acknowledged that the regulation has not been proposed to correct an actual problem or existing shortcoming in tribal regulation, but to address a perceived problem that the State has created through misrepresentations in the media.

not true

u. b.

media

The proposed CGCC- 8 discriminates against tribes, because California Card Rooms do not have MICS in place concerning key areas of gaming. Tribal gaming establishments, however, adopted internal control standards from the beginning. NIGC MICS and Tribal Internal Control Standards are far more stringent than those set forth in proposed CGCC-8. With all do respect, the CGCC now wants to regulate the tribal regulators, but has not even created or held the card rooms to the same standards. This demonstrates discriminatory behavior that forces tribes to be held to a higher standard than other gaming establishments that the State does in fact have authority to fully regulate.

u. d.

u. d.

The proposed CGCC-8 attempts to grant the CGCC authority not authorized in the Compact, and would undercut the Tribe's exclusive regulatory powers over Indian gaming on Indian lands as agreed to in the Compact. Despite the perceived regulatory gap raised by the CGCC, there is ample regulation in place at the tribal, federal, and state levels to ensure compliance with MICS. The existing regulations include, the IGRA, enforcement powers of NIGC set forth in 25

C.F.R. Parts 522 and 573, adoption of MICS in Tribal Gaming Ordinances and tribal regulations. The proposed regulation circumvents the government to government negotiation process mandated in IGRA and would allow the state to unilaterally regulate tribes in an area that was not agreed to in the compact negotiations.

tribes
ordinance

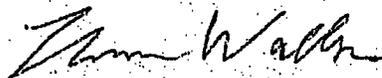
compact

There is regulation in place that protects class III Indian gaming at the tribal, federal and state level. The State has not effectively regulated the areas it has current authority over, yet it attempts to take on responsibility outside that authorized by the Compact without a government-to-government negotiation. Also, no enforcement mechanism exists to prevent abuse of this regulatory power by the State Gaming Agency as long as the outstanding procedural objections by the State continue to negate the dispute resolution process set forth in Section 9.0 of the Compact. At this time there does not appear to be a need for CGCC-8, nor is there authority within the Tribal State Compact for such regulation¹. If a CRIT fix is needed, it appears that tribes should pursue a federal option.

7
negate
dispute
resolution

Therefore, the Picayune Rancheria of the Chukchansi Indians opposes adoption of CGCC- 8, as the provisions of this regulation, regardless of the version, violate the 1999 Compact between the Chukchansi Indians and the State. Any provisions, interpretations, establishment of specific procedures and granting of authority belong in compact negotiations between the State of California and the Tribe, as pursued in 2004 and 2007 with other 1999 Compact tribes.

Sincerely,



Thomas Walker, Chairman
Picayune Rancheria of the Chukchansi Indians
Tribal Gaming Commission
State Association Delegate

Uniform Tribal Gaming Regulation CGCC- 8

Minimum Internal Control Standards

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(a) PURPOSE.

(1) Sections 6.0, 7.0, and 8.0 of Tthe Tribal-State Indian Gaming Compact

(Compact) empowers authorizes the State, through its State Gaming Agency (SGA), to conduct compliance reviews of various aspects of each Tribe's Class III Gaming Operations and requires each Tribe to adopt and maintain written internal control standards that apply to the Tribe's Class III Gaming Operation. Specifically, Section 6.0 of the 1999 Compact, and comparable sections of new or amended Compacts, provide that each Tribe will conduct its Gaming Operation in compliance with a Gaming Ordinance adopted by the Tribe, and rules, regulations, procedures, specifications and standards adopted by the Tribal Gaming Agency (TGA). Section 7.1 of the 1999 Compact, and comparable sections of new or amended Compacts, requires the TGA to adopt and enforce regulations which ensure that the Gaming Operation "meets the highest standards of regulation and internal controls."

1 (2) Section 8.1 of the 1999 Compact, and comparable sections of new or amended
2 Compacts, charge the TGA with responsibility to promulgate such rules,
3 regulations and specifications and to ensure their enforcement. Compact
4 sections 8.1.1 through 8.1.14 outline the matters which, at a minimum, these
5 rules, regulations, and specifications must address. Compact sections 7.4
6 through 7.4.4 provide the State Gaming Agency the authority to inspect the
7 Gaming Facility, as defined in the Compact, as reasonably necessary to ensure
8 compliance with the Compact. The purpose of this regulation, pursuant to
9 Section 8.4, is to provide an effective uniform manner in which the SGA can
10 conduct compliance reviews of the adoption and enforcement of these rules,
11 regulations, and specifications by the TGA, and to protect the public as well as
12 each Tribe.

13
14 (3) As defined in Section 2.18 of the Compact, the State Gaming Agency includes
15 the California Gambling Control Commission (CGCC) and the Department of
16 Justice, Bureau of Gambling Control (Department).

17
18 (4) Nothing in this regulation shall modify or otherwise affect the rights and
19 obligations of the SGA under the Compact, including but not limited to, the
20 ~~SGA entities'~~ ability of the SGA entities to share documents provided
21 pursuant to this regulation, subject to the Compact's confidentiality
22 provisions.

23
24 (b) INTERNAL CONTROL STANDARDS. Each Tribal Gaming Agency (TGA) shall
25 maintain written internal control standards applying to ~~its~~ the operation and
26 ~~support~~ of Class III gaming activities by the Tribe that equal or exceed the
27 Minimum Internal Control Standards (MICS) set forth at 25 CFR Part 542 (as in
28 effect on October 1, 2006, ~~as may be amended from time to time~~), and shall
29 provide a copy of these standards and amendments thereto when requested by the

1 SGA, in accordance with Section 7.4 of the 1999 Compact, or comparable
2 sections of new or amended Compacts to the CGCC staff within 30 days of the
3 effective date of this regulation. Copies of any amendments to these standards
4 shall be provided to CGCC staff within 30 days of adoption by the TGA.
5

6 (c) INTERNAL CONTROL SYSTEM. Each Tribe shall ensure that its Gaming Operation
7 implements and maintains an internal control system that, at a minimum, ensures
8 compliance with the tribal internal control standards that apply to its operation
9 and support of Class III gaming activities.
10

11 (d) NET WIN. The definition of "net win" contained in the applicable Tribal-State
12 Compact shall apply to matters covered by this regulation, rather than the
13 definition of "net win" provided at 25 CFR 542.19(d).
14

15 (e) FINANCIAL STATEMENTS AUDIT. Section 8.1.8 of the 1999 Compact, and
16 comparable sections of new or amended compacts, provide that each Tribe shall
17 engage an independent Certified Public Accountant (CPA) to provide an annual
18 audit of the financial statements of each Gaming Operation. Such financial
19 statements shall be prepared in accordance with generally accepted accounting
20 principles and financial statements audits shall be conducted in accordance with
21 generally accepted auditing standards, as supplemented by the standards for audit
22 of casinos of the American Institute of Certified Public Accountants. Each Tribe
23 shall submit to the CGCC staff all audit report information, including
24 management letters and responses to management letters, pertaining to the
25 operation and support of Class III gaming activities, within 120 days after the
26 completion of the audit. The Tribe may elect to provide the entire audit report to
27 the CGCC staff for review and CGCC staff will only utilize or record those
28 aspects affecting the operations and support of Class III gaming activities.
29

1 (f) AGREED-UPON PROCEDURES AUDIT. Each Tribe shall engage an independent
2 CPA to perform an annual "Agreed-Upon Procedures" audit in accordance with
3 25 CFR 542.3(f) to verify that the gaming operation is in compliance with the
4 Tribe's written internal control standards. Either the firm or all independent
5 certified accountants engaged to perform an "Agreed-Upon-Procedures" audit
6 must be licensed by the California Board of Accountancy. The CPA shall prepare
7 a report of the findings for the Tribe. The Tribe shall submit a copy of the report
8 to the CGCC staff no later than 120 days after the completion of the audit.
9

10 (g) STATE GAMING AGENCY ACCESS TO RECORDS. Pursuant to Section 7.4 and
11 following of the 1999 Compact, or comparable sections of new or amended
12 Compacts, SGA staff shall be given prompt access to all gaming operation
13 facilities, equipment, personnel, and records reasonably necessary to ensure
14 compliance with the Compact. Tribal officials shall not unreasonably withhold or
15 deny access to records deemed necessary for compliance review by SGA staff.
16 Upon request and notice to the Tribe and the TGA, the SGA staff shall be granted
17 access during normal hours of the Gaming Facility's business office for
18 inspection and copying records of the operation ~~and support~~ of all Class III
19 gaming activities, including, but not limited to: internal control standards; work-
20 papers of the independent CPA generated in performing the Agreed-Upon-
21 Procedures audit; reports and work papers of the internal audit staff; observation
22 checklists; CPA MICS compliance checklists or other comparable testing
23 procedures; findings by the independent CPA or the internal audit staff; and
24 exceptions and gaming operation response to the exceptions. The TGA and the
25 Tribe shall permit the SGA staff to interview and consult with the independent
26 CPA before and after the performance of the Agreed-Upon-Procedures audit.
27

28 (h) CGCC REVIEW OF INDEPENDENT AUDITS. CGCC staff shall review both the
29 audit of the financial statements pertaining to the operation ~~and support~~ of Class

1 III gaming activities, the Agreed-Upon-Procedures report, and all information
2 supplied by the Tribe and the TGA and may choose to conduct on-site
3 compliance reviews of the operation ~~and support~~ of all Class III gaming activities.
4 ~~The compliance reviews authorized by this regulation~~ Nothing in this subsection
5 (h) shall not be construed to authorize the State to conduct a full financial audit as
6 is required of the Tribe by Section 8.1.8 of the 1999 Compact or authorized
7 pursuant to 25 CFR 571.12.

8
9 (i) CGCC REPORT ACCEPTANCE AND TRIBAL ACTION PLAN.

10 (1) If an on-site compliance review is conducted, CGCC staff shall provide a draft
11 Compliance Review Report (draft Report) to the Tribe and to the TGA,
12 including findings of non-compliance, if any. The Tribe shall have 60 days, or
13 such other time period as is mutually agreeable, to respond to the CGCC draft
14 Report. If the Tribe accepts the draft Report, CGCC staff shall finalize its
15 Report and, within 20 days of acceptance, submit the final Compliance
16 Review Report (final Report) to the Tribe and the TGA. If no response to the
17 draft Report is received from the Tribe by the 60th day or within such other
18 time period as may be mutually agreed upon, the draft Report shall be deemed
19 accepted. Within 20 days of the date on which the draft Report is deemed
20 accepted by the Tribe, CGCC staff shall submit the final Report to the Tribe
21 and the TGA.

22
23 (2) Within 45 days of receipt of the final Report, the Tribe shall acknowledge the
24 final Report and, if findings require, provide a written action plan including a
25 proposed time line addressing the findings. If no response to the final Report
26 is received from the Tribe by the 60th day or within such other time period as
27 may be mutually agreed upon, the final Report shall be deemed accepted. In
28 the event that a final Report containing findings of non-compliance is deemed
29 accepted, CGCC staff and the Tribe shall, within 30 days of that date or such

1 other time period as is mutually agreeable, make good faith efforts to address
2 and resolve the findings of non-compliance. If differences remain after the
3 CGCC staff and the Tribe have made good faith efforts to resolve them, the
4 dispute may be resolved pursuant to the dispute resolution process outlined in
5 compact section 9.0.

6
7 (3) CGCC staff may review the impact or implementation of any action plan
8 undertaken by the Tribe pursuant to this regulation and may issue an Action
9 Plan Assessment to the Tribe.

10
11 (j) CGCC COMPLIANCE REVIEW REPORT DISPUTE.

12 (1) ~~If, after a 60-day review, the Tribe elects to contests the draft Report, CGCC~~
13 ~~staff and the Tribe shall make good faith efforts to resolve any differences~~
14 ~~within 30 days of receipt of the tribal response contesting the draft Report or~~
15 ~~such other time period as may be mutually agreed upon. Upon notice by the~~
16 ~~Tribe of a disagreement~~ If the dispute cannot be resolved within 30 days of
17 receipt of the tribal response contesting the draft Report or such other time
18 period as may be mutually agreed upon and failure to resolve differences, the
19 CGCC staff will finalize and deliver the Report.

20
21 (2) Within 30 days of receipt of the final Report, the Tribe shall provide a written
22 explanation of its reasons for disputing the findings. If the Tribe fails to
23 provide a written explanation within 30 days of receipt of the final Report, the
24 final Report shall be deemed accepted. In the event that a final Report
25 containing findings of non-compliance is deemed accepted, CGCC staff and
26 the Tribe shall, within 30 days of that date or such other time period as is
27 mutually agreeable, make good faith efforts to address and resolve the
28 findings of non-compliance. If differences remain after the CGCC staff and

1 the Tribe have made good faith efforts to resolve them, the dispute may be
2 resolved pursuant to the dispute resolution process outlined in compact section
3 9.0.

4
5 (3) In the event that the Tribe has timely disputed the final Report, The this
6 Report and the Tribe's explanation of the dispute shall may at the option of the
7 Tribe be referred for consideration by the full CGCC. In the event that the
8 Tribe opts to pursue review by the full CGCC, At the request of the Tribe, the
9 matter may further request that the matter be set for closed session
10 consideration at which time the Tribe may offer any evidence to support its
11 position and/or offer a compromise reconciliation. All information presented
12 shall be subject to the confidentiality provisions of the Compact. If, after
13 consideration and decision by the full CGCC, where applicable, a dispute
14 remains, it may be resolved pursuant to the dispute resolution process outlined
15 in Compact Section 9.0. If the Tribe does not opt for review by the full
16 CGCC, the dispute may be resolved pursuant to the dispute resolution process
17 outlined in Compact Section 9.0.

18
19 (k) CONFIDENTIALITY. Pursuant to Compact section 7.4.3(b), or comparable sections
20 of new or amended Compacts, the SGA shall exercise utmost care in the
21 preservation of the confidentiality of any and all information received from the
22 Tribe in compliance with this regulation, including but not limited to tribal
23 internal control standards, third-party audits, tribal audits, and state compliance
24 reviews, and shall apply the highest standards of confidentiality expected under
25 state law to preserve such documents from disclosure.

26
27 (l) VARIANCE TO INTERNAL CONTROL STANDARDS.

28 (1) A TGA may approve a variance from the control standards set out at 25 CFR
29 Part 542, ~~following the procedure outlined in 25 CFR 542.18(a).~~ The other

1 ~~procedures found at 25 CFR 542.18(a) through (e) shall also apply to~~
2 ~~variances sought under this regulation, except that the review of the TGA~~
3 ~~approval shall be conducted by the Chairperson of the CGCC and the TGA~~
4 ~~shall be entitled to an appeal to the full CGCC in the event that the~~
5 ~~Chairperson files objections to a re-submission of a variance as provided in 25~~
6 ~~CFR 542.18(d).~~ provided that the TGA determines that the variance will
7 achieve a level of control sufficient to accomplish the purpose of the standard
8 it is to replace. The variance shall take effect on the date of approval by the
9 TGA or such later date as may be specified by the TGA.

10
11 (2) The TGA shall, within 30 days of approval, provide to the CGCC staff a copy
12 or a detailed description of the variance, the rationale for the variance, and
13 evidence of approval by the TGA. The CGCC staff shall review the variance
14 approval within 60 days of its receipt by the CGGC or such other time period
15 as is mutually agreeable. The CGCC staff shall bring any concerns to the
16 attention of the TGA within 30 days or such other time period as is mutually
17 agreeable. If differences remain after the CGCC staff and the TGA have made
18 good faith efforts to resolve them, the dispute may be resolved pursuant to the
19 dispute resolution process outlined in Compact Section 9.0.

20
21 (3) The TGA shall not be required to submit to the CGCC staff pursuant to this
22 subsection (1) any variance that was submitted to the National Indian Gaming
23 Commission prior to October 1, 2006, and considered "concurred with" under
24 the terms of 25 CFR 542.18.

25
26 (m) UPDATING INTERNAL CONTROLS AND THIS REGULATION.

27 (1) Nothing in this regulation shall be construed to preclude individual tribes and
28 the SGA from meeting, from time-to-time, to discuss MICS compliance
29 matters in light of changing technology or industry best practices.

1 (2) The Tribal-State Regulatory Association may meet from time-to time, but not
2 less often than once every two years, to discuss possible modifications of this
3 regulation in light of changing technology or industry best practices.
4

5 (n) DISPUTES. If a dispute not previously addressed by this regulation arises between
6 CGCC staff and a Tribe involving the application or interpretation of this
7 regulation, the parties shall make good faith efforts to resolve their differences.
8 the following procedure shall be followed:

9 ~~(1) The parties shall make good faith efforts to resolve their differences.~~

10 (2) (1) If these good faith discussions do not resolve the matter, then the matter
11 shall may, at the option of the Tribe, be referred to the full CGCC for review and
12 decision.

13 (A) In the event that the Tribe opts to pursue review by the full CGCC, At
14 the request of the Tribe, may further request that the matter may be set for
15 closed session consideration.

16 (3B) If the Tribe has opted for such consideration, Aafter the full CGCC
17 reviews the matter and makes a decision, or if the full CGCC for any
18 reason does not make a decision, the Tribe shall be entitled to invoke the
19 dispute resolution process outlined in Compact section 9.0.

20 (C) If, having opted for such consideration, the Tribe declines to follow the
21 decision of the full CGCC, the State shall be entitled to invoke the dispute
22 resolution process outlined in Compact section 9.0.

23 ~~(4.2) If the Tribe declines to follow the decision of the full CGCC, the State In~~
24 the event that the Tribe does not opt for review before the full CGCC, either
25 party shall be entitled to invoke the dispute resolution process outlined in
26 Compact section 9.0.
27

1 (o) SEVERABILITY. The provisions of this regulation are severable. If any
2 provision of this regulation or its application is held invalid, that
3 invalidity shall not affect other provisions or applications that can
4 be given effect without the invalid provision or application.

CALIFORNIA GAMBLING CONTROL COMMISSION



Detailed Response to Tribal-State Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8)

Compact section 8.4.1 sets out procedures for the State Gaming Agency (SGA) to propose uniform statewide regulations governing Class III gaming operations and for the Association of Tribal and State Gaming Regulators (Association) to approve or disapprove them. Section 8.4.1 (b) provides that the SGA may re-adopt a regulation in its original or amended form after disapproval by the Association, and then submit the regulation to each individual tribe, provided that the SGA prepares a detailed, written response to the Association's objections.¹² Compact section 8.4.1(e) states that tribes may object to a proposed statewide uniform regulation on any of four enumerated grounds: that is, that the regulation is "unnecessary, unduly burdensome, conflicts with a published final regulation of the [National Indian Gaming Commission], or is unfairly discriminatory"

At its September 4, 2008 meeting, the Association voted to disapprove proposed regulation CGCC-8, regarding Minimum Internal Control Standards (MICS), based upon the objections stated in the Association Task Force Report, dated February 13, 2008 and in letters received within 14 days of the vote.³

The following tribes, tribal gaming agencies, or commissions sent in timely comments: Cahuilla Tribal Gaming Agency, Dry Creek Rancheria Band of Pomo Indians, Elk Valley Rancheria, Paskenta Band of Nomlaki Indians Tribal Gaming Commission, Rincon Band of Luiseño Indians, Rumsey Indian Rancheria of Wintun Indians, and Torres Martinez Gaming Commission. The Department of Justice, Bureau of Gambling Control sent in a letter on September 29, 2008. (These comment letters are attached as Exhibits "A1-A8 respectively".)

¹ Compact section 8.4.1, subsection (b) provides "Every State Gaming Agency regulation that is intended to apply to the Tribe (other than a regulation proposed or previously approved by the Association) shall be submitted to the Association for consideration prior to submission of the regulation to the Tribe for comment as provided in subdivision (c). A regulation that is disapproved by the Association shall not be submitted to the Tribe for comment unless it is readopted by the State Gaming Agency as a proposed regulation a proposed regulation in its original or amended form with a detailed written response to the Association's objections.

² The State believes that section 8.4.1, subsection (b) provides a clear exception to the general proposition in subsection (a) of 8.4.1 that the regulation has to be approved by the Tribal-State Association. This readoption and response procedure constitutes a clear exception to the general requirement that the Association approve a regulation before it may be effective. Any other interpretation would render subsection (b) mere surplusage, and such a construction must be avoided. (*Boghos v. Certain Underwriters at Lloyd's of London* (2005) 36 Cal.4th 495,503 [language in a contract must be interpreted as a whole and constructions that render contractual provisions surplusage are disfavored].)

³ The motion made at the meeting was to oppose the adoption of the CGCC-8 regulation based on the objections in the Task Force Report of February 13, 2008.

This document is the written response to the Association's objections as required by subsection 8.4.1. It includes the rationale for the CGCC-8 text (dated October 1, 2008) and a detailed response to the objections raised. The Commission's Response to the Task Force Report dated April 23, 2008 is also incorporated herein. (Attached as Exhibit "B".)

PART I. RATIONALE FOR MINIMUM INTERNAL CONTROL STANDARDS (MICS) (GCC-8 amended form dated October 1, 2008)

1. INTRODUCTION

Internal controls are the primary procedures used to protect the integrity of casino gaming operations, which is cash intensive, and are a vitally important part of properly regulated gambling. Inherent in gaming operations are problems of customer and employee access to cash, unrecorded cash transactions at table games, manipulation of credit, questions of fairness of games, and the threat or risk of collusion to circumvent controls.⁴ Internal control standards are therefore commonplace in the gambling industry and many tribes in California currently have some standards in place.

Inherent in an internal control structure are the concepts of individual accountability and segregation of incompatible functions. The existence of standards alone, however, is not enough. Any internal control system carries the risk of circumvention, which is why a process of *independent* oversight is so critical to the integrity of an operation. (Emphasis added.)⁵

Under IGRA, a tribe conducts Class III gaming pursuant to a compact with the state. (See 25 U.S.C. § 2710(d)(1)(c).) After the Secretary of the Interior approves the compact, the "*Tribal-State compact govern[s] the conduct of [class III] gaming activities*" § 2710(d)(3)(A) (emphasis added), and the tribe's class III gaming operations, including standards for operation, must be "conducted in conformance" with the compact, § 2710(d)(1)(C) and § 2710(d)(3)(C)(vi) and (vii).

2. NATIONAL INDIAN GAMING COMMISSION MICS

The National Indian Gaming Commission (NIGC) NIGC Minimum Internal Control Standards (MICS) were designed to establish a baseline, that is, **minimum** internal control standards, to be required of tribal gaming operations. Initially adopted in 1999, the NIGC MICS have been amended over the years to take into account advances in technology, and to clarify certain requirements.

⁴ The most recent totals for the United States Indian gaming revenue for 2007 stood at over \$26 billion. Source: *NIGC Strategic Plan for Fiscal Years 2009-2014*, page four. The link is <http://www.nigc.gov/LinkClick.aspx?fileticket=gruAugiyc28%3d&tabid=36&mid=345>. Page four of the Plan is included as Exhibit "C."

⁵ Written Remarks of National Indian Gaming Commission Chairman Montie R. Deer before the Senate Committee on Indian Affairs, March 14, 2002. (See complete remarks attached as Exhibit "D.")

The NIGC MICS are structured by size of gaming operations rather than by type of game, thus recognizing that the requirements placed upon tribal gaming operations should differ based upon their annual gross gaming revenue. Costs involved in implementing controls are part of the regular business costs incurred by a gambling operation. Because different states have different compacts as to types of games offered (such as craps, roulette, or pari-mutuel wagering) or as to credit, or because certain tribes opt not to offer particular games or extend credit, the NIGC MICS cover some areas not applicable to all tribes. However, as long as the tribal internal controls met or exceeded the standards in the NIGC MICS for the applicable areas, uniform standards were achieved.

3. THE COLORADO RIVER INDIAN TRIBES (CRIT) DECISION

In *Colorado River Indian Tribes v. National Indian Gaming Commission (CRIT)*, 466 F.3d 134, decided October 20, 2006, by the United States Court of Appeals for the District of Columbia Circuit, the court held that NIGC did not have the authority to promulgate or enforce the MICS with regard to Class III gaming. This decision effectively eliminated the federal government's authority and jurisdiction to regulate Class III gaming in California, at least with regard to the Class III MICS. The court clearly held that the declared policy of shielding Indian tribes "from organized crime and other corrupting influences" and "to assure that gaming is conducted fairly and honestly by both the operator and players" for Class III gaming is accomplished through the only allowable statutory basis for such, through the Tribal-State compacts. (*CRIT, supra*, 466 F.3d, at p. 140; emphasis added.) The existing framework under IGRA of Tribal-State Compacts establishing the regulatory rules for Class III gaming did not change with the *CRIT* decision.

4. THE AUTHORITY OF THE STATE GAMING AGENCY

The Preamble to the Compact provides that the Compact is made pursuant to IGRA and that the system of regulation fashioned by Congress in IGRA rests on an allocation of regulatory jurisdiction among three sovereigns – the federal government, the State, and the Tribe. The Compact recognizes the State's interest in ensuring, jointly with the tribes, that "tribal gaming activities are free from criminal and other undesirable elements" (Compact Preamble, paragraph (F)). One of the stated Purposes and Objectives of the Compact is to ensure that Tribal Class III gaming is "conducted fairly and honestly by both the operator and players" (Compact Preamble, paragraph A). See also Compact section 1(b) (compact purpose is to ensure "fair and honest operation" of Class III gaming in accordance with IGRA).

The primary responsibility for regulating the gaming operation rests with the Tribe. Specifically, the Tribe must adopt a gaming ordinance and conduct its gaming activities in compliance with that ordinance and rules, regulations, procedures, specifications, and standards adopted by the Tribal Gaming Agency (TGA). In addition to oversight by the TGA, NIGC has in the past performed the valuable role of providing independent outside oversight, as in the area of MICS compliance review.

The SGA also has a role and has the authority to promulgate regulations to establish statewide uniform operating procedures. Section 8.0 of the Compact is entitled "Rules and Regulations for

the Operation and Management of the Tribal Gaming Operation.” Section 8.1 of the Compact is entitled “Adoption of Regulations for Operation and Management: *Minimum Standards.*” (Emphasis added.) Section 8.1 states that that each Tribal Gaming Agency must adopt rules, regulations, and specifications concerning, *at a minimum*, thirteen enumerated topics “and to ensure their enforcement in an effective manner.” (Emphasis added.) Section 8.4 (no title) provides in substance as follows:

1. That the parties agree that the SGA, for the purpose of fostering “statewide uniformity of regulation of Class III gaming operations throughout the state,” has the power to adopt regulations on “any matter encompassed by Section 6.0, 7.0. and 8.0”. (Emphasis added.)
2. That the rules, regulations, standards, specifications, and procedures adopted by the Tribal Gaming Agency “shall be consistent with regulations adopted by the State Gaming Agency in accordance with Section 8.4.1.”⁶

Essentially, statewide uniform regulations under Section 8.4 can encompass any matter within Compact Sections 6.0, 7.0 and 8.0, and the TGA rules, regulations and standards must be consistent with statewide uniform regulations adopted by the SGA. Section 7.1 of the 1999 Compact, and comparable sections of new or amended Compacts, requires the TGA to adopt and enforce regulations which ensure that the Gaming Operation “meets the highest standards of regulation and internal controls.” Section 8.1 of the 1999 Compact, and comparable sections of new or amended Compacts, charge the TGA with responsibility to promulgate such rules, regulations and specifications and to ensure their enforcement. Compact sections 8.1.1 through 8.1.14 outline the matters which, at a minimum, these rules, regulations, and specifications must address. Compact sections 7.4 through 7.4.4 provide the SGA the authority to inspect the Gaming Facility, as defined in the Compact, as reasonably necessary to ensure compliance with the Compact. The purpose of this regulation (CGCC-8), pursuant to Section 8.4, is to provide an effective uniform manner in which the SGA can conduct compliance reviews of the adoption and enforcement of these rules, regulations, and specifications by the TGA, and to protect the public as well as each tribe.

In light of the fundamental importance of MICS in protecting the integrity of the Gaming Activities and ensuring the successful functioning of Class III Gaming operations, it is appropriate for the SGA to adopt uniform, minimum requirements for MICS: that is, to require TGAs to adopt MICS which equal or exceed the MICS as promulgated by the NICG as of October 1, 2006 and to require each tribal Gaming Operation to implement internal control systems that ensure compliance with the TGA MICS.

⁶ Compact Section 8.4 provides in full:

“In order to foster statewide uniformity of regulation of Class III gaming operations throughout the state, rules, regulations, standards, specifications, and procedures of the Tribal Gaming Agency in respect to any matter encompassed by Sections 6.0, 7.0, and 8.0 shall be consistent with regulations adopted by the State Gaming Agency in accordance with Section 8.4.1. Chapter 3.5 (commencing with section 11340) or Part 1 of Division 3 of Title 2 of the California Government Code does not apply to regulations adopted by the State Gaming Agency in respect to tribal gaming operations under this section.” (Emphasis added.)

The California Gambling Control Commission (Commission) has specific responsibilities under the Tribal-State Gaming Compacts including the auditing of funds for the General, Special Distribution, and Revenue Sharing Trust Funds. The Commission has the obligation to verify the proper receipt of money due to the state under the compacts, and ensure that the State's interest in this revenue stream is protected. MICS provide safeguards that ensure the revenue is reported and provide the ability to check the accuracy of the numbers. The State in the Compact reserves the right to inspect and have access to the gaming operation and to copy papers, books, and records related thereto. (See Compact, Sec. 7.4.) Among those books and records available for inspection are those related to the matters set forth in Sec. 8.0 of the Compact. Among those matters in 8.0 are items related to MICS. (See, for example, Compact Secs. 8.1 – 8.1.14, inclusive, which covers such things as employee procedures designed to permit detection of theft, cheating or fraud, and maintenance of closed circuit television surveillance system and cashier's cage.) Therefore, the Commission has the authority under the Compact to inspect all books and records relating to a tribe's MICS.

For a variety of reasons, including the presence of the federal government assuming a prominent regulatory role, the State's oversight and auditing have to date been focused on the Revenue Sharing Trust Fund, the Special Distribution fund, and, under new and amended compacts, contributions to the General Fund. Now with the determination that the Compact provides the exclusive authority for Class III MICS oversight, the State must turn its attention to this oversight of Tribal Gaming Operations to ensure the integrity of the operation for the public, thus CGCC-8.

5. CGCC-8 -- MINIMUM INTERNAL CONTROL STANDARDS

CGCC-8 establishes a uniform basic standard and protocol for state oversight of tribal regulation of gaming operations. It does this by establishing the federal MICS as a baseline for tribal gaming operations. Using the NIGC MICS as a baseline standard ensures consistency and uniformity while taking into account the size of gaming operations. Further, since many tribes have been accepting this standard for years, this approach eliminates duplication or unnecessary promulgation of new rules, regulations, or specifications. The state has significant oversight authority as outlined above. CGCC-8 is not an expansion of that authority, but recognition that the authority existed all along, and is rather an exercise of that authority. CGCC-8 tracks the federal MICS as closely as possible; any provision of CGCC-8 that was even arguably inconsistent with or not authorized by the Compact has been eliminated. CGCC-8 has thus been drawn as narrowly as possible, while still protecting the integrity of tribal gaming.

Additionally, the CGCC-8 regulation reiterates the provisions in existing compacts that utmost care will be given in regard to protecting the confidentiality of information provided by the tribe. The extent of the information being shared under this regulation is generally the same as what the tribes were sharing with the federal government, and thus no new or additional information is being shared with an outside (non-tribal) governmental agency.

6. OTHER FACTORS MENTIONED IN THE PROTOCOL CRITERIA

- (i) **Economic Impact.** This proposed regulation should have no additional economic impact, since many tribes have been complying with the NIGC MICS since 1999 or

have some form of internal controls because such controls are considered essential to protecting gaming assets. Thus, this regulation is not unduly burdensome.

Under the NIGC MICS, gaming operations are tiered by revenues, with tighter and more controls imposed as the revenues increase.⁷ NIGC indicated in its Final Rule Revisions 25 CFR Part 542, 71 Fed. Reg. 277385 (May 11, 2006) at p. 27390, that compliance with the requirement that independent certified public accountant (CPA) testing occur will cost, for small gaming operations, between \$3,000 and \$5000. This testing measures the gaming operation's compliance with the Tribe's internal control standards. This cost, according to NIGC, is "relatively minimal" and "does not create a significant economic effect on gaming operations" and what little effect there is can be offset by performing the required yearly independent financial audits at the same time. Therefore, for these reasons these proposed regulatory standards do not disparately impact small tribal operations over large operations, and this regulation will not have significant economic impact. The regulation is thus not unduly discriminatory amongst tribes.

- (ii) **Application outside Tribal Gaming.** California cardrooms (gambling establishments) are governed not only by numerous provisions of the Penal Code⁸ and the Business and Professions Code,⁹ but also by regulations adopted by the Commission¹⁰ and by the Department of Justice, Bureau of Gambling Control.¹¹ Strict regulations are in place concerning cardroom accounting and financial reporting.¹² Cardrooms must, for example, maintain records of the drop for each table for a period of seven years, which records must be provided upon request to the State. The chart of accounts used in each cardroom's accounting system must be approved by the Commission.¹³ All cardrooms with a gross annual revenue of \$10 million or more must have an annual audit done by an independent California CPA, a copy of which audit must be provided to the State, along with the management letter and reply to the management letter, if any.¹⁴ Cardrooms with a lower annual gross revenue may be directed to have an audit performed if the State has concerns about the licensee's operation or financial reporting, including but not limited to inadequate "internal control procedures."¹⁵ In addition, the State may require the cardroom to

⁷ Under the NIGC MICS, the provisions do not apply to operations that have gross revenues under \$1 million. Tier A facilities are those with gross revenues between \$1 and \$5 million; Tier B facilities are those with gross revenues of more than \$5 but not more than \$15 million; and Tier C facilities are those with gross revenues of more than \$15 million.

⁸ See, for example, Penal Code sections 337j (e) (defining "controlled game") and 330 (listing prohibited games).

⁹ The Gambling Control Act, Business and Professions Code sections 19800-19987.

¹⁰ Commission regulations are found in Title 4 CCR sections 12002-12590.

¹¹ Bureau regulations are found in Title 11 CCR sections 2000-2142.

¹² See CGCC regulations at Title 4 CCR sections 12400—12406.

¹³ Title 4 CCR section 12402.

¹⁴ Title 4 CCR section 12403.

¹⁵ Title 4 CCR section 12403(a).

have a fraud audit performed by an independent CPA in the event that fraud or illegal acts are suspected.¹⁶

Further, following a 45-day comment period and a public hearing in April 2008, Commission-drafted MICS for extension of credit, check cashing and ATMs for cardrooms were sent out for a 15-day comment which ended October 8, 2008. Adoption of these latter regulations should be completed by the end of October 2008. The draft minimum internal control standards for cardroom security and surveillance procedures have been sent out for comment and are set for public hearing on November 18, 2008. The goal is to have these regulations in place by early 2009. Workshops are being conducted on the remaining phases and will be added as soon as possible through the State rulemaking process. As the tribes are aware from their participation in the NIGC MICS, the MICS process takes considerable time to complete. IGRA was enacted in 1988 and the NIGC MICS were not promulgated until 1999.

The California Horse Racing Board (Board) has detailed regulations as to the types of races, wagering, and pools, as well as requirements for outside audits to be performed and submitted to the Board.

CGCC-8 is thus not “unduly discriminatory” against tribes vis-a- vis others in the gaming industry, such as cardrooms and racetracks.

- (iii) **Uniformity.** By adopting the longstanding NIGC MICS, this draft regulation fosters uniformity in Tribal Gaming in continuing the baseline internal control standards. Some tribes have apparently entered into agreements with the federal government to perform MICS oversight or have voluntarily submitted to the federal government’s “jurisdiction” via ordinance. These tribes assert that the Commission’s CGCC-8 does not “foster uniformity” because uniformity is accomplished by the tribes voluntarily consenting to NIGC “jurisdiction and authority.” However, that argument is fallacious for two reasons. First, both the agreements and the provisions in the ordinances related to MICS are *voluntary* and can be cancelled or amended at any time. Second, under the *CRIT* decision, the NIGC does not have jurisdiction or authority under IGRA to regulate class III gaming and that includes oversight, so its “exercise” of monitoring and enforcement, although an admirable attempt, is hollow. Moreover, it is significant that for six years, from 2000 to 2006, NIGC had completed on-site compliance reviews for only eight California tribes. At that rate, it would take 42.75 years to complete MICS compliance review for all California gaming tribes.¹⁷ CGCC-8 thus is necessary.

¹⁶ Title 4 CCR section 12403(d).

¹⁷ The 42.75 year estimate is based on the following. It took six years to complete eight audits, indicating it took .75 years to complete one audit. In California, there are 57 tribes operating casinos. If you multiply .75 times 57 tribes, the result is that it would take 42.75 years to complete audits of all 57 tribes. See also Written Remarks of National Indian Gaming Commission Chairman Montie R. Deer before the Senate Committee on Indian Affairs, March 14, 2002 wherein he states that “at current [NIGC] staffing levels, it would take twenty to thirty years for the Commission to evaluate each of the existing gaming operations.” (See Exhibit “D”.)

- (iv) **Alternatives.** An alternative to adopting the NIGC MICS would be to create a new set of minimum internal control standards. This would take a great deal of time and energy, and would result in tribes having to re-test and perhaps change their internal control systems to make sure they were in compliance. Another alternative that has been suggested is for tribes to enter into agreements with the federal government to perform the oversight or to voluntarily submit to the federal government's jurisdiction" via ordinance. However, as explained above, that is not a viable alternative because consent can be withdrawn at anytime. Although NIGC still has authority to approve Class III gaming ordinances (see 25 U.S.C. section 2710(d)(1) and (2)), the *CRIT* decision held that they have no authority over Class III gaming operations. Thus, the problem with the ordinance approach is that a tribe may subsequently amend the ordinance to remove the MICS provision and the NIGC Chairman probably cannot disapprove the ordinance on that ground. (See 25 U.S.C. section 2710 (d)(2) (B).).

As noted above, it is significant that as of March 2007, NIGC had completed compliance reviews from 2000 to 2006 for only eight California tribes.¹⁸ The just recently published NIGC Strategic Plan (FY 2009-2014) notes on page six under Objective 1.1 (Effectively monitor and enforce Indian gaming laws and regulations), that "operational compliance audits have resulted in hundreds of findings of non-compliance with required minimum internal controls relative to cash handling and revenue accountability."¹⁹ Thus, there is a need for this regulation. The State has already completed two MICS reviews via MOUs²⁰ thus far in 2008 and plans on completing the remaining three by the end of the 2008/2009 fiscal year. Minimal or non-existent federal oversight is not a substitute or alternative for effective oversight by the State through the Compact.

It has been suggested that the State should enter into agreements with each tribe. First, this is unnecessary because the State has the authority through the Compact to adopt the regulation. Even if for some reason the State would want to enter into multiple agreements, there is no guarantee of uniformity because different tribes would want different standards. And finally such agreements would require the tribes to waive sovereign immunity.

- (v) **Legal Authority.** See section above.

¹⁸ NIGC provides federal oversight to approximately 443 tribally-owned, operated, or licensed casinos operating in 29 states. Source: *NIGC Strategic Plan for Fiscal Years 2009-2014*, Overview, page one. See Exhibit "C."

¹⁹ See Exhibit "C."

²⁰ The three effective MOUs and one MOA with various tribes specifically provide that they are in place so long as the statewide uniform MICS regulations are not yet in effect. (There are four MOUs but one has not been signed yet by the Tribal Chair.)

- (vi) **If Statement of Need Identifies Factual Basis as the Rationale for the Need, Address Whether Duplicative.**²¹ The Association's Task Force Report asserts that CGGC-8 duplicates a provision of the Indian Gaming Regulatory Act, 25 USC Section 2710(b)(2)(C) and the MICS portion of certain existing tribal regulations.

The Task Force Report at page 2 criticizes CGCC-8 for mandating "external financial audits" which are already required by IGRA and by section 8.1.8 of the 1999 Compact, and by comparable sections of new or amended compacts and asserts there is no legitimate basis for including the financial audit provision.

CGCC-8 subsection (e) specifically refers to section 8.1.8 of the Compact and it is true the subsection refers to the audit, and true that such an audit is mandated by federal law and the Compact. However, it is appropriate to mention the audit in CGCC-8 subsection (e) for several reasons.

First, this audit, although required by federal law for NIGC fee assessment purposes, was also the basic building block of the separate NIGC MICS outside oversight process. Before the *CRIT* decision, the NIGC practice was to review this audit to determine if problems had been identified suggesting that further review of compliance with MICS standards was appropriate.

Following this problem-centered approach, subsection (e) of CGCC-8 requires the tribe to provide not only the audit report itself, but also management letters and responses to management letters. The reason for this is that problems are typically highlighted in management letters; plans for resolving problems are typically highlighted in responses to management letters. (See 25 CFR § 571.13 requiring a tribe to submit to the NIGC a copy of audit reports and management letters.)

Second, subsection (e) of CGCC-8 makes clear that the tribe need not provide the complete audit because the audit will likely cover not only Class III gaming activities, but also other gaming activities. Alternatively, the tribe has option of providing the complete audit, but CGCC staff will only utilize or record those aspects of the audit affecting Class III gaming activities. This provision not only supplies specific, helpful guidance to both tribal and CGCC staff, but also clarifies the scope of state review of the independent-CPA audit.

The Task Force Report similarly suggests that CGCC-8 is duplicative because "a number of California gaming tribes" have amended their tribal gaming ordinances to

²¹ The Task Force objection on grounds of "duplicative" arises from the Protocol (B. 2(b) (vi)), which may have been inspired by the rulemaking part of the California Administrative Procedure Act (APA). According to Compact section 8.4, the rulemaking part of the APA does not apply to SGA uniform regulations. Under the APA, a proposed state agency regulation must satisfy the "non-duplication" standard (Government Code sections 11349.1 and 11349(f)). However, "non-duplication" is not one of the grounds that the parties to the Compact agreed could serve as a basis for an objection to a proposed regulation.

incorporate the NIGC MICS and to grant the NIGC authority to enforce those standards. We have also been informed that some Tribes have entered into agreements with NIGC, though we have not seen copies of any agreements. It may be that tribal representatives view adoption of an amendment to a tribal gaming ordinance as tantamount to a formal written agreement. In any event, these Tribes argue that, since they have voluntarily submitted to NIGC jurisdiction and authority, CGCC-8 is duplicative. The Commission rejects this argument for three reasons.

First, the MICS amendments to the ordinances are *voluntary* acts on the part of the tribes. It is true that NIGC retains authority to approve Class III gaming ordinances, as explicitly stated in IGRA section 2710(d) (1) and (2). *CRIT* dealt with *regulation* of class III gaming operations; it did not eliminate all NIGC authority concerning Class III matters. The problem with the ordinance approach, however, is that a tribe may subsequently amend its ordinance to remove the MICS provisions and the NIGC Chairman probably cannot disapprove the ordinance amendment on the ground that a tribal ordinance must contain a MICS provision. See IGRA section 2710(d)(2)(B).

Second, written agreements between individual California tribes and NIGC, if there are any, very likely can be cancelled at any time by the tribe.

Third, NIGC does not have authority under IGRA to regulate Class III gaming operations; no agreement or tribal ordinance can provide such regulatory authority. Additionally, the state's authority to regulate Class III gaming operations pursuant to IGRA is not secondary to that of the federal government. It is absurd to suggest that the State should, in essence, acquiesce in the delegation of state responsibilities to the federal government.

Moreover, pursuant to the agreement of the parties, provisions of uniform state regulations adopted under Compact section 8.4 are binding on the tribes. Only a binding regulation can fully protect the public interest.

(vii) **Unnecessary**

The Task Force "duplicative" comment may also be read as suggesting that CGCC-8 is "unnecessary." For the reasons noted above, we suggest that the Task Force Report has not met its burden of persuasion on this issue, that is, the Report has not demonstrated that CGCC-8 is "unnecessary" within the meaning of Compact section 8.4.1(e).²²

Finally, we note that section 8.4.1(e) states:

²² Under the California APA (expressly not applicable here pursuant to Compact section 8.4), the state agency adopting a regulation must demonstrate by substantial evidence that the proposal is "reasonably necessary" to effectuate the purpose of the statute (Government Code sections 11340(c), 11342.2, 11349(a) and 11349.1(a)(1)). Here, by contrast, the burden is on the tribe to show that the uniform tribal regulation is "unnecessary." Compact section 8.4.1(e).

“The Tribe may object to a State Gaming Agency regulation on the ground that it is unnecessary, unduly burdensome, conflicts with a published final regulation of the NIGC, or is unfairly discriminatory, and may seek repeal or amendment of the regulation through the dispute resolution process of Section 9.0; provided that, if the regulation of the State Gaming Agency conflicts with a final published regulation of the NIGC, the NIGC regulation shall govern pending conclusion of the dispute resolution process.” (Emphasis added.)

This subsection indicates that conflict with a final published NIGC regulation was a matter of sufficient importance to the parties to warrant listing among the authorized grounds for objection to a proposed statewide uniform regulation. CGCC-8 cannot conflict with a published NIGC regulation because the NIGC MICS have been held unenforceable. Additionally, by contrast, there is no mention of duplication in 8.4.1(e).

Further, while the Compact clearly states that a conflicting NIGC regulation is to govern pending conclusion of the dispute resolution process, one may logically infer that a readopted statewide uniform regulation which is allegedly unnecessary, unduly burdensome, or unduly discriminatory (or which allegedly has a flaw other than those matters specifically listed by the parties as grounds for objection) shall govern pending conclusion of the dispute resolution process.

7. FURTHER RESPONSE TO “COMPACT AMENDMENT” COMMENT

The Association’s Task Force Report asserts that the State does not have the power under Compact section 8.4 to supplement or interpret Compact provisions and that uniform statewide regulations are valid only if tribes consent to them. If the State desires to address the topic of minimum internal control standards, the Association asserts that the State’s only option is seek compact amendments.

The Commission believes that the 1999 Compact did not leave the State defenseless and paralyzed, that is, that the State has the ability under the Compact to ensure that the tribes adhere to minimum standards consistent with those formerly mandated by NIGC. There are others who also agree with the Commission.²³

²³ May 28, 2007 Copley News Service article by James P. Sweeney, “New Deals worth Billions to 5 Tribes,” quoting tribal attorney George Forman as stating:

“The state did not leave itself defenseless and paralyzed [under the 1999 Compact].”

“[Forman] said the state has the ability under the compact ‘to ensure that tribes adhere to (minimum standards) consistent with those mandated by the National Indian Gaming Commission.’ ”

In sharp contrast, a substantial number of the comments made in the Task Force Report, though phrased in different ways, basically assert that the Compact does not authorize the SGA to adopt any regulation concerning MICS, at least if the regulation contains mandates.

Indeed, one could reasonably conclude that the authors of the Report believe that the SGA simply has no authority under the Compact to adopt regulations. This “nullity theory” essentially postulates that while it might appear on the surface that the compact (section 8.0) expressly grants a substantial degree of rulemaking power to the SGA (subject to review in the dispute resolution process) for purpose of fostering “statewide uniformity of regulation of Class III gaming operations,” on closer analysis, they assert, it becomes clear that the only option open to the State is to negotiate individual compact amendments with each tribe.

Though we respect this view, we assert that the proper procedure for any tribe which rejects the State’s role in developing uniform statewide regulations under section 8.0 would be to seek an amendment to its compact deleting or revising section 8.0. For instance, the 2004 Coyote Valley compact and the 2007 Yurok Compact both have a regulations section (section 9), but this section does not authorize the SGA to adopt uniform statewide regulations. Rather, those two compacts provide a process whereby the SGA may adopt a tribe-specific regulation.

Given the fundamental disagreement concerning the scope of SGA authority under the Compact to adopt a MICS regulation, CGCC staff has endeavored to ensure that CGCC-8 is drawn as narrowly as possible, while still protecting the integrity of tribal gaming.

8. CONCLUSION

In summary, CGCC-8 is an attempt to cooperatively develop reasonable standards and a protocol for increased state independent oversight of tribal gaming operations, in light of the *CRIT* decision. The adoption of the NIGC MICS as a baseline accomplishes a number of purposes, including use of a standard with which tribes have experience and are comfortable using. Increased state oversight will accomplish a number of worthwhile goals. It will give the State a basis for emphasizing publicly what has been an ongoing assumption: that many tribal gaming operations are run with efficiency and integrity. Further, it will allow the State to better ensure protection of its citizens who frequent tribal casinos and guarantee that its interest in the revenue sharing that is part of each compact is secure.

This article is included as Exhibit “E.”

PART II. ASSOCIATION'S OBJECTIONS

1. AUTHORITY TO PROMULGATE MICS REGULATION

Regarding the legal authority of CGCC-8, the Commission received comments from Dry Creek, Paskenta, Rincon, Rumsey, Torres Martinez, and the Task Force. These comments contended that only a TGA is vested with the authority to promulgate and enforce rules and that the Association cannot displace a tribe's sovereign governmental powers. Comments argued that there was no authority for CGCC-8 in the compact.

Compact section 7.4.4 makes clear the SGA's broad right of access to documents, equipment and facilities:

"Notwithstanding any other provision of this Compact, the State Gaming Agency shall not be denied access to papers, books, records, equipment or places where such access is reasonably necessary to ensure compliance with this Compact."

It is clear that the SGA may promulgate regulations concerning matters encompassed by Sections 6.0, 7.0 and 8.0 in order to foster uniformity of regulation of Class III gaming operations throughout the state. Further, it is clear that notwithstanding that the tribes have primary responsibility for administering and enforcing the Compact's regulatory requirements, the SGA has the right to inspect the Gaming Facility and Gaming Operation or Facility records and, notwithstanding any other provision of the Compact, the SGA is to be allowed access to papers, equipment and places where such access is reasonably necessary to ensure compliance with the Compact.

CGCC-8 is a regulation authorized under Section 8.4 to ensure uniformity in the regulation of matters encompassed by Sections 6.0, 7.0 and 8.0. It is an exercise of the SGA's authority under Sections 7.4, 7.4.4, 8.4 and 8.4.1 of the Compact.

See the Part 1 of this document, Section I.D., above, for further discussion of the State Gaming Agency's authority.

Some comments referred to the 2006 compact amendments, contending that the existence of a MICS-related section in the amendments proved that the State is aware of the lack of authority to implement MICS under the 1999 Compact. The four Memoranda of Agreement and one Letter of Agreement have the following language:

Section 104. Minimum Internal Control Standards (MICS).

Sec. 104.1 *So long as the National Indian Gaming Commission does not have the authority to adopt, enforce, and audit minimum internal control standards (MICS) for class III gaming devices and facilities and the State Gaming Agency does not have regulations in effect that contain internal control standards that are no less stringent*

than those contained in the MICS of the National Indian Gaming Commission, the Tribe agrees to maintain in full force and effect and implement minimum internal control standards for class III gaming that are no less stringent than those contained in the Minimum Internal Control Standards of the National Indian Gaming Commission (25 C.F.R. 542), as they existed on October 19, 2006, and, during that period, to submit to enforcement and auditing by the State Gaming Agency to ensure that the Tribe is in compliance with such MICS. This section is intended to supplement the Amended Compact and is not intended to supersede or negate any provision of the Amended Compact or any regulation that may be adopted by the State Gaming Agency.

These agreements contemplate that state regulations will contain MICS, but the agreements are merely an interim measure to keep the NIGC MICS as the standard until the state regulation (CGCC-8) is promulgated. There is no language indicating that this provision required additional authority be granted to the State. In fact section 104.1 specifically provides that:

“[t]his section is intended to supplement the Amended Compact and is not intended to supersede or negate any provision of the Amended Compact or any regulation that may be adopted by the State gaming Agency.”

Further, all compacts have an express provision that makes clear that "neither the presence in another tribal-state compact of language that is not included in this Compact, nor the absence in this Compact of language that is present in another tribal-state compact shall be a factor in construing the terms of this Compact."²⁴

Some comments asserted that CGCC had no authority to conduct a full financial audit. CGCC-8 does not contemplate financial audits such as those found at 25 U.S.C. section 2710(b)(2)(C). In response to concerns raised by a number of tribes, the version of CGCC-8 approved by the CGCC (March 27, 2008) for consideration by the Association contained specific language eschewing such authority. In any event, CGCC later amended CGCC-8 subsection (h) to delete the term “full” and to restructure the subsection to clarify the intent of the regulation. CGCC-8 does not purport to and does not require financial audits be conducted by the SGA.

2. NEED FOR REGULATION

Comments were received asserting that there was no need for the State to adopt a regulation setting minimum internal control standards. (Rincon, Task Force.) Since *CRIT*²⁵ validated what many tribes had believed for years, that is, that the NIGC had no authority with regard to internal controls related to Class III gaming, the legal landscape never changed and tribes have been and continue to be self-regulating. The question has arisen as to what events have occurred which demonstrate that the State has a greater need for oversight. (Rincon, Task Force.)

²⁴ Compact Section 15.3.

²⁵ See Part 1, Section 3 above for further discussion of the *CRIT* decision.

The Commission believes that the *CRIT* court by deciding that NIGC did not have authority did not so much leave a “void” but rather clarified that Congress intended to leave Class III gaming regulation to the State and the tribes, including independent, non-tribal oversight of Class III gaming operations by the State. In response to widespread disagreement with that assertion and in response to language suggested by the Rumsey Rancheria, the Commission modified the Statement of Need and the Purpose section of CGCC-8 (subsection (a)) to reflect the other aspect of the need and purpose of the regulation: to provide an effective and uniform manner in which the SGA can conduct the compliance reviews contemplated in Compact Sections 7.4 and 7.4.4. The reviews include assuring tribal (and TGA) compliance with the requirements of Compact Sections 6.1 and 8.1 – 8.1.14.

The Commission agrees with the Task Force Report that the *CRIT* decision does not and cannot change the terms of the Compact. However, we disagree with the proposition that CGCC-8 attempts to amend the terms of the Compact. For reasons expressed in more detail in the section on Legal Authority, Part 1, Section 4 above, we believe that the adoption of CGCC-8 is well within the Commission’s authority, as provided in the Compact.

The Commission listened to the comments throughout the Association process and deleted references to *CRIT* in CGCC-8 because it became apparent that the citations themselves were unnecessary, although the regulation itself is nonetheless a valid exercise of authority under the Compacts.

Comments also stated that tribes employ many persons as regulators and spend a great deal of money in self-regulation. (Task Force, Torres Martinez.) While no doubt true, that is not a reason for the State to not exercise its oversight authority given the outcome of protection to the integrity of the gaming operation and the need to assure gaming is conducted honestly and fairly. As explained above, compliance with the requirement that independent CPA testing occur, which measures the gaming operation’s compliance with the tribe’s internal control standards can be offset by performing the required yearly independent financial audits at the same time.

In the cases in which a tribe pays a flat fee²⁶ under amended Compacts, the Task Force report suggests that the State has no interest in securing its revenue share through the compliance reviews proposed in CGCC-8. There are, however, provisions of the MICS that are applicable even to a flat fee tribe. Proper accountability of the number of machines in operation is essential. The NIGC MICS contain detailed processes, which in themselves cause an accounting of the number of machines operated.²⁷ Further, the MICS contain standards relative to information technology that protect the integrity of the data produced.²⁸ Another MICS section relates to the preservation of records, which is essential to validate the tribe’s assertion of machines operated.²⁹ Additionally, all those compacts implementing a flat fee system also contain unique compact obligations relating to gaming devices in which MICS are invaluable for

²⁶ There are only five such tribes.

²⁷ NIGC MICS, 25 CFR 542.13(h)(7), (10), (14) &(15); (m)

²⁸ 25 CFR 542.16(a), (b) & (f)

²⁹ 25 CFR 542.19(k)

the tribe to carrying out its obligations. In the broadest sense, the NIGC MICS facilitate the credible operation of the gaming activity, which interest goes beyond the State's revenue share concerns, and is fundamental to the integrity of the entire gaming operation. (See also Section 6., "Unnecessary," below.)

Finally, some comments suggested that adopting the NIGC MICS by way of ordinance and providing for NIGC oversight eliminates the need for CGCC-8. (See Part 1, Section 6, (iii and iv) above and 7, Duplicative, below, for further discussion of this suggested alternative.)

3. REGULATION OR COMPACT AMENDMENTS

Some comments argued that CGCC-8 was viewed as an unauthorized or premature renegotiation of the Compacts and that separate government-to-government negotiations should be undertaken pursuant to Section 12.0. (Dry Creek, Rincon, Task Force.) Memoranda of Agreement were suggested as a separate negotiation.

From the Commission's perspective, Compact negotiations are not needed because the SGA's compliance review authority is clearly established in the existing Compact. While individual agreements could accomplish the same purpose, a uniform regulation adopted in accordance with the Compact provisions specifically authorizing such a regulation is much more efficacious. It ensures uniformity and fairness in SGA compliance review and, by taking into account the scope of individual gaming operations, assures a level playing field for all tribes and prevents arbitrariness. Both the tribe and the State are sovereigns. Each has sovereignty the other must respect; each has the right to demand that the other sovereign comply with its responsibilities and obligations mutually agreed to in the Compact.

It was also suggested that CGCC-8 is inappropriately and unilaterally supplanting the TGA with the Commission and that, since MICS were not discussed in the Compacts, they cannot be added now.

CGCC-8 does not usurp the primary role of the TGA in establishing and enforcing tribal MICS. CGCC-8 establishes guidelines and procedures for the SGA in exercising its authority under Sections 7.4 and 7.4.4 to independently ensure that the TGAs are carrying out their responsibilities under the Compact; in short, to ensure compliance with the Compact. Indeed, Compact Section 7.4 makes clear that notwithstanding the primary regulatory and enforcement role of the TGA, the SGA may inspect the tribe's gaming facility and gaming operation or facility records with regard to Class III gaming, subject to conditions outlined in Sections 7.4.1 through 7.4.3:

"Notwithstanding that the Tribe has the primary responsibility to administer and enforce the regulatory requirements of this Compact, the State Gaming Agency shall have the right to inspect the Tribe's Gaming Facility with respect to Class III Gaming Activities only, and all Gaming Operation or Facility records relating thereto . . ."

The Compact provides the State with the authority (and responsibility) to review tribal standards to ensure compliance with the Compact. Neither tribal regulatory activities, nor NIGC regulatory activities can take the place of State Compact authorized compliance reviews.

See also Part I. sections 4, Authority, and 6 (iv) (Alternatives).

4. “UNFAIRLY DISCRIMINATORY”

The Task Force Report and separate comments from Rumsey indicate that because the State has not yet imposed MICS requirements in cardrooms, CGCC-8 is “unfairly discriminatory”. See Part I, Section 6(ii), above, for a response to this comment.

5. “UNDULY BURDENSOME”

Comments from Cahuilla and the Task Force Report indicate that CGCC-8 is “unduly burdensome,” but that adoption of the NIGC MICS or annual audits would not pose a significant economic impact because TGAs have already adopted the NIGC MICS and perform annual audits pursuant to IGRA. Revisions to CGCC-8, including the variance provisions, have been made to streamline the process and lessen any impact.

The Commission reiterates that CGCC-8 has not and does not increase any obligation on the tribes related to audits beyond that already provided for in Section 8.1.8 of the Compact.

While any outside review necessarily entails the use of some gaming operation staff time and resources, the Commission is fully committed to working with individual TGAs through consultation on a case-by-case basis to conduct compliance reviews in the most efficient manner possible and therefore minimize any impact on tribal gaming operations, TGAs, and California taxpayers. The Commission’s ability to efficiently conduct meaningful compliance reviews depends to a large extent on the cooperation of individual TGAs and gaming operation personnel.

6. “UNNECESSARY”

Comments contended that CGCC-8 provides significant and unnecessary auditing by the Commission (Rincon) and that there has been no showing that tribes are conducting gaming without standards to justify the implementation of CGCC-8 (Cahuilla). Further, for those tribes that provide flat fee rather than percentages based upon net win, the State’s interest in securing its revenue share through compliance reviews is lessened (Task Force).

Even for those tribes which provide a flat fee, the State has an interest in ensuring, through compliance reviews, that the TGA regulations and internal controls protect the gambling operation from criminal involvement or corrupting influences and maintain fair and honest gaming by both the operator and players.^{30 31}

³⁰ Compact, Preamble, Paragraph A and Section 1(b).

The NIGC has identified many instances of non-compliance in the limited number of MICS compliance reviews that they have conducted. See Part I, Section 6 (vi).

7. DUPLICATIVE

The Task Force Report and separate comments from Rumsey, Paskenta, and Torres Martinez argue that NIGC requires external auditing and if tribes adopt ordinances containing NIGC enforcement of MICS, then CGCC-8 is “duplicative.”

As has been made clear at the Task Force meetings and as Chairman Shelton made clear at the March 27, 2008 Commission meeting, the CGCC has and will continue to make every effort to coordinate with the NIGC. However, SGA compliance reviews are not duplicative of NIGC reviews; they are a legitimate exercise of the State’s authority under the Compact.

As NIGC Chairman Philip Hogen’s April 17, 2008 written testimony to the Senate Indian Affairs Committee Oversight Hearing stated:

“To put the regulation of tribal gaming in proper context, we need to appreciate that the vast majority of the regulation of tribal gaming is done by the tribes themselves, with their tribal gaming commissions and regulatory authorities. In many instances, where tribes conduct Class III or casino gaming, state regulators also participate in the [regulatory] process. NIGC has a discrete role to play in this process and is only one partner in a team of regulators.” (Emphasis added.)

The SGA focus is Compact compliance; the NIGC has no interest in, nor authority with regard to Compact compliance. Further, to assert that because the NIGC has an oversight role with regard to internal controls the State should forbear from exercising its compliance review authority under the Compact is to ignore the State’s role as a sovereign Compact signatory.

The Task Force Report points to Governor Schwarzenegger’s letter of March 30, 2007 (attached as Exhibit “F”) to the Senate Committee on Indian Affairs, quoting the governor as follows: “[California’s] approach with the compacts and state oversight of internal controls has been to complement, rather than duplicate NIGC’s activities.”

CGCC-8 is not, as the Task Force Report asserts, “entirely inconsistent” with the Governor’s message to the Senate Committee. In fact, it is not at all inconsistent. The fact that tribes have already put into place standards “at least as stringent as NIGC MICS” does not make CGCC-8 duplicative. Nor does the fact that a number of tribes have changed their gaming ordinances or entered into agreements purporting to grant the NIGC “authority” to monitor and enforce tribal

³¹ Even tribes with flat fee payments revert back to the net win calculation after 18 years of lump sum payments to the State. The flat fee payments are based on so much per machine, and thus the number of machines is important, and the MICS provide a valuable tool for the state to verify the accuracy of the amount paid.

compliance with those standards. The loss of such authority as a result of the *CRIT* decision highlighted the need for the State to step into compliance oversight. The authority for such oversight has always existed in the Compact -- it was just not exercised.

As indicated above, CGCC-8 does not require financial audits, so there is no duplication of auditing or conflict with Sections 5.3(c) or (d) other than what is already required under Compact section 8.1.8.

As stated above, CGCC-8 does not duplicate TGA regulatory enforcement, as suggested by comments from the Task Force Report, Cahuilla, Paskenta, and Torres Martinez.

The Commission expects that the vast majority of gaming tribes have standards in place and run their gaming operation according to those standards in compliance with the Compact. However, that does not alter the State's clear authority to conduct compliance reviews. Further, from the perspective of the SGA, the State not only has the authority to conduct compliance reviews, but the responsibility as well. The public as well as the legislative and executive branches of state government have made that clear. CGCC-8 simply outlines a process and sets a uniform benchmark for such reviews. The State has not arrogated to itself any authority not already found in the Compact.

8. SPECIFIC REGULATORY LANGUAGE COMMENTS

Ralph LePera, an attorney representing Bishop Paiute, sent in a letter in May 2008 noting that:

“Subsection (i) states that when on-site compliance review is conducted, the ‘Tribe shall have sixty days . . . to respond to the CGCC draft report.’ This appears to mean that all responses, whether accepting or rejecting the report, need to be received within 60 days. However, subsection (j) as written causes some confusion. Subsection (j) states ‘If, after a 60 day review, the Tribe contests the draft report’ This seems to contradict subsection (i) which says that all responses must be made within 60 days. Is subsection (j) an exception to the 60 day rule set out in (i)?”

Mr. LePera also commented that the second line of subsection (j) states:

“‘Upon notice by the Tribe of a disagreement and failure to resolve differences, the CGCC staff will finalize and deliver the report.’ What if the Tribe never gives notice of a disagreement and failure to resolve differences? Does this mean that as long as the Tribe does not formally provide a notice of disagreement and failure to resolve differences that the report will be in so-called limbo?”

Subsection (i) and (j) has been revised to avoid any confusion and to clarify the process, and to more clearly distinguish between the *draft* Compliance Review Report and the *final* Compliance Review Report, in subsections (i) (1) and (2).

9. ALTERNATIVES TO MICS REGULATION

Tribal Task Force members proposed alternative language that contemplated either waiting for new federal authority for the NIGC or eliminating SGA compliance review via CGCC-8 if the tribe and the NIGC agreed to NIGC oversight through either MOU/MOAs or changes to Tribal gaming ordinances. Neither of these approaches takes into account the State's sovereignty as a signatory to the Compact. The SGA authority to inspect the gaming facility and all gaming operation or facility records relating thereto (Section 7.4) and the SGA's authority to be granted access to papers, books, records, equipment or places where such access is reasonably necessary to ensure compliance with the Compact (Section 7.4.4) are derived from the Compact. They are not and cannot be made dependent upon the statutory authority of the NIGC, or upon other arrangements between the NIGC and individual tribes. The State's authority is not secondary to the federal government's non-existent authority over Class III gaming operations and the State's is not obliged to delegate its authority to NIGC.

Dry Creek suggested a non-adversarial dispute resolution process. Changes to subsection (n) of CGCC-8 address those concerns by clarifying that the tribe has the option of seeking review by the full Commission before invoking the compact dispute resolution process. As CGCC-8 derives its authority from the Compact, the dispute resolution process in CGCC-8 follows that found in the Compact. However, there is nothing in CGCC-8 that would *preclude* the State and any tribe from agreeing to binding arbitration on a case-by-case basis, depending on the facts and circumstances of the dispute.

One alternative suggested (Elk Valley, Paskenta) was to follow the oral statement made on September 4, 2008 by the Attorney General/Bureau to individually consent to oversight. The Attorney General's suggestion is too vague, and it is unclear in what form the consent would come or how it would be enforceable and whose consent – the State of the NIGC?³² Dry Creek also suggests following a "safe harbor" approach by *recognizing rather than mandating* the NIGC MICS as a national standard.

CGCC-8 does *not* require any tribe to adopt the NIGC MICS in carrying out its responsibilities under Compact Sections 6 and 8. CGCC-8 requires that whatever internal controls standards a tribe may choose to adopt meet or exceed the requirements of the NIGC MICS. Further, CGCC-8 provides for variances (subsection (l)) and for consultation between the SGA and individual tribes and the Association as a whole regarding the effect of changing technology on compliance matters (subsection (m)).

10. RESPONSE TO "SAFE HARBOR" ALTERNATIVE

Dry Creek Rancheria asserts that the State should reach statewide uniformity through cooperative action with the Association without mandating conduct or amending the compacts. The Tribe contends that an example of that is uniform regulation CGCC-2 related to

³² It also appears that this September 4, 2008 oral comment from the Attorney General/Department of Justice may have been superseded by the formal written comment dated September 29, 2008.

registration of qualified bondholders, which did not mandate that it be followed, but provided that if followed, the tribes and their bondholders would be deemed to be in compliance with the compact. Dry Creek Rancheria argues that this process, even though voluntary, provided complete assurance ("safe harbor") that preserved the regulatory integrity of those financings. However, the CGCC-2 example is not comparable to the CGCC-8 situation. First, CGCC-2 was agreed to because it substituted a process that was easier to accomplish than the more complicated requirements of the Compact. Although CGCC-2 does find that TGA shall be "deem[ed] to satisfy suitability standards of the Compact" if the applicant meets the requirements for registration under the regulation, it allows a more streamlined process for a determination of a Finding of Suitability for a Financial Source. By contrast, CGCC-8 is not relaxing a Compact requirement, but is rather imposing a uniform requirement and thus very different than what occurred with CGCC-2. Further, although Findings of Suitability for Financial Sources are important, the process dealt with in CGCC-2 is not integral to the process of protecting the integrity of gaming. The minimum internal controls of CGCC-8 are integral to gaming and cannot be voluntarily agreed to with no ability on the part of the State to ensure compliance.

11. RESPONSE TO (1) THE VOTE BY THE DEPARTMENT OF JUSTICE, BUREAU OF GAMBLING CONTROL AT THE SEPTEMBER 4, 2008 ASSOCIATION MEETING AND (2) THE FOLLOW-UP LETTER FROM INTERIM BUREAU CHIEF MATT CAMPOY, DATED SEPTEMBER 29, 2008

At the September 4, 2008 meeting, the Department of Justice, Bureau of Gambling Control voted:

"Yes to oppose the regulation CGCC-8 with the following comments:

- 1) We encourage tribes to consent to oversight; and
- 2) If the tribes are unwilling to consent, we would generally support the idea of the application of the federal standards without modifications."³³

This Bureau comment is too vague to permit an effective response. In what form would the consent come, with whom and in what kind of vehicle? How would it be enforceable and would the State need a waiver of sovereign immunity from each tribe? CGCC-8 follows the NIGC MICS as closely as possible, given that certain things simply cannot follow the federal procedure. For instance, it would be nonsensical to appeal a variance to the CGCC-8 MICS to the NIGC Chairman. The "safe-harbor" language mentioned by Paskenta is suggested by the September 29, 2008 follow-up letter from the Bureau of Gambling Control. In that letter the Bureau suggests the following language in (b)(1):

³³See the letter from Paskenta advocating this position also.

“In recognition of the importance of adequate internal controls to the State, the State Gaming Agency regards either of the following to be a material breach of the Compact:

- (A) An unreasonable failure to maintain written internal control standards that are at least as stringent as the MICS;
- (B) An unreasonable failure to afford the Bureau of gambling Control access to, and an opportunity to copy, the Tribe’s written internal control standards or amendments thereto when requested.”

That suggested language attaches a condition of unreasonableness to any alleged breach. That, in turn, suggests that there can be conditions under which failure to adopt conforming MICS may be reasonable. While it seems obvious that not every failure to adopt or implement conforming MICS would constitute a material breach (as, for example, when a TGA adopts MICS that fail to meet or exceed the NIGC MICS in minor, inconsequential respects), the use of the term "unreasonable" in subparagraphs (1) (A) and (B) of the Bureau letter is too nebulous to effectively differentiate a material from an immaterial breach. At what point on what scale would a failure stop being reasonable and become unreasonable? The classic purpose of an administrative regulation is to interpret or make specific a provision of the underlying enactment, typically a statute, but in the case of CGCC-8, the Compact. It does not seem prudent or productive to adopt a uniform regulation which contains such a combination of ambiguous terms, thus increasing the likelihood of litigation.

Moreover, whether the SGA regards "unreasonable" noncompliance as a material breach of the Compact is not dispositive. Only the Governor is empowered to determine the State's position and enforce tribal obligations under the Compacts. Therefore, the SGA's view concerning what is a reasonable or unreasonable violation of CGCC-8 would be subject to the Governor's review and thus the language is ineffective. Additionally, how could either condition be a material breach when the language suggested in paragraph (b) does not require the tribes to have MICS, but rather is just the SGA “construing” the provisions of the Compacts as imposing certain obligations on the tribes?

Further, the MICS are a subset of a larger regulatory universe that the TGAs are required to adopt and implement for casino operation. The suggested draft language deems the obligation for adopting "internal control standards" to be satisfied if the standards meet or exceed the NIGC standards for MICS. However, it is not clear that the NIGC MICS are the standards. The term "internal control standards" is not defined in the Bureau’s text and could be susceptible to more than one interpretation in the context of the Bureau's suggested language. On the one hand, it could be argued that the term is restricted to those subjects expressly covered by the NIGC MICS and CGCC-8. On the other hand, it could also be argued that it covers anything that could possibly come within the ordinary meaning of "internal control standards." From an interpretive standpoint, ordinary meaning is preferred by the courts, in the absence of clear intent to ascribe a limited technical meaning to language. When terms such as "internal control standards" are used in their limited technical sense, a definition should be added to the regulation to make clear the intended meaning. Otherwise a much broader interpretation could be applied in litigation.

If no minimum standards are set or defined, as can be inferred from the Bureau's letter, the issue of whether or not there is a material breach becomes even more difficult and could cause more problems than the "safe harbor" approach solves.

Finally, paragraph 2 of the Bureau's comment is surplusage because nothing in the regulation could be construed to preclude the State and a tribe from agreeing to binding arbitration under Compact section 9.2, but by adding this paragraph, it makes it appear as though arbitration is the preferred method, thus undermining Section 9.

Detailed Response to Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8)

List of Exhibits

- A.1 September 12, 2008 letter from Cahuilla Tribal Gaming Agency
- A.2 September 18, 2008 letter from Dry Creek Rancheria
- A.3 September 30, 2008 letter from Elk Valley Rancheria
- A.4 September 11, 2008 letter from Paskenta Band of Nomlaki Indians
- A.5 September 18, 2008 letter from Rincon Band of Luiseno Indians
- A.6 September 4, 2008 letter from Rumsey Indian Rancheria
- A.7 September 18, 2008 letter from Torres Martinez Gaming Commission
- A.8 September 29, 2008 letter from Department of Justice
- B. April 23, 2008 California Gambling Control Commission Response to Tribal Task Force Representative Final Report Statement of Need
RE: CGCC-8, Dated February 13, 2008
- C. Excerpts from the NIGC Strategic Plan FY 2009-2014
- D. Written remarks of NIGC Chairman Montie R. Deer before the Senate Committee on Indian Affairs, March 14, 2002
- E. May 28, 2007 Copley News Service article by James P. Sweeney
- F. March 30, 2007 letter from Governor Arnold Schwarzenegger to Byron Dorgan, Chairman and Craig Thomas, Ranking Member, Senate Committee on Indian Affairs



Cahuilla Tribal Gaming Agency

52702 Hwy 371, P.O. Box 390854 Anza, Ca. 92539
 Phone: (951) 763-1200 ext. 138 Fax: (951) 763-4938

2008 SEP 25 AM 11:05

CONTROL COMMISSION

September 12, 2007

Evelyn Matteucci
 State of California Gambling Control Commission
 2399 Gateway Oaks Dr #100
 Sacramento, CA 95833-4231

Re: Objection to the CCGC-8 Regulation

Dear Mrs. Matteucci,

The Cahuilla Tribal Gaming Agency (CTGA) was present for the Tribal-State Association meeting held at Rolling Hills Casino, Corning, CA on September 4, 2008. During this meeting the California Gambling Control Commission (CGCC) submitted CGCC-8 Regulation to the Tribes of California for approval. This Regulation would impose a State Minimum Internal Control Standards (MICS) on the Tribes. The motion to approve such regulation was denied by the majority of the Tribal-State Association, the motion was carried as final action on this proposed Regulation.

The CTGA objects to the above-mentioned Regulation for the following reasons:

- According to the Indian Gaming Regulatory Act (IGRA) Indian Gaming is Regulated by three (3) sovereign's; Tribe, Federal, and State. As agreed upon in the Tribal/State Compact the Gaming Commission is the Primary Regulator, with the State of California fulfilling an active role in a limited over-site capacity.
- The CTGA has adopted Tribal Internal Controls, monitors, enforces industry standards to protect the assets, integrity, fairness, honesty, and Security of the Tribes Gaming Enterprise. Our controls are more stringent than the proposed Regulation by the State.
- Tribal State Compact Section 8.4.1 (e): The Tribe may object to a State Gaming Agency Regulation on the ground that it is unnecessary, unduly burdensome, or unfairly discriminatory, and may seek repeal or amendment of the regulation through the dispute resolution process of Section 9.0.
- This Regulation duplicates the duty and responsibility of the Tribal Gaming Agency while creating an unnecessary financial Burdon on the tax payers of California.
- The State's justification for the proposed Regulation fails to clearly identify valid concerns and or lack of Regulation by the Tribe to warrant such proposal.

There is sufficient Tribal Gaming Regulatory Authority which was established by IGRA to adequately protect the Tribe. This Regulation is not needed, and imposes a variety of challenges with the State. The time, effort, and resources already allocated to this proposed Regulation, has caused an undue hardship on the Tribe. The proposed Regulation adds new processes outside of those authorized in our Tribal State Compact. We ask the CGCC to withdraw its pursuit of this Regulation.



Cahuilla Tribal Gaming Agency

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Phone: (951) 763-1200 ext. 138 Fax: (951) 763-4938

Respectfully,

Andrew Hofstetter, Chairman

Joseph Salgado, Commissioner

Cc: Tribal Council, CTGA File



**DRY CREEK RANCHERIA
BAND OF POMO INDIANS**

September 18, 2008

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

Re: Supplement to the September 4, 2008, Association Meeting Record

Dear Chairman Shelton:

The Dry Creek Rancheria Band of Pomo Indians ("Tribe") respectfully submits the following comments as a supplement to the record of the Tribal-State Association ("Association") meeting held on September 4, 2008, during which CGCC-8 was disapproved by the Association. We note that the disapproval of CGCC-8 was based primarily on the objections raised in the Association Regulatory Standards Taskforce Final Report Statement of Need Re: CGCC-8, dated February 13, 2008 ("Taskforce Final Report"). We note further that during the September 4th meeting, a motion was approved to leave the meeting record open for fourteen (14) days to allow tribes to submit written comments to supplement the objections made in the Taskforce Final Report. These supplemental comments are to be considered as part of the comments of the Association in accordance with that motion, as well as individual comments of the Tribe's gaming regulatory agency for general purposes. It is with this intent and understanding that we provide the following comments.

One of the key reasons that the Tribe voted against the passage of CGCC-8 was that, by mandating compliance with specific rules like the NIGC's Minimum Internal Control Standards ("MICS"), it purported to impose a duty and consequence on the Tribe that was in excess of what had been agreed upon in its compact. Most of the compacts that are now in effect, including the Tribe's compact (which, like approximately 57 other compacts, was entered into in 1999 and still constitutes the most prevalent form of compact model today within the state), contains no reference to the MICS. The objection is not with the standard itself, but the manner in which CGCC-8 attempts to mandate that it and various implementing rules be followed by the Tribe. For example, Section (b) provides that "[e]ach Tribal Gaming Agency (TGA) shall maintain" and Section (c) provides that "[e]ach Tribe shall implement and maintain"

The extent to which the Tribe is placed under any duty to the State with regard to its gaming activities is solely a matter of federal law, as embodied in IGRA. The means for sharing regulatory responsibilities is through a compact. 25 U.S.C. §2710. We do not believe that any action by the Association, which is defined in Section 2.2 of the Compact, was or could have been intended to displace a tribe's sovereign governmental powers or to subordinate those powers to those of the State, even through agreement or majority vote of the Association. *Indeed, specific regulatory duties are placed directly on the Tribe, which is to be the primary regulator.*

For example: Section 6 of the Compact sets forth specific rules with regard to the *licensing* of persons and entities who interact with the gaming operation, and Section 8 requires the Tribe to promulgate and enforce rules that ensure sound regulatory practices for a gaming operation, such as the *physical safety of patrons and employees* (Sec. 8.1.2), the *physical safeguarding of gaming facility assets* (Sec. 8.1.3), the *prevention of illegal activity*, including appropriate employee procedures and surveillance systems (Sec. 8.1.4), the *recording of incidents that deviate from normal operating procedures* (Sec. 8.1.5), the establishment of *procedures designed to permit detection of irregularities, theft, cheating, fraud or the like, "consistent with industry practice,"* (Sec. 8.1.6), the maintenance of a *barred patron process* (Sec. 8.1.7), the conduct of an *audit of the operation by an independent CPA firm* at least annually in accordance with industry practices for auditing casinos (Sec.8.1.8), adoption of *rules and regulation for each game* (Sec. 8.1.9) and the *publication to the public of those rules, including rules that address the method of play, odds, prize determinations, betting limits, industry standard resolution of patron disputes* (Sec. 8.1.10), industry standard *closed circuit televised surveillance systems* (Sec. 8.1.11) and *cash cage processes* (Sec. 8.1.12), *minimum staff requirements* for each gaming activity (Sec. 8.1.13), and *technical standards and specifications for Gaming Devices that meet the industry standards* for such devices (Sec. 8.1.14), as well as following specific procedures with respect to the *transportation of gaming devices* (Sec. 7.4.5).

In addition, the Tribe must also adhere to specific requirements and standards with regard to *food and beverage handling, water quality, public health conditions, building and safety code adherence, insurance coverages, occupational health and safety conditions, employment discrimination, unemployment and workers compensation, advancement of credit, limitations on accepting certain kinds of public issued checks or vouchers, alcoholic beverage control, Bank Secrecy Act and Internal Revenue Code compliance, emergency service availability, labor relations, and off-reservation environmental impact mitigation processes.* See generally Sec. 10.0.

In sum, virtually every corner of casino regulation already is covered and mandated as a tribal duty in the Compact. What isn't specified in some instances, but could have been, is the particular manner in which the Tribe must accomplish each of these assignments. Instead, through negotiation and agreement in accordance with federal law, the Compact left those details to the sound discretion of the Tribe. The Compact thus specifies that the Tribe's gaming agency is primarily responsible for carrying out the Tribe's regulatory responsibilities under IGRA and its federally mandated gaming ordinance (Sec. 2.20), and that the Tribal agency has the responsibility "to conduct on-site gaming regulation and control in order to enforce the terms of

this Gaming Compact..." Sec. 7.1. Needless to say, however, the rules and processes must be effective in meeting the specified goals, and the State is granted access to the premises and inspection rights (Sec. 7.4.3), including access to gaming operation papers, books, records, equipment, or places "where such access is reasonably necessary to ensure compliance with this Compact." Sec. 7.4.4.

The question here is thus whether the creation of regulations approved either by the Association or unilaterally by the State may be used, as CGCC-8 suggests, as a vehicle to amend each tribe's individual compact without its express agreement, through the sovereign process of each Tribe, to amend its compact to require it to abide by the proposed regulation's specific regulatory duties. We do not believe that our Compact so provides, and that CGCC-8's attempt to do so violates the Compact and state and federal law, and on that basis we objected to the adoption of that purported regulation as written.

Nevertheless, we respectfully suggest that other means for achieving sound statewide regulatory standards consistent with the Compacts, and particularly through the use of the Association process, exist and should be considered. These views are ours alone, however, and should not be construed as being submitted on behalf of any other tribe or even necessarily echoing their views.

Compact Section 8.4 contemplates the promulgation of regulations intended to "*foster* statewide uniformity of Class III gaming operations throughout the state [emphasis added]," as opposed to agreeing that there *must* be statewide uniformity. Section 8.4.1 therefore sets forth a cooperative process, through the Association, for drafting regulations that are presumably intended to reach that goal, as opposed to requiring the Tribe to abide by regulations which come out of that process, or that may be adopted unilaterally by the State. Were such an interpretation possible, it would effectively result in the Association or the State having the power to amend the Compact and subject the Tribe to State regulatory control. Nothing in the Compact creates that dynamic or opportunity. Indeed, the Compact has explicit dispute resolution provisions in the event that the State and Tribe disagree, which contradicts any notion that the State or even the other tribes, through the Association, can simply impose extra-Compact regulatory requirements on the Tribe without its consent.

But that does not mean that the Association process cannot be effective. A useful example of a successful attempt to reach statewide uniformity in tribal gaming through Association action without mandating conduct or amending the compacts is CGCC-2. That regulation sets forth a standard that both the State and tribes agreed could be followed in order to comply with the compacts' suitability standards for institutions engaged in bond and other complex financing transactions. The rule does not mandate that it be followed, but provides that if it is, the parties will be in compliance with the compact. Because it provides a practical and reasonable process that, even though voluntary, provides compliance assurance (i.e., a "safe harbor") that preserves the regulatory integrity of those financing transactions, it was acceptable to both the State and tribes. It has been in widespread use. Similarly, the fear (albeit unfounded) that there is a void in the regulation of tribal gaming in the absence of mandatory adherence to the federal MICS (the federal enforcement of which was placed in doubt by the CRIT decision) could be alleviated through acknowledgment by the Association that adherence to the MICS is a

means to meet the compact's regulatory requirements and providing a scheme that encourages, rather than mandates, its adoption and enforcement. The practicality of this suggestion is based on the following:

The federal NIGC MICS were created from several years of meetings and conferences in which federal and tribal gaming regulators met with each other and with the assistance of professionals from various disciplines in the gaming industry, including consultants affiliated with various gaming device laboratories with world-wide credibility in the gaming industry. The MICS thus reflect standards that many tribes and non-gaming jurisdictions already follow. They are not highly controversial in their own right, and thus their substance is not the issue.

In our own case, we have adopted the MICS as the *threshold* requirement for our own regulatory scheme and as the means to meet the generalized regulatory requirements in the Compact. We believe many other tribes within the State, and nationally, have done the same. Recognition of that fact and that doing so will provide certainty as to whether or not a tribe has promulgated the rules and regulations required under the compact, would encourage others to do so as well. If it did not, the worst case would simply be the status quo, so a failure to adopt the MICS under such a rule would not conflict with the compact and thus would not prejudice either the tribes' or State's rights.

If a regulation were proposed to the Association that, instead of mandating MICS compliance, merely declared that the MICS were viewed by the State and the tribes as a generally accepted means of compliance with the regulatory requirements in the compacts, our own opposition would be substantially diminished and perhaps eliminated (obviously the details are important, particularly in light of our and other tribes' sensitivity to the potential for usurping a tribe's sovereign power to negotiate for itself with respect to any amendment of the compact). A regulation that reflected a consensus that the MICS constitute a recognized standard by which compact compliance may be measured would encourage a tribe to incorporate the MICS into their own rules in order to remove any doubts about the acceptability and soundness of their rules. We submit that the removal of that uncertainty, coupled with the fact that so many of the tribes already follow the MICS, would result in a confirmation that the MICS are in fact in widespread use already, would provide a common baseline for determining compact compliance, and would thus accomplish the goal of fostering and implementing statewide uniformity.

Such a rule would also permit tribes to alter or vary the MICS to the extent necessary for individual circumstances¹ without creating a patchwork of inconsistent regulations, since it would provide a standard frame of reference against which a local alteration could be examined.

Finally, but importantly, we believe that to be effective, any such rule would have to include the availability of a voluntary process for resolving disputes regarding the adoption of and compliance with the MICS. Such a process would strive to avoid, whenever possible (but obviously not in the case of a true emergency), the severely adversarial nature of conflicts that can arise over such issues under the compacts, in which the issue is whether a tribe is in breach and subject to possible compact termination. The availability of an enforceable but alternative

¹ For example, for some small operations, some adaptation is necessary to avoid overkill, and thus the NIGC and most regulatory jurisdictions will consider such alterations.

dispute resolution process that is more in scale with the goal of obtaining effective and uniform regulation, provided the MICS are adopted by a tribe, would further encourage adherence to the MICS, and achieving such an alternative scheme would strengthen the role of the Association generally as a forum for discussing and resolving mutual regulatory concerns under the compacts.

Thank you for your consideration of these comments.



Harvey Hopkins, Chairman
Dry Creek Rancheria Band of Pomo Indians

Elk Valley Rancheria, California



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2008 OCT -3 AM 10:47
CONTROL ROOM

September 30, 2008

California Gambling Control Commission
Attn: Evelyn Matteucci
2399 Gateway Oaks #100
Sacramento, California 95833

Re: CGCC-8 Comments

Dear Ms. Matteucci:

In furtherance of the September 4, 2008, Tribal-State Association meeting, the Elk Valley Rancheria, California provides the following initial comments.

The Elk Valley Rancheria, California, is a federally recognized Indian tribe ("Tribe") that signed the 1999 tribal-state compact. To date, the Tribe has not amended its tribal-state compact. The Tribe operates the Elk Valley Casino, which includes approximately 320 slot machines, nine (9) table games, and bingo. Pursuant to the express terms of its tribal-state compact, the Tribe does not pay any revenue to the Special Distribution Fund or to the Revenue Sharing Trust Fund.

Since March 2007 when the California Gambling Control Commission ("CGCC") notified California Indian tribes that had entered into tribal-state compacts that it intended to promulgate and adopt CGCC-8, Tribal representatives have participated in the various Tribal-State Association meetings and have periodically provided input regarding CGCC-8.

We understand that the CGCC seeks to promulgate and enforce CGCC-8 because of a perceived lack of national Minimum Internal Control Standards ("MICS") resulting from the court decisions in *Colorado River Indian Tribes v. National Indian Gaming Commission* ("NIGC").



As you are aware, pursuant to the 1999 tribal-state compact, each individual tribe that entered into said tribal-state compact has primary regulatory authority over its tribal government gaming operation. The Tribe is no different. The Tribe responsibly regulates the Elk Valley Casino – as do other tribes in California. Further, in addition to the oversight provided by the CGCC and the Bureau of Gaming Control, the Tribe adopted provisions in its NIGC-approved Gaming Ordinance expressly providing for oversight and enforcement of the MICS by the NIGC.

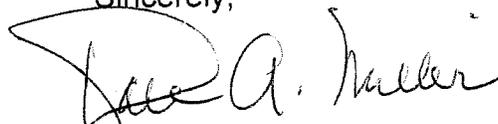
In short, the Tribe disagrees with the CGCC's attempt to unilaterally seize new, unprecedented and unauthorized regulatory authority over tribal government gaming operations. Instead, the Tribe recommends that the CGCC adopt the Bureau of Gaming Control's position that California tribes should determine whether they individually: 1) wish to grant the State an oversight role; or 2) adopt the MICS, including appropriate enforcement authority.

The Tribe adopted the MICS and granted appropriate enforcement authority to the NIGC to enforce said standards. As such, the CGCC's stated rationale for adopting CGCC-8 is not supported in this instance. Likewise, CGCC-8, in large part, is contrary to the Tribe's tribal-state compact.

Based upon the foregoing, the Elk Valley Rancheria, California requests that the CGCC place appropriate conditions on the application of CGCC-8 to California gaming tribes and that those conditions be identical to the Bureau of Gambling Control's position, i.e., individual tribes may consent to State oversight; or 2) individual tribes take steps to ensure application of the federal MICS.

Thank you for your consideration.

Sincerely,



Dale A. Miller
Chairman

cc: Elk Valley Tribal Council
Elk Valley Tribal Gaming Commission
Office of Tribal Attorney

DM:bbd

Paskenta Band of Nomlaki Indians

TRIBAL GAMING COMMISSION

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THEODORI PATA, Commission Chairman

JON PATA, Commission Vice Chairman

BRANDIN PATA, Commissioner

2008 SEP 12 AM 10:54

September 11, 2008

CONTROL

California Tribal-State Association
 C/O Paskenta Band of Nomlaki Indians
 Tribal Gaming Commission
 2655 Barham Avenue
 Corning, California 96021

Re: Paskenta Band of Nomlaki Indians Tribal Gaming Commission's
Comments in Support of Disapproval of CGCC-8

To the California Tribal-State Association:

The Paskenta Band of Nomlaki Indians Tribal Gaming Commission ("Paskenta TGC") submits the comments below as part of the minutes/record of the September 4, 2008 Tribal-State Association meeting. At the meeting, the Paskenta TGC voted to disapprove the California Gambling Control Commission's ("CGCC") proposed regulation CGCC-8 ("CGCC-8").

The Paskenta Band of Nomlaki Indians is a federally recognized Indian tribe ("Tribe") that entered into the 1999 tribal-state compact ("Compact"). The Tribe has not amended its Compact. The Tribe operates 773 gaming devices and 12 table games. Pursuant to the compact, the Tribe does not pay any revenue to the Special Distribution Fund. However, the Tribe contributes to the Revenue Trust Fund annual gaming device fees. Such payments, though, represent flat fees not based upon net win.

Under the Compact, the Paskenta TGC is the primary regulatory authority over the Tribal government gaming operation. In furtherance of its regulatory authority, the Paskenta TGC adopted by regulation the National Indian Gaming Commission ("NIGC") Minimum Internal Control Standards ("MICS") for Class III gaming prior to the opening of the Rolling Hills Casino. Subsequently, the Tribe amended its Gaming Ordinance to include the NIGC MICS as part of such Ordinance and to authorize the NIGC to monitor and enforce compliance with said standards. On May 13, 2008, the NIGC approved said amendment.

Pursuant to CGCC-8, the CGCC seeks to unilaterally impose regulatory standards upon the Tribe, authorize the CGCC to perform compliance reviews/audits of NIGC MICS and to review financials of the Tribe's gaming operations. The Tribe's Compact provides no authority for the CGCC to impose such standards and conditions on the Tribe. In addition, federal law provides no authority for such action.



In essence, CGCC-8 represents an amendment to the Tribe's compact that requires the Tribe's agreement. The Tribe does not agree to the amendment of its Compact under the terms and conditions set forth in CGCC-8. Further, the Tribe does not agree that Tribal-State discussions of CGCC-8 at Association meetings represent government-to-government negotiations for Compact amendment.

In part, the CGCC seeks to promulgate CGCC-8 because of a perceived lack of NIGC MICS resulting from the court decisions in *Colorado River Indian Tribes v. National Indian Gaming Commission*. As mentioned above, the NIGC MICS have been adopted and enforced in accordance with the Compact by the Paskenta TGC since the opening of the Rolling Hills Casino. Moreover, the NIGC approved the Tribe's amendment to its Gaming Ordinance to include NIGC MICS and NIGC oversight and enforcement authority of the Tribe's gaming operation. Based upon the action already taken by the Paskenta TGC and the Tribe, CGCC-8 is unnecessary, duplicative, and unduly burdensome.

Finally, at the meeting the Bureau of Gambling Control voted to disapprove CGCC-8 with the following recommendation: tribes should determine whether they individually: (1) wish to grant the state an oversight role; or (2) adopt the NIGC MICS, including appropriate enforcement authority. The Tribe recommends that the CGCC not readopt CGCC-8, or if it chooses to readopt the proposed regulation to place appropriate conditions on the application of CGCC-8 and that those conditions be identical to the Bureau of Gambling Control's position, i.e., individual tribes may consent to State oversight; or individual tribes take steps to ensure application of the NIGC MICS.

Sincerely,



Theodore Pata
Commission Chairman

cc: PBNI Tribal Council

Evelyn Matteucci
California Gambling Control Commission
2399 Gateway Oaks #100
Sacramento, California 95833

Rincon Band of Luiseño Indians

P.O. Box 68 Valley Center, CA 92082 ♦ (760) 749-1051 ♦ Fax: (760) 749-8901



September 18, 2008

California Gambling Control Commission
2399 Gateway Oaks Drive #100
Sacramento, California 95833

Re: Opposition to CGCC-8

Members of the California Gambling Control Commission:

The Rincon Band of Luiseño Indians ("Rincon Band") is operating its Gaming Operation in compliance with the Rincon Gaming Commission's Minimum Internal Control Standards (which Minimum Internal Controls are no less stringent than those found at 25 CFR 542), and is subject to significant regulatory oversight and enforcement by the Rincon Gaming Commission. As a clear regulatory structure is currently in place and being enforced by the an independent regulatory agency for the Rincon Band's Gaming Operation, the Rincon Band opposes the effort by the CGCC to impose unwarranted and duplicative regulations in the form of CGCC-8 in the strongest of terms. In addition to adopting the Taskforce Report dated February 13, 2008 and opposing CGCC-8 for the purposes stated within, the Rincon Band opposes CGCC-8 for the following reasons:

1. If the State Intends to Pursue the Policy Objectives Behind CGCC-8, it Should Initiate Government to Government Negotiations.

Pursuant to the Compact between the State of California and the Rincon Band, the Tribal Gaming Agency ("TGA") is the primary regulator of all aspects of gaming, gaming operation and management of the Rincon Band's gaming operation. See Compact §§ 7.1, 7.2, 8.1 *see also* 25 U.S.C. 2701 et seq. The Tribal Gaming Agency (also "Rincon Gaming Commission") is solely vested with the authority and responsibility to promulgate and enforce rules and regulations regarding Minimum Internal Control Standards ("MICS"), and indeed the Rincon Band has adopted MICS which are enforced by the Rincon Gaming Commission. There is no language within the Compact, or elsewhere in federal law, which delegates promulgation and enforcement authority of MICS to the State Gaming Agency. It appears that the State may also hold this same position on this issue as the State has entered into Memorandums of Agreement ("MOA") with the Agua Caliente Band of Cahuilla Indians, Sycuan Band of Kumeyaay Indians, Pechanga Band of Luiseno Indians, Morongo Band of Mission Indians, and the San Manuel Band of Serrano Mission Indians which specifically provide each of those tribes submit to the enforcement of MICS by the State Gaming Agency. Should the State Gaming Agency wish to assume a regulatory role that is different that that described within the Compact, the appropriate avenue for such a change would be through government to government negotiations and an

Vernon Wright
Chairman

Bo Mazzetti
Vice-Chairman

Stephanie Spencer
Council Member

Gilbert Parada
Council Member

Charlie Kolb
Council Member
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amendment to the Compact or other mutual agreement. Should the State choose to engage the Rincon Band in government to government negotiations on the policy objectives behind CGCC-8, we suggest that the draft of CGCC-8 prepared by the Attorney Work Group clearly indicates our willingness to discuss this issue.

2. There is no Void in Regulation. The State has Shown no Need for this Regulation.

Even assuming for the sake of argument that the TGA is not the primary regulator of Indian gaming pursuant to the Indian Gaming Regulatory Act ("IGRA") and the clear terms of the Compact, the State has not shown any need to substantially modify the Compact to promulgate and enforce CGCC-8. The CRIT decision did not change the state of the law, nor did the CRIT decision vest additional authority within the State. See Colorado River Indian Tribes v. National Indian Gaming Commission, 451 F.3d 873 (D.C. Cir. 2006). The CRIT decision simply affirmed what we always knew – the NIGC does not have this authority – rather, regulatory authority is to be governed by the terms of the Compact, and under the Compact, the authority lies with the TGA. The CRIT decision did not change the law. The CRIT decision is simply being used by the CGCC as a reason to rewrite the Compact to minimize TGA authority and tribal sovereignty. There is no evidence that any TGA has reacted to the CRIT decision with an abandonment of internal controls.

As primary regulators of our gaming operation, the Rincon Gaming Commission takes its job very seriously and is vigilant in its comprehensive and strict regulation of the Gaming Operation. The Rincon Gaming Commission is staffed with experienced professionals with significant expertise in the regulation of Indian gaming. As further evidence of the Rincon Band's commitment to regulation of our Gaming Operation, the 2008 budget for our Tribal Gaming Agency is \$1,868,243, the 2008 budget for security and surveillance is \$3,663,869, and the 2008 budget for the Gaming Operation's compliance department is \$167,623. The total amount budgeted for gaming regulation and related costs for 2008 is \$5,699,735. Furthermore, in a survey conducted by the Rose Institute of State and Local Governments at Claremont McKenna College in 2007 stated that the estimated average annual tribal gaming agency budget for California Indian tribes was \$1,556,600 and the projected total amount spent on gaming regulation by Indian tribes in California is \$90,282,837 per year. Clearly tribal gaming in California heavily regulated.

As the Rincon Band retains the sole proprietary interest in our gaming operation, we have the most to lose in the event of any tribal MICS violations. Strong and appropriate tribal regulation by the Rincon TGA is beneficial to the Gaming Operation and the Rincon Band. Duplicative regulation in the form of CGCC-8 is not necessary or warranted. The Rincon Band does not oppose the idea of regulation in general. As the CGCC is well aware, our Gaming Operation is already subject to significant regulation by the NIGC, the TGA and pursuant to the express terms of the Compact. State regulation has not been absent as evidenced by the fact that the California Department of Justice - Bureau of Gambling Control has been conducting Compact compliance reviews of the Rincon Band's Gaming Operation since 2001. Through these years of compact compliance review by the Bureau, the Bureau has not alleged that the Rincon Band did not maintain internal controls or otherwise comply with Section 8.1 – 8.1.14 of

the Compact. The absence of internal control and auditing violations is a testament to the effectiveness of the regulatory oversight of the Rincon Gaming Commission.

The Rincon Band opposes ceding any of the Rincon Band's hard fought and retained regulatory authority to the State without an accompanying cession of regulatory power from the State in the form of a Compact amendment.

3. The Compact does not Provide the CGCC Authority to Substantially Alter the Terms of the Compact.

The Compact agreed to by the Rincon Band and the State does not give the State Gaming Agency plenary power to modify the terms of the Compact at will. There is no provision within the Compact which states that the State Gaming Agency may promulgate and enforce the terms of CGCC-8. While the Compact provides the State with access to a Tribe's Gaming Facility and limited inspection rights of "papers, books, records, equipment, or places where such access is reasonably necessary to ensure compliance" with the Compact, there is no provision within the Compact which authorizes the State Gaming Agency to alter the terms of the Compact and enact and enforce regulations regarding MICS and auditing. See Compact §§ 7.0– 7.4.4.

Additionally, the argument that the NIGC MICS are an implicit and necessary part of the Compact also fails as the Compact does not include such language. The State was well aware of how to incorporate federal standards into the Compact as evidenced by Section 6.4.7 which requires a TGA to review and consider "all information required under IGRA, including Section 556.4 of Title 25 of the Code of Federal Regulations, for licensing primary management officials and key employees." Failure of the State not to include a reference to a specific requirement of 25 CFR 542 in the Compact does not provide the State Gaming Agency with authority to alter the express provisions of the Compact to include such standards.

Sections 7.0 and 8.0 clearly provide that the TGA, and not the State Gaming Agency, is vested with the authority to promulgate and enforce rules and regulations.

It is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of this Gaming Compact, IGRA, and the Tribal Gaming Ordinance with respect to Gaming Operation and Facility compliance, and to protect the integrity of the Gaming Activities, the reputation of the Tribe and the Gaming Operation for honesty and fairness, and the confidence of patrons that tribal government gaming in California meets the highest standards of regulation and internal controls. To meet those responsibilities, the Tribal Gaming Agency shall adopt and enforce regulations, procedures, and practices as set forth herein.

Compact Section 7.1.

The language in 7.1, and Sections 7.2 and 8.0, clearly state that it is the responsibility of the TGA to conduct on-site gaming regulation and ensure that tribal gaming meets the highest standards of regulation and internal controls. As tribal-state gaming compacts are governed by

general principles of contract interpretation, the plain language and specific terms of the Compact must control. See State of Idaho v. Shoshone-Bannock Tribes, 465 F.3d 1095, 1098, (9th Cir. 2006). As the plain language of the Compact vests the TGA with primary regulatory authority, attempted enactment of CGCC-8 by the State Gaming Agency which is contrary to the Compact's specific language would be without effect.

The closest the Compact comes to discussing enactment of the substance of CGCC-8 is in Section 8.1 where the Compact requires the Tribal Gaming Agency to enact rules and regulations regarding (and confirms that the TGA is vested with the primary authority for enforcement of such regulations) providing an audit of the Gaming Operation no less than annually by and independent certified public accountant, and internal controls. See Compact Section 8.1 – 8.1.14 see also Compact §§ 7.1, 7.2. The Compact clearly provides that the TGA is proper authority for promulgating and enforcing rules and regulations relating to auditing and internal controls. Without a specific delegation of authority within the Compact to provide that the State Gaming Agency may supercede tribal regulatory authority, then that authority must remain within the Tribal Gaming Agency. Implementation of CGCC-8 would render these express Compact provisions a nullity.

The proposed CGCC-8 circumvents the Compact amendment provisions of the existing Compact. It is a rewrite of sections 7 and 8, which designate the TGA as the entity establishing the minimum internal controls and enforcement of those controls, and replaces the TGA with the State Gaming Agency. The proposal supplants the TGA with the CGCC and as such is subject to the Compact amendment process, not the process for detailing baseline regulations identified in Section 8.4-8.4.1. As the substance of CGCC-8 is more properly the subject of the Compact amendment process, this is an issue that is more properly addressed in a government to government negotiation.

4. Additional Auditing and Compliance Review Requirements are Compact Amendments.

The auditing and compliance review provision of CGCC-8 provides for significant and unnecessary auditing by the CGCC. Such a new requirement is well beyond the scope of the Compact and would constitute a de facto amendment to the Compact. The authority to audit is one best discussed in the Compact amendment context. Currently the Rincon Band's Compact provides for auditing of those Gaming Operations which pay into the Special Distribution Fund ("SDF"). Compact § 5.3. The Rincon Band does not pay into the SDF as we did not operate any Gaming Devices prior to September 1, 1999. This concern appears to be resolved in more recent Compact amendments which provide for State auditing in the event the State receives a revenue share based upon the total "Net Win" of the Tribe. See 2007 Pechanga Compact Amendment at § 4.3.1. It is clear that it is helpful for the State to retain auditing authority when receiving a revenue share based upon Net Win. Based upon those recent Compact amendments, it is clear that the State is aware that inclusion of such authority within the Compact is necessary to ensure that such authority is retained. The fact that the Compact lacks broad auditing authority for the State Gaming Agency does not by itself serve as a source of authority for the State Gaming Agency to enact de facto Compact amendments on its own accord.

Government to Government Discussions are Appropriate in this Instance.

The proper forum for State Gaming Agency authority over Minimum Internal Control Standards, auditing and additional enforcement authority is the Compact amendment process. Any effort other than a government to government negotiation for amendment of the Compacts is void ab initio.

The Rincon Band is encouraged by the fact that that State would like to see changes to the Compact. The Rincon Band would like to see changes to the Compact as well. We suggest that out of respect for the sovereignty of both the Tribe and the State that the CGCC encourage the Governor's office to meet with the Rincon Band to discuss amendments to our Compact which could be mutually beneficial. We do not feel that it is necessary for an additional state bureaucracy to be built up for the purpose of unnecessary, burdensome, and duplicative regulation, especially in these lean economic times. Nevertheless, the Rincon Band is always willing to consider any proposals that the State may have for amending the Compact.

Respectfully,



Bo Mazzetti
Vice Chairman
Rincon Band of Luiseño Indians

Memorandum

TO• Tribal-State Association
 FROM• Rumsey Indian Rancheria of Wintun Indians of California
 DATE• September 4, 2008
 RE• Rumsey Band's Objections To CGCC-8

The Rumsey Band adopts in its entirety the Tribal-State Association's Regulatory Standards Taskforce February 13, 2008 Final Report regarding the California Gambling Control Commission's proposed regulation, CGCC-8. The Rumsey Band also raises the following specific objections to CGCC-8, and requests that the CGCC address these objections.

1. CGCC-8 IS AN ATTEMPT TO AMEND THE COMPACT THROUGH REGULATION

According to the CGCC's April 23, 2008 response to the Task Force Final Report, CGCC-8 "is an exercise of the [CGCC's] authority under Sections 7.4, 7.4.4, 8.4 and 8.4.1 of the Compact." (Response, p. 6.) On their face, however, none of these Compact sections allow the CGCC to impose on the Rumsey Band or its Tribal Gaming Agency ("TGA") through CGCC-8 the requirement to adopt internal control standards at least as stringent as the federal Minimum Internal Control Standards ("MICS"), to submit financial audits to the CGCC, or to submit to MICS compliance reviews/audits by the CGCC. Indeed, no provision of the Compact between the State and the Rumsey Band anywhere even mentions MICS.

The Compacts the State signed with four Southern California tribes in 2006 proves that CGCC-8 is an improper Compact amendment. Those Compacts all included Memoranda of Agreement that imposed on the tribes at issue the obligation to maintain and implement MICS, just as CGCC-8 attempts to do. If the CGCC truly always had, as it claims, the power under pre-2006 Compacts to do all that CGCC-8 provides, it would not have had to include the Memoranda of Agreement in the 2006 Compacts.

Moreover, the Compact, at Section 8.1, expressly vests the TGA with the authority to promulgate rules governing the topics in Sections 8.1.1 through 8.1.14 and to ensure their enforcement in an effective manner. Section 8.1 is a recognition of the TGA's jurisdiction over these areas. Nothing in Section 8.1 confers jurisdiction on the State to enforce the TGA rules pertaining to the gaming operation.¹ As such, CGCC-8 is an attempt to adopt a regulation that materially alters express provisions of the Compact as it exists. This the CGCC may not do.

¹ Compact Section 7.4, which only authorizes the CGCC to inspect Cache Creek Casino's Class III records where reasonably necessary to ensure compliance with the Compact, cannot be read to wipe Section 8.1 out of existence. Section 7.4 simply allows the State to make sure rules governing the subjects of Sections 8.1.1 through 8.1.10 are in place, and to review whether the TGA has a mechanism in place to ensure enforcement of those rules.

If the State wishes to implement the provisions of CGCC-8, it must engage in government-to-government negotiations with the Rumsey Band (and every other tribe) to amend the Compact.

2. **THE RUMSEY BAND HAS SUBMITTED TO NIGC OVERSIGHT**

With respect to the Rumsey Band, at least, CGCC-8 is redundant, even if it were appropriate. On December 4, 2007, the Rumsey Tribal Council amended the Tribe's gaming ordinance to allow the NIGC to continue MICS enforcement, just as it had prior to the *Colorado River Indian Tribes v. NIGC* decision. The NIGC approved the amended ordinance on January 11, 2008. With the continued regulatory oversight from the NIGC, any claimed State authority is unnecessary, redundant and burdensome.

3. **THE RUMSEY BAND HAS SUBMITTED AN ALTERNATIVE, APPROPRIATE PROPOSAL**

Some months back, the Rumsey TGA submitted to the Tribal-State Association an alternative to CGCC-8. That proposal highlighted the authority the CGCC *actually has* under the Compact. Specifically, under the Rumsey proposal, each tribal gaming agency would maintain a System of Internal Controls ("SIC") that would equal or exceed the agency's established MICS. The CGCC, in turn, could ensure each tribe's compliance with the SIC by conducting compliance reviews of the tribe's gaming operation. The CGCC would then provide a draft written report of its findings to the tribe, which could either accept or dispute the findings. Disputes that could not be resolved informally or by the full CGCC would then be subject to the Compact dispute resolution process.

The Rumsey Band continues to believe that no additional regulation is necessary. If the CGCC insists on implementing a regulation, that prepared by Rumsey's TGA is the only proposal that complies with the Compact. In its April 23, 2008 response to the Task Force Report, the CGCC claims it integrated into CGCC-8 portions of the Rumsey proposal. Substantively speaking, that is not true. Moreover, the CGCC never provided the Rumsey TGA any formal comments or response to its proposal.

4. **THE CGCC TREATS TRIBES AND CARD ROOMS DIFFERENTLY**

The CGCC's April 23, 2008 response to the Task Force Report disputes the conclusion that CGCC-8 represents disparate treatment of card rooms and tribes by the CGCC. As proof, the CGCC cites the many pages of regulations it does have with respect to card rooms. The CGCC, however, does not dispute that it has no MICS in place for non-tribal gaming facilities in California.

The CGCC has plenary jurisdiction over non-tribal gaming facilities in California, yet does not impose on them MICS oversight. Tribal casinos such as Cache Creek Casino are subject to MICS oversight from tribal gaming agencies and the NIGC, and compact compliance oversight from the CGCC, yet the CGCC doggedly continues to assert its right to impose even further regulation on tribal casinos in the form of CGCC-8. It is hardly surprising that tribes view the CGCC's attempt to saddle them with CGCC-8 as discriminatory, and nothing in the CGCC's April 23 response to the Task Force Report demonstrates otherwise.



Torres Martinez Gaming Commission

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September 18, 2008

Evelyn Matteucci
State of California Gambling Control Commission
2399 Gateway Oaks Dr #100
Sacramento CA 95833-4231

Re: Objections to CGCC-8

Dear Mrs. Matteucci:

The Torres Martinez Gaming Agency (TMGA) was present for the September 4th Tribal-State Association meeting held at Rolling Hills Casino, Corning, CA. During this meeting the California Gambling Control Commission (CGCC) proposed CGCC-8 regulation to the gaming Tribes of California for approval to impose a State Minimal Internal Control Standard (MICS) on their tribal gaming enterprises. The motion to approve such regulation was denied by a majority vote of the Tribal-State Association that afternoon, followed by a motion made and passed (majority vote) to have a 14-day comment period for Tribes that want to present to the State their individual CGCC-8 regulation vote reasoning.

The TMGA recognizes and supports the importance of the CGCC's regulatory oversight per our State Compact; however it so happens that within this same Compact the TMGA is designated as primary regulator of our gaming facility and operation. Thus the TMGA believes the proposed CGCC-8 regulation means to create an unnecessary duplication of regulatory monitoring. In fact both the TMGA and the National Indian Gaming Commission (NIGC) have already been performing their regulatory roles above accepted standards. Conceptionally, we perceive the proposed CGCC-8 regulation as pairing both Minimum Internal Controls Standards (MICS) and Tribal Internal Control Standards (TICS) that the TMGA continues to adhere to since opening of our gaming facilities.

For the record the TMGA objects to the above-mentioned regulation for the following reasons:

- The State of California already plays a prominent regulatory role as agreed to in our gaming Compact.
- The TMGA has adopted Tribal Internal Controls, and monitors and enforces industry standard security regulations at our gaming facility that are, at minimum, as stringent as the federal standards proposed by the state.

Torres Martinez Gaming Commission

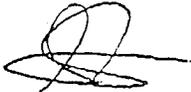
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- The NIGC, a federal regulatory agency, already audits and enforces compliance with our standards.
- The CGCC-8 regulation will duplicate the regulatory monitoring at our gaming facility and merely increases California's debt problem by creating more unnecessary costs for our Tribe and California state tax payers.

In conclusion, the TMGA has thoroughly considered the proposed CGCC-8 regulation and in our opinion it falls outside the scope of State authority to mandate such regulation over what already applies and works quite effectively and efficiently. The State's proposed regulation basically attempts to add new processes and procedures that are nowhere suggested or authorized in our Tribal gaming Compact.

It truly matters to us that this comment letter will assist State regulators in succinctly understanding our position and consideration due our sovereign status. Please contact me directly should you require further information or details on this important issue.

Sincerely,



Alex Sanchez
TMGC, Executive Director
Tribal-State Association, Delegate

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



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DIVISION OF LAW ENFORCEMENT

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September 29, 2008

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

RE: Minimum Internal Control Standards, CGCC-8

Dear Chairman Shelton:

As the law-enforcement component of the "State Gaming Agency" described in the tribal-state compacts, the Department of Justice is very concerned that tribal gaming operations in California be conducted in accordance with strict internal controls, and that those controls be enforced rigorously by the tribal gaming agencies having responsibility for them. Among other things, the purpose of the Compacts is "to Develop and implement a means of regulating Class III gaming . . . on the Tribe[s'] Indian lands to ensure it's fair and honest operation in accordance with [the Indian Gaming Regulatory Act] . . ." (See Compacts, § 1.0(b).) By addressing matters such as cash handling and counting, documentation, game integrity, auditing, and surveillance, a gaming Tribe's maintenance and enforcement of internal controls furthers the State's legitimate interest in discouraging theft, embezzlement, and other criminal activity—conduct that is of proper concern to the Department of Justice in light of California's criminal-law jurisdiction on Indian lands. (18 U.S.C.A. §§ 1162, 1166(d); Compacts § 8.2.) And, of course, by virtue of its entitlement under the Compacts to share in gaming revenue (Compacts § 5.0), the State is properly interested in preventing loss of casino revenues to theft or embezzlement. It is, therefore, appropriate that the Commission should identify a system of internal controls, such as the Minimum Internal Control Standards (MICS) adopted by the National Indian Gaming Commission (NIGC; 25 C.F.R. Part 542) as the minimum standard against which California would measure the Tribes' compliance with their compact obligations.

Our opposition to the Commission's proposed CGCC-8 has not been about the need for internal controls in tribal casino operations or, indeed, about the merit of using the NIGC MICS as a minimally acceptable standard for internal controls. Our opposition has only been about the necessity for imposing a system of MICS on all tribal gaming operations in California when it appears that most gaming Tribes have either already adopted internal controls that are comparable to the NIGC MICS or that they are willing to do so as an exercise of their own sovereign discretion. Gaming Tribes are certainly no less concerned than is the State to prevent criminal activity within their casino operations and to safeguard against loss due to customer or

employee access to cash or cash equivalents. As you are aware, several Tribes from across the Nation, including Tribes from California, participated in the development of the NIGC MICS. (See 71 Fed. Reg. 27386 (May 11, 2006).)

Truly successful tribal-state regulation of Class III gaming in California can only be the result of genuinely cooperative efforts between the gaming Tribes and the State—efforts that reflect a recognition of the government-to-government relationship that necessarily informs joint regulation pursuant to compact. While we do not doubt the Commission's authority under the Compacts to establish uniform regulatory standards concerning internal controls, we do not believe that this authority need be exercised in the manner reflected in CGCC-8, nor do we believe that the public interest compels imposition of a regulatory standard in the manner proposed by that regulation.

Accordingly, we are suggesting that the Commission substitute the following language for what is presently in paragraph (b) of CGCC-8:

(b) The State Gaming Agency construes Sections 6.0, 7.0, and 8.0 of the Compacts to impose on tribes an obligation, among others, to adopt and maintain written internal control standards that apply to its operation and support of Class III gaming. The State Gaming Agency will deem a tribe to be in compliance with this obligation if the Tribal Gaming Agency (TGA) demonstrates that it has adopted and maintains written internal control standards that equal or exceed the Minimum Internal Control Standards set forth at 25 C.F.R. Part 542 (as in effect on October 1, 2006, as may be amended from time-to-time) (hereafter MICS).

(1) In recognition of the importance of adequate internal controls to the State, the State Gaming Agency regards either of the following to be a material breach of the Compact:

(A) An unreasonable failure to maintain written internal control standards that are at least as stringent as the MICS;

(B) An unreasonable failure to afford the Bureau of Gambling Control access to, and an opportunity to copy, the Tribe's written internal control standards or amendments thereto when requested.

(2) Nothing in subparagraph (1) should be construed to preclude the State and a Tribe from agreeing to binding arbitration as the means for deciding whether a Tribe's internal controls are at least as rigorous as the MICS.

In our view, this amendment would provide the Commission with a standard by which to measure a Tribe's compliance with the obligation to adopt adequate internal controls, while, at the same time, preserving the government-to-government relationship and emphasizing the importance of internal controls to the State.

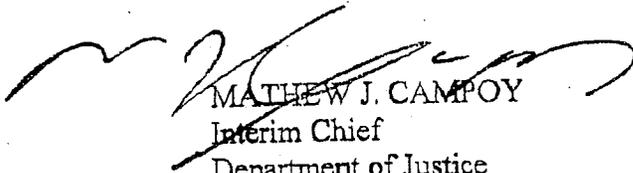
Under Section 11.2.1 of the Compacts, the State may unilaterally terminate the agreement

MICS, CGCC-8
September 29, 2008
Page 3

upon a judicial determination that the tribe is in material breach. Maintenance and enforcement of an adequate system of internal controls by tribal gaming agencies is an essential part of preserving a casino operation free from criminal activity. The State has a right under the Compacts not only to assure itself that Tribes are meeting their part of the bargain in this critical area of regulation, but also the right to treat unreasonable non-compliance as a material breach.

Thank you for your consideration.

Sincerely,



MATHEW J. CAMFOY
Interim Chief
Department of Justice
Bureau of Gambling Control

For EDMUND G. BROWN JR.
Attorney General

**CALIFORNIA GAMBLING CONTROL COMMISSION RESPONSE TO TRIBAL
TASK FORCE REPRESENTATIVES FINAL REPORT STATEMENT OF NEED
RE: CGCC-8, DATED FEBRUARY 13, 2008.**

April 23, 2008

INTRODUCTION

On February 13, 2008, the State Gaming Agency (SGA) Association and Task Force representatives to the Association and Task Force meetings at which CGCC-8 was discussed were presented with a copy of the report entitled, "Association Regulatory Standards Taskforce Final Report Statement of Need Re: CGCC-8, February 13, 2008" (Report). While the SGA representatives provided verbal input regarding the matters covered in the Report during the Association and Task Force meetings involving CGCC-8, the actual drafting of the Report was accomplished by Tribal Task Force representatives and their counsel. Accordingly, this Response is intended to provide the Association with the views of the California Gambling Control Commission (Commission, CGCC) regarding the Report's assertions and to provide the Commission's position with regard to the issues discussed in the Report, including the Statement of Need. The headings below and their content respond to the headings and content in the Report.

At the outset, the Commission wishes to acknowledge the hard work and professionalism of the Tribal Task Force participants. CGCC-8 prompted an unprecedented response from tribal representatives and the sheer number of Task Force participants made the process arduous. Nevertheless, in spite of strongly held feelings about many aspects of CGCC-8, all parties acquitted themselves with professionalism. This Response is made in the same spirit.

STATEMENT OF NEED

The Draft Statement of Need alluded to the CRIT decision and its effect on oversight of Tribal Gaming by the NIGC. While the Commission continues to believe that the decision did indeed leave a void in independent, non-tribal oversight of Tribal Gaming regulation, in response to widespread disagreement with that assertion and in response to language suggested by the Rumsey Rancheria, the Commission modified the Statement and the Purpose section of CGCC-8 (CGCC-8 section (a)) to reflect the other aspect of the need and purpose of the regulation: to provide an effective and uniform manner in which the SGA can conduct the compliance reviews contemplated in Compact Sections 7.4 and 7.4.4. The reviews include assuring Tribal (and TGA) compliance with the requirements of Compact Sections 6.1 and 8.1 – 8.1.14.

We agree with the Report that the CRIT decision does not and cannot change the terms of the Tribal-State Gaming Compact (Compact). However, we disagree that CGCC-8 attempts to amend the terms of the Compact. For reasons expressed in more detail in the section on Legal Authority, we believe the adoption of CGCC-8 is well within the Commission's authority, as provided in the Compact.

Moreover, while we agree with the repeated assertions of Tribal representatives that the NIGC MICS remain the applicable standards for tribal gaming operations in California, we reiterate that including the NIGC MICS as a baseline in CGCC-8 fosters the uniformity goals expressed in Compact Section 8.4 and facilitates the SGA's exercise of its compliance authority and responsibility found in Section 7 of the Compact. We also are constrained to point out that CGCC-8 does *not* require any tribe to adopt the NIGC MICS in carrying out its responsibilities under Sections 6 and 8. CGCC-8 requires that whatever MICS a Tribe may choose to adopt meet or exceed the requirements of the NIGC MICS. Further, CGCC-8 provides for variances (CGCC-8 section (l)) and for consultation between the SGA and individual tribes and the Association as a whole regarding the effect of changing technology on compliance matters (CGCC-8 section (m)).

Finally, we disagree with the Report's assertion that CGCC-8 provides for financial audits by the state. No such language was included in the draft upon which the Report was based and, in response to concerns raised by a number of Tribes, the version of CGCC-8 approved by the CGCC (March 27, 2008) for consideration by the Association contains specific language eschewing such authority. (CGCC-8 section (h).)

ECONOMIC IMPACT

First, as outlined above, the Commission reiterates that CGCC-8 has not and does not provide for an annual financial audit by the SGA.

Second, while any outside review must entail the use of some gaming operation staff resources, the SGA is dedicated to working with individual TGA's to minimize the impact of compliance reviews. We believe that through consultation with Tribal regulators on a case-by-case basis, the impact that such compliance reviews may have on individual gaming operations will be minimized. We are acutely aware that our ability to efficiently conduct meaningful compliance reviews depends to a large extent on the cooperation of individual TGA's and gaming operation personnel.

APPLICATION TO CARDROOMS

As stated in more detail below, the State's authority to promulgate CGCC-8 is found in the Compact. When the 1999 Compact was signed, the California Gambling Control Commission was not even in existence. For a number of

years, the Commission's staffing levels were minimal and its focus with regard to regulations applicable to cardrooms was on the licensing process. Extensive regulations have been developed regarding licensing of owners, and key employees; work permits for other employees, registration of manufacturers and distributors, third party providers, the discipline process, emergency preparedness and evacuation, and responsible gambling; in addition to accounting and financial reporting regulations. Included in regulations currently pending in the formal Administrative Procedure Act rulemaking process are regulations pertaining to MICS for check cashing, extension of credit, automatic teller machines and abandoned property. MICS for drop and count procedures, cage requirements, security, and surveillance have been proposed to the cardroom industry in informal comment sessions and are pending the formal process. The Bureau of Gambling Control also has regulations regarding cardroom operation and the game authorization process.

The assertion that CGCC-8 represents a "discriminatory" approach to gaming regulations by the CGCC is unfounded. Commission and Bureau of Gambling Control cardroom regulations run some 130 pages, not including forms. The extent of the State's authority over cardrooms as demonstrated in the Gambling Control Act and the Discipline regulations compared to the division of authority between sovereign signatories to the Compact presents a stark comparison. Moreover, in contrast to the Report's assertions, CGCC-8 neither ignores the fact that California tribes follow the NIGC MICS – that assumption was implicit in the development of CGCC-8 – nor does the Commission "not respect the ability of tribal gaming agencies to enforce such standards." CGCC-8 is not discriminatory. It is an exercise of the State's compliance overview authority found in the Compact. The Compact is clear in providing that the SGA may inspect the gaming operation and associated documents to assure compliance with the Compact.

FOSTERING UNIFORMITY

The Report incorrectly conflates Tribal (and TGA) use of the NIGC MICS in carrying out regulatory responsibilities under the Compact with SGA review of Compact compliance. The Commission does not dispute the Report's assertion that gaming tribes played a major role in the development of the NIGC MICS, nor does the Commission dispute the Report's assertion that the NIGC MICS are the standard for California gaming tribes. On the contrary, those assertions were essential to the Commission decision to adopt the NIGC MICS as a baseline or bench mark for compliance review. The selection of a benchmark already employed by California's gaming tribes was seen as a way of avoiding arbitrariness in compliance reviews. The Commission reasoned that if Tribes in developing their own MICS used the NIGC MICS as a baseline, the use of the same baseline by the SGA assured uniformity of review and consistency with the uniformity goals of Compact Section 8.4.

CGCC-8 does not require any Tribe to adopt the NIGC MICS. Nor does it seek to amend the Compact. The Compact sets out the areas for which Tribes and TGA's must develop internal controls and must ensure the gaming operation is run pursuant to those controls. (See Sections 6.1, 8.1 – 8.1.14.) CGCC-8 does not seek to expand, nor by its terms does it expand those Compact terms. It sets a benchmark for compliance review, a benchmark that the Tribes have repeatedly asserted they already use, and thus the industry standard for tribal gaming in California. Further, it is a benchmark that explicitly takes into consideration the size and scope of the gaming operation.

ALTERNATIVES TO CGCC-8

From the Commission's perspective, Compact negotiations are not called for because the SGA's compliance review authority is clearly established in the existing Compact. While individual agreements could accomplish the same purpose, a uniform regulation adopted in accordance with the Compact provisions specifically authorizing such regulations seems much more efficacious. It ensures uniformity and fairness in SGA compliance review and, by taking into account the scope of individual gaming operations, assures a level playing field for all tribes.

Tribal Task Force members also proposed alternative language that contemplated either waiting for new federal authority for the NIGC or eliminating SGA compliance review via CGCC-8 if the Tribe and the NIGC agreed to NIGC oversight through either MOU/MOA's or changes to Tribal gaming ordinances. Neither of these approaches takes into account the State's sovereignty as a signatory to the Compact. The State/SGA authority to inspect the gaming facility and all gaming operation or facility records relating thereto (Section 7.4) and the SGA's authority to be granted access to papers, books, records, equipment or places where such access is reasonably necessary to ensure compliance with the Compact (Section 7.4.4) are derived from the Compact. They are not and cannot be made dependent upon the statutory authority of the NIGC, or upon other arrangements between the NIGC and individual tribes.

Both the Tribe and the State are sovereigns. Each has sovereignty the other must respect; each has the right to demand that the other sovereign comply with its responsibilities and obligations mutually agreed to in the Compact.

ALTERNATIVE LANGUAGE TO CGCC-8

As the report indicates, there were two alternate language proposals submitted. However, the Commission representatives were repeatedly and pointedly reminded at Task Force meetings that neither of these proposals was agreed to by the tribal regulatory Task Force members as a group and that there were a number of Tribes whose opposition to CGCC-8 would not be changed by language changes. Nevertheless, the Commission adopted language from each

proposal. Much of the Purpose section of CGCC-8 (section (a)) is taken from the Rumsey proposal and the language in CGCC-8 section (f) regarding Agreed Upon Procedures Audits comes from the Attorney Work Group Proposal. Further, both the Attorney Work Group and Rumsey proposals adopt the NIGC MICS as a benchmark.

With regard to language inserting binding arbitration into the dispute resolution process, it has been the Commission's position that CGCC-8 derives its authority from the Compact and therefore, the dispute resolution process in CGCC-8 should follow that found in the Compact.

LEGAL AUTHORITY

It is the position of the Commission, as it has been throughout this process, that legal authority for CGCC-8 is firmly grounded in the Compact.

First, as a general proposition, the State, like the Tribe, has the right under the Compact to demand that the other signatory comply with the terms of the Compact. In fact, each signatory has waived sovereign immunity with regard to matters of Compact compliance. (See Sections 9.4 and 11.2.1(c).)

Second, Sections 8.4 and 8.4.1 clearly contemplate that the SGA may pass regulations regarding the Tribe's gaming operations in order to foster statewide uniformity of regulation of Class III gaming operations. Section 8.4 provides:

"In order to foster statewide uniformity of regulation of Class III gaming operations throughout the state, rules, regulations, standards, specifications, and procedures of the Tribal Gaming Agency in respect to any matter encompassed by Sections 6.0, 7.0, or 8.0 shall be consistent with regulations adopted by the State Gaming Agency in accordance with Section 8.4.1."

CGCC-8 is clearly such a regulation. It does not, as arguably it could, require the TGA to make its "rules, regulations, standards, specifications, and procedures regarding matters encompassed by Sections 6.0, 7.0, or 8.0 . . . consistent with regulations adopted by the State Gaming Agency." (Section 8.4.1.) Instead, it establishes as a benchmark the industry standard for MICS, the NIGC MICS. It does not purport to require Tribes to adopt the NIGC MICS in whole or in part, (though throughout this process we have been repeatedly told that tribes have already adopted the NIGC MICS) but instead requires that whatever MICS each TGA adopts be equal to or more stringent than the NIGC MICS. The NIGC MICS were chosen as a benchmark because the Commission was repeatedly assured by gaming tribes that it was both the industry standard and the MICS of choice for California gaming tribes.

CGCC-8 does not purport to usurp the primary role of TGA's in establishing and enforcing tribal MICS. CGCC-8 establishes guidelines and procedures for the SGA in exercising its authority under Sections 7.4 and 7.4.4 to independently ensure that the TGA's are carrying out their responsibilities under the Compact; in short, to ensure compliance with the Compact. Indeed, Compact Section 7.4 makes clear that notwithstanding the primary regulation and enforcement role of the TGA, the SGA may inspect the Tribe's gaming facility and gaming operation or facility records with regard to Class III gaming, subject to conditions outlined in Sections 7.4.1 through 7.4.3:

“Notwithstanding that the Tribe has the primary responsibility to administer and enforce the regulatory requirements of this Compact, the State Gaming Agency shall have the right to inspect the Tribe's Gaming Facility with respect to Class III Gaming Activities only, and all Gaming Operation or Facility records relating thereto”

Further Section 7.4.4 makes clear the SGA's broad right of access to documents, equipment and facilities:

“Notwithstanding any other provision of this Compact, the State Gaming Agency shall not be denied access to papers, books, records, equipment or places where such access is reasonably necessary to ensure compliance with this Compact.”

Thus, it is clear that the SGA may promulgate regulations in respect to matters encompassed by Sections 6.0, 7.0 and 8.0 in order to foster statewide uniformity of regulation of Class III gaming operations throughout the state. Further, it is clear that notwithstanding that the Tribe's have primary responsibility for administering and enforcing the Compact's regulatory requirements, the SGA has the right to inspect the Gaming Facility and Gaming Operation or Facility records and, notwithstanding any other provision of the Compact, the SGA is to be allowed access to papers, equipment and places where such access is reasonably necessary to ensure compliance with the Compact.

CGCC-8 is a regulation authorized under Section 8.4 to ensure uniformity in the regulation of matters encompassed by Sections 6.0, 7.0 and 8.0. It is an exercise of the SGA's authority under Sections 7.4, 7.4.4, 8.4 and 8.4.1 of the Compact. Thus is it not an “amendment” of the Compact nor does it change the terms of the Compact. It is not, by its language or intent, an attempt to limit or reduce the primary role of the TGA in the regulation and enforcement of Class III gaming.

DUPLICATIVE

The Report points to the Governor Schwarzenegger's letter of March 30, 2007 to the Senate Committee on Indian Affairs, quoting the governor as follows:

"[California's] approach with the compacts and state oversight of internal controls has been to complement, rather than duplicate NIGC's activities."

CGCC-8 is not, as the Report asserts, "entirely inconsistent" with the Governor's message to the Committee. In fact, it is not at all inconsistent. As has been made clear at the Task Force meetings and as Chairman Shelton has made clear at the March 27, 2008 Commission meeting, the CGCC has and will continue to make every effort to coordinate with the NIGC. However, SGA compliance reviews are not duplicative of NIGC reviews; they are a legitimate exercise of the State's authority under the Compact. As NIGC Chairman Philip Hogen's April 17, 2008 written testimony to the Senate Indian Affairs Committee Oversight Hearing Committee indicated: "To put the regulation of tribal gaming in proper context, we need to appreciate that the vast majority of the regulation of tribal gaming is done by the tribes themselves, with their tribal gaming commissions and regulatory authorities. In many instances, where tribes conduct Class III or casino gaming, state regulators also participate in the [regulatory] process. NIGC has a discrete role to play in this process and is only one partner in a team of regulators." The SGA focus is Compact compliance; the NIGC has no interest in, nor authority with regard to Compact compliance. Further, to assert that because the NIGC has an oversight role with regard to internal controls the State should forbear from exercising its compliance review authority under the Compact is to ignore the State's role as a sovereign Compact signatory.

The fact that tribes have already put into place standards "at least as stringent as NIGC MICS" does not make CGCC-8 duplicative. Nor does the fact that a number of Tribes have changed their gaming ordinances or entered into agreements purporting to grant the NIGC "authority" to monitor and enforce tribal compliance with those standards. The loss of such authority as a result of the CRIT decision brought focus on the need for State compliance oversight. The authority for such oversight has always existed in the Compact.

Finally, the Report's assertion that CGCC-8 contemplates financial audits such as those found at 25 U.S.C. section 2710(b)(2)(C) is unfounded. The Commission has consistently indicated that CGCC-8 was not designed to facilitate such audits, and language added to the March 2, 2008 version of CGCC-8 (CGCC-8, paragraph (h)) makes that explicit.

As stated on many occasions, the Compact provides the State with the authority (and responsibility) to review tribal standards to ensure compliance with the Compact. Neither tribal regulatory activities, nor NIGC regulatory activities displace or substitute for such State compliance reviews.

RECOMMENDATION

The Commission is well aware of the widespread and persistent opposition to the proposed CGCC-8 among many Task Force and Association members. Nevertheless, we ask that you re-consider these positions.

As we have stated on many occasions during this process, the Commission expects that the vast majority of gaming tribes have standards in place and run their gaming operation according to those standards in compliance with the Compact. However, that does not alter the State's clear authority to conduct compliance reviews. Further, from the perspective of the SGA, the State not only has the authority to conduct compliance reviews, but the responsibility as well. The public as well as the legislative and executive branches of state government have made that clear. CGCC-8 simply outlines a process and sets a uniform benchmark for such reviews. It does not arrogate to the State any authority not already found in the Compact. It does not prescribe specific standards. Rather, it sets a uniform benchmark for such standards; a benchmark that the Report asserts the tribes already employ.

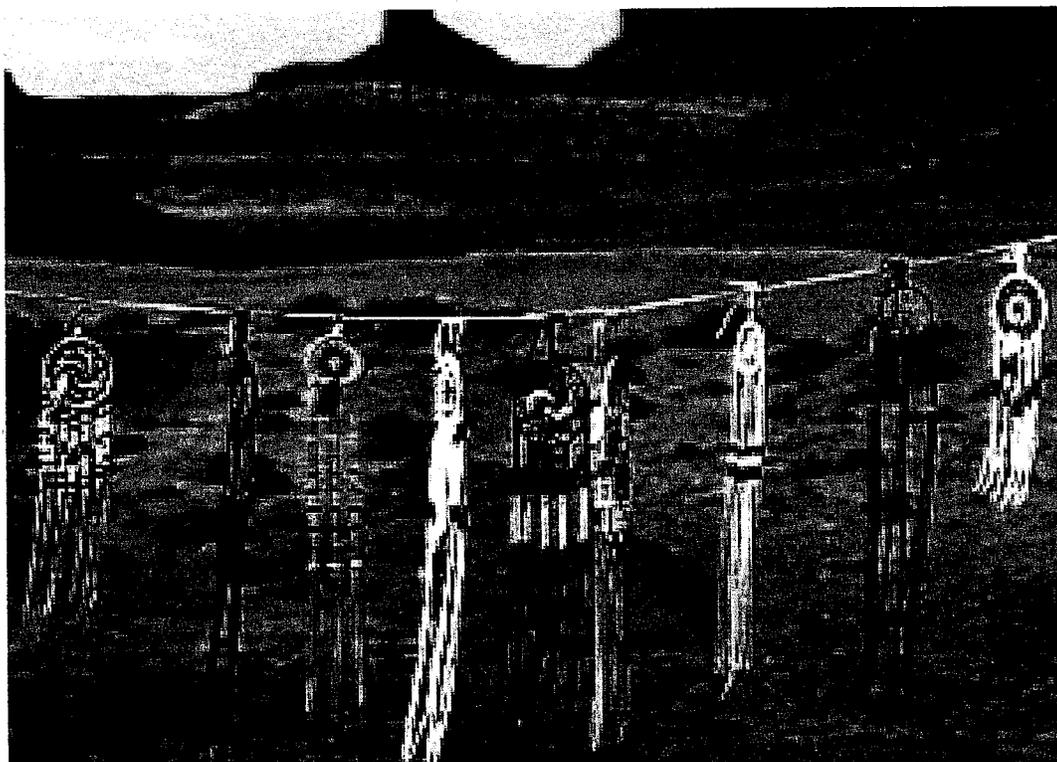
The Commission fully realizes that any on-site review takes time and resources on the part of the tribal gaming operation and is fully committed to working with tribes to accomplish these reviews in the most efficient manner possible. Additionally, the Commission realizes that the efficacy of such reviews is dependent in large part on the cooperation of the tribes.

CGCC-8 is respectful of tribal sovereignty. It does not purport, nor does its language suggest, an intent to infringe on the primary regulatory role of the TGA. It establishes a process and benchmark designed to foster statewide uniformity of regulation of Class III gaming while at the same time recognizing individual tribal sovereignty and wide-ranging differences in the size and scope of gaming operations.



National Indian Gaming Commission

**Government Performance and Results Act
Strategic Plan for Fiscal Years 2009 – 2014**



OVERVIEW

The Commission

The National Indian Gaming Commission ("Commission") is an independent regulatory agency of the United States established pursuant to the Indian Gaming Regulatory Act of 1988 ("IGRA"). The Commission was created to fulfill the mandates of IGRA of fostering tribal economic development. The Commission became operational in 1993, and is comprised of a Chairman and two Commissioners, each of whom are appointed to three-year terms.

The Commission establishes policy, oversees the agency, and is responsible for carrying out the duties assigned to it by IGRA. The Commission is authorized to: conduct investigations; undertake enforcement actions, including the issuance of notices of violation and closure orders, and the assessment of civil fines; review and approve management contracts; and issue such regulations as are necessary to meet its responsibilities under IGRA.

The Commission provides Federal oversight to approximately 443 tribally-owned, operated, or licensed gaming establishments operating in 29 states. The Commission maintains its headquarters in Washington, D.C., and has five regional offices and four satellite offices. The Commission established its regional structure to increase effectiveness and improve the level and quality of services that it provides to tribal gaming regulatory authorities. The regional offices are vital to executing the Commission's statutory responsibilities and securing industry compliance with IGRA. The Commission's efficiency and effectiveness have improved as a result of locating auditors and investigators geographically closer to Indian gaming facilities, as regular visits enable better oversight of tribal compliance with regulations and allows for timely intervention where warranted. In addition to auditing and investigative activities, the Commission field staff provides technical assistance, education, and training to promote a better understanding of gaming controls within the regulated industry, and to enhance cooperation and compliance. Further, the Commission serves as a clearinghouse for vital information sharing between the tribes, Federal agencies, and the states and other stakeholders, such as law enforcement and public safety agencies.

The Indian Gaming Regulatory Act of 1988

The rise of tribal government-sponsored gaming dates back to the late 1970's when a number of tribes established bingo operations as a means of raising revenues to fund tribal government operations. At approximately the same time, a number of state governments were also exploring the potential for increasing state revenues through state-sponsored gaming. By the mid-1980's, a number of states had authorized charitable gaming, and some were sponsoring state-operated lotteries.

Although government-sponsored gaming was an issue of mutual interest, tribal and state governments soon found themselves at odds over Indian gaming. The debate centered on

VISION

An Indian gaming industry in which Indian tribes are the primary beneficiaries of gaming revenues; gaming is conducted fairly and honestly by both operators and players; and tribes and gaming operations are free from organized crime and other corrupting influences.

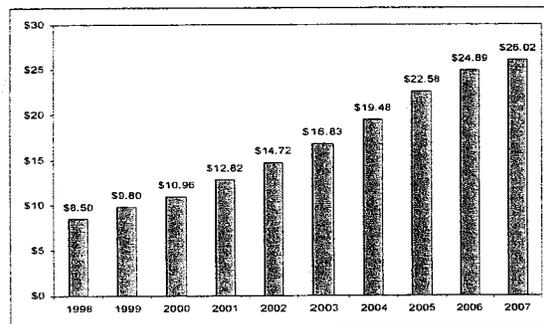
MISSION

To effectively monitor and participate in the regulation of Indian gaming pursuant to the Indian Gaming Regulatory Act in order to promote the integrity of the Indian gaming industry.

About the Vision and Mission

Indian tribes as the primary beneficiaries of gaming revenues...

Indian gaming revenues have grown at a rapid rate since IGRA was enacted in 1988. The most recent totals for Indian gaming revenue for 2007 stood at over \$26 billion. With these increased resources, tribes have been able to strengthen tribal governments, better provide for the general welfare of their respective tribal members, reinvest in the expansion of gaming facilities, and diversify into other economic growth opportunities. As this economic development and prosperity continues and expands to include a broader number of tribes and tribal members throughout the United States, the Commission intends to ensure such economic development benefits the participating tribes.



Growth of Indian Gaming Revenues (in Billions)

Gaming conducted fairly and honestly by both operators and players...

In the past, gambling and casino-style gaming has been highly susceptible to corrupt and dishonest operators and patrons. The fast-paced, cash intensive nature of casinos has often proven to attract those who would violate the rules and the law in order to realize a quick payout. Fortunately, the gaming industry, along with Federal and local law enforcement, has over the past several decades developed fervent policies and procedures to prevent cheating and fraud. IGRA envisions and enables the Commission to utilize these proven techniques to maintain the integrity of gaming as it has expanded to Indian lands.

Objective 1.1: Effectively monitor and enforce Indian gaming laws and regulations.

Monitoring and enforcing gaming laws and regulations is an essential function of the Commission. The Commission also works with other Federal agencies to ensure the integrity of the Indian gaming industry. In the past, tribes and their members have been subjected to public corruption investigations, prosecutions and fines for a variety of gaming-related offenses including (but not limited to):

- misappropriation of Indian gaming revenues, or unlawful receipt of funds from gaming contractors;
- internal theft or embezzlement of funds in Indian gaming operations; and
- tax-related violations for not reporting gambling winnings, and for non-compliance with the Title 31 money laundering statutes.

In addition, tribes have been subjected to numerous findings and enforcement actions by the Commission including:

- operational compliance audits that have resulted in hundreds of findings of non-compliance with required minimum internal control standards relative to cash handling and revenue accountability; and
- the issuance of numerous notices of violations, facility closure orders, and the imposition of substantial monetary fines totaling millions of dollars.

These findings and enforcement actions directly affect the profitability of the Indian gaming operation, and in relation to our mission, the integrity of the Indian gaming industry.

Means and Strategies for Achieving Objective 1.1

The Commission will utilize three strategies in order to effectively monitor and enforce gaming laws and regulations.

First, the Commission will ensure that tribes meet the statutory prerequisites to conduct gaming under IGRA by making timely determinations on tribal gaming ordinances, management contracts, and other statutorily-required activities.

Second, the Commission will conduct monitoring activities of Indian gaming operations in a uniform and consistent manner. Routine site visits will consist of compliance reviews and the use of standardized audit checklists. The Commission will, through its various field offices, develop and maintain positive working relationships with tribal gaming regulatory authorities. The Commission will also publish annual compliance reports and annual Indian gaming revenue reports.

Third, the Commission will conduct prudent regulatory enforcement actions as necessary. Working with tribal gaming regulatory authorities, we will provide advice and assistance,

Written Remarks of NIGC Chairman Montie R. Deer
Before the Senate Committee on Indian Affairs
March 14, 2002

Mr. Chairman, Mr. Vice Chairman and members of the Committee. Thank you for this opportunity to report to you on the work of the National Indian Gaming Commission. As you are no doubt aware, the other Commission members and I are approaching the end of our terms, and we would like to say that we appreciate the interest and support that the Commission has received from this Committee during our tenures.

My remarks can be summarized by saying simply that the tremendous growth in the Indian gaming industry, particularly in light of the recent, dynamic changes in California, have strained our ability to keep pace.

In 1988, when the Commission was created, Indian gaming was Indian bingo. Today, it is a major industry producing revenues on par with Nevada and New Jersey combined. While the Indian gaming industry has increased more than one hundred fold, the Commission in vast contrast, has barely doubled from its start-up capacity. It is becoming increasingly difficult for the Commission effectively to carry out its requisite functions under the Indian Gaming Regulatory Act, a situation that is both frustrating and potentially damaging to the industry as a whole. A solid, effective Commission is an important ingredient in the health of this industry.

To put the Commission's resource needs in proper perspective, Mr. Chairman, please note that there are more than 300 tribal gaming facilities in operation today. These facilities are located throughout our great country, from Eastern Connecticut to Southern California, and from South Florida all the way to Washington State. They vary tremendously in size and sophistication, from tiny bingo halls to some of the largest casino operations in the world. To provide proper oversight, the Commission must not only retain a top-notch professional workforce, but we must also equip them with the tools they need to do their job. Given the size and scope of the industry, we are finding it more and more challenging to meet these important obligations.

We come to the Committee today seeking a \$2 million appropriation for FY 2003. To be completely candid, we view this request as an interim measure while we work with the Congress and the Indian gaming industry to secure legislation needed to allow flexibility in our fee collection structure. The Administration supports this one-time budget request and our goal of statutory adjustments to the current limitations on our permanent financing.

The upcoming fiscal year marks the fifth consecutive funding cycle during which the Commission has operated under a flat budget. As the Committee will recall, the Indian Gaming Regulatory Act (IGRA) was amended in 1997 to increase the Commission's fee assessment authority to the present level of \$8 million. It was recognized that the significant growth in the Indian gaming industry necessitated increased capacity on the part of the Commission.

Since the 1997 increase, the industry has continued to grow. The industry now generates approximately \$11 billion per year – an increase of nearly fifty percent since our last adjustment. Despite this rapid growth, the Commission continues to operate under a cap designed for an industry much smaller than the present size.

As previously reported to this Committee, we again emphasize that the Indian gaming boom in California continues to place a severe strain on our resources. Prior to passage of Proposition 1A in March 2000, there were 39 tribal gaming operations in California. Today, there are 46. In addition to the new facilities, it is important to note that many of those original 39 operations have undergone significant expansion, further impacting our workload. This growth is sure to continue. The number of California tribes having compacts for class III gaming could ultimately reach as high as 70.

The nature of gaming in California has changed as well, as major commercial players, such as Harrah's Entertainment, Anchor Gaming, Stations Casinos, and Donald Trump, have submitted management contracts to the Commission. While the contract review process gives us the opportunity to ensure the goals of Congress for such arrangements can be met, this also means that Commission staff must conduct complex financial background investigations, review the many documents related to the contractual relationship, and evaluate the environmental impacts of the casino development. To do our job in a timely manner we have had to hire temporary employees and retain consultants, to conduct background investigations, to provide financial analysis of the contracts, and to develop necessary environmental assessments.

A regrettable casualty of our flat budget has been our regular government-to-government consultations with tribal officials. Until the realities of our limited resources forced us to stop, the Commission had been conducting quarterly consultations with tribes. These one-on-one sessions were held at our regional offices and provided an opportunity for tribal leaders and the Commissioners to meet and discuss matters of mutual interest or concern. We also used the occasion to provide training on wide array of topics, including internal control standards and ethical issues. These consultations not only resulted in better, more productive relations with tribal governments, but also helped keep enforcement costs in check.

Among our most important activities as an agency is rulemaking, and we have worked hard to carry out our activities in this arena in keeping with the highest principles of the federal-tribal relationship. The primary rulemaking activities initiated by this Commission have been undertaken through an advisory committee process, followed by formal hearing to secure the fullest level of input. But the many benefits derived from this method of rulemaking come with a price, in that they are more expensive than simply writing the rules and receiving written comment.

In our effort to manage costs, we have also had to reduce travel across-the-board and we have instituted a hiring freeze. The commission is solvent, but it is solvent because we have allowed vacant positions to remain unfilled and because we have

reduced our presence in Indian country. We are certain that this is not what Congress had in mind when it created the Commission.

When we produced our Biennial Report for the years 1999-2000, we estimated our 2001 work force at seventy-seven employees. In fact today we employ sixty-eight people, two of whom are temporary employees, because we are concerned about the sustainability of staffing beyond this level. By "sustainability" we mean more than simply covering the cost of salaries and benefits, but also equipping the staff and getting them to where they need to be. The oversight responsibilities of the commission require professional employees – field investigators, auditors and lawyers – and we do not have enough. But we do not have the money to hire more of these employees and fund the travel, overhead, and other operational expenses associated with a larger staff.

By way of illustration, let's look at our Audit Division and the Minimum Internal control Standards (MICS), which became effective February 2000. We began FY 2002 with six (6) auditors. Through attrition, we have lost two. These positions, though critical have not been filled due to our need to impose a hiring freeze and a shortage of funds to allow auditors to travel.

Due to its cash intensive nature, gaming is an exceedingly vulnerable industry. And in contrast to an industry in which all transactions are documented by cash register receipts, gaming operations have hundreds or thousands operations each day that cannot be supported by such documentation. The lack of supporting documentation for bets and other transactions makes the industry especially vulnerable. To protect the assets of the operation under these circumstances, observers must carefully monitor the wagering activities. This makes the industry highly labor intensive.

During the early 80's, the Nevada Gaming Control Board recognized that pre-established procedures or "internal controls" were essential to identify and deter irregularities effectively. In 1985, Nevada promulgated a framework of minimum internal control standards deemed necessary to ensure the proper recognition of gaming revenues and to safeguard the interests of the gaming public. Other jurisdictions soon followed Nevada's lead. Inherent in an internal control structure are the concepts of individual accountability and segregation of incompatible functions. The existence of standards alone, however, is not enough. Any internal control system carries the risk of circumvention, which is why a process of independent oversight is so critical to the integrity of an operation.

Consistent with our peers, the Commission promulgated its own minimum internal control standards (MICS). Recognizing the complexity of this aspect of our oversight responsibility, the Audit Division has been staffed by accountants experienced in the performance of gaming compliance audits. Without regard to the venue in which the gaming is conducted, history had demonstrated that, left unregulated, gaming will fall victim to those intent on preying upon its vulnerabilities. Consequently, the Commission has profound appreciation for the need to measure and evaluate compliance with the MICS.

One way to view the MICS is as a protective shield against threats to tribal gaming integrity. With an appropriate level of sampling, we believe we can measure compliance with the MICS and make a meaningful contribution to ensuring the overall integrity of Indian gaming. Unfortunately, at current staffing levels, it would take twenty to thirty years for the Commission to evaluate each of the existing gaming operations.

There are other needs as well. The Commission would like to complete several projects that will pay future dividends in terms of overall efficiency and effectiveness. We are in the final stages of our technology initiative and are ready to begin implementing the financial and records management components of our new database. We are also preparing to introduce an electronic accounts receivable capability that will provide a database interface for on-line payments of fees. We have plans to improve our public information system by introducing dedicated FOIA software.

We are in the final phases of a project to improve the speed with which we provide fingerprint results from the FBI to the tribes. In the nine years we have been handling fingerprints for the tribes, we have processed more than 145,000 sets. Last year, with support from the FBI, we established a high-speed direct connection. Once our hardware needs are fully met, we will be able to take full advantage of this connection, and reduce the time it takes to process criminal background information for tribal employees from weeks or months to days or hours, a tremendous benefit to gaming tribes.

As mentioned at the beginning, my term at the Commission is drawing to a close, as are the terms of the other Commissioners. Our successors will face some significant challenges, and we hope that my remarks today will help pave the way as they guide the Commission in the next three years. Thank you for your kind attention. Let me say for myself, Vice Chair Homer and Commissioner Poust, that we each appreciate the support and many courtesies that you have extended us.

Thank you. We would be happy to answer any questions that the Committee may have.

More California news

Past could hurt state regulation of casinos

New deals worth billions to 5 tribes

By James P. Sweeney

COPLEY NEWS SERVICE

May 28, 2007

SACRAMENTO – To the surprise of many, the Schwarzenegger administration and the chairman of California's gambling commission recently declared that the state has all the legal authority it needs to step in and restore basic operating standards for Indian casinos.

The stance offered a fresh counterargument to Assembly Democrats who say pending gambling agreements for five big Southern California tribes must be reopened to address the loss of federal guidelines tossed out by a federal court.

The new gambling agreements, or compacts, are worth billions of dollars to the five tribes, which include Sycuan of El Cajon and Pechanga of Temecula. The state would receive a sizable cut, projected at more than \$22 billion over the 23-year life of the deals.

But echoes from the past, when an angry debate over the state's regulatory reach all but consumed the gambling commission, could undercut the administration's recent assertion and blunt any impact it might have on the stalled compacts.

It wasn't that long ago that most if not all of the five tribes with the pending deals insisted that the state had little power to regulate casinos in the first round of compacts signed in 1999.

"Under the compact, the California Gambling Control Commission has no direct role or authority in regulating tribal government gaming," Sycuan argued in a January 2003 letter to the commission.

Morongo, another tribe with a compact pending, made the same claim in a largely identical letter at the time.

Agua Caliente Chairman Richard Milanovich, whose tribe also has one of the pending deals, complained earlier that the commission was "overstepping its bounds" in the pursuit of uniform tribal gaming regulations and additional auditors.

Sen. Jim Battin, a Palm Desert Republican aligned with tribes, noted in a memo in June 2001 that tribal leaders believed the gambling commission was "attempting to over-assert its regulatory authority into tribal activities in which they have no jurisdiction."

At the time, the fledgling commission and its critics were sorting through murky compact language that clearly gave tribes the primary role in regulating and governing their casinos but left the state's position open to interpretation.

The National Indian Gaming Commission had just finished work on a comprehensive set of minimum

standards for internal security at casinos, from cash handling to cash and credit operations, internal audits, surveillance and the games, whose standards included things from technical requirements to how often decks of cards should be changed.

The federal rules prevailed until late last year, when a federal appeals court upheld an earlier ruling that the national commission did not have the authority to establish and enforce such standards in most Indian casinos: those that offer conventional slot machines and other Nevada-style games.

The courts said the issue of operating rules should be resolved in the compacts.

The legal setback could "greatly impact California," Gov. Arnold Schwarzenegger warned in a March 30 letter to the Senate Committee on Indian Affairs. He urged Congress to restore the federal rules.

The administration also has supported a move by the state gambling commission and some tribes with pending compacts to develop a statewide regulation to require casino standards at least as stringent as the federal rules.

However, the proposal has drawn a cool response from many of California's more than 60 gaming tribes.

With the five big compacts stymied in the Assembly, attorneys for the governor and the commission – which is appointed by the governor – told an Assembly committee this month that the state could fill any regulatory void under the 1999 compacts.

"We determined that all of the compacts provide the commission with ample oversight authority and access related to tribal (internal standards)," Commission Chairman Dean Shelton told the Governmental Organization Committee. "This includes the authority to review tribes' gaming facilities and inspect related gaming operations or . . . records."

The commission simply lacked the staff and resources to exercise its power in the past, Shelton said.

Under questioning, Shelton said the commission could adopt and enforce the proposed statewide regulation on internal standards even if most tribes reject it.

"This is unprecedented," said Howard Dickstein, a leading tribal attorney. "No one from the state has ever taken this position before."

Assemblyman Alberto Torrico, a Fremont Democrat who is chairman of the committee, also wasn't convinced. Just last year, the commission had lamented the state's "limited compact authority" in its request for a budget increase, Torrico noted.

He asked why the governor appealed to Congress for help if the administration really believes the state has all the legal tools it needs to watch over Indian casinos.

"Either we're serious about coming up with a statewide solution or . . . we're going to admit here publicly we don't care, there is no federal regulation, we have these compacts pending," Torrico said. "Let the chips fall where they may."

Tribes did not testify, but representatives of some with pending compacts applauded the administration.

"There is a lot of concern about things we believe are already in place," said Nancy Conrad, a spokeswoman for Agua Caliente. "We believe the regulatory oversight is there."

George Forman, a prominent tribal attorney who represents both Sycuan and Morongo, said that despite widespread criticism of the 1999 compact, "The state did not leave itself defenseless and paralyzed."

He said the state has the ability under the compact "to ensure that tribes adhere to (minimum standards) consistent with those mandated by the National Indian Gaming Commission."

Earlier protests about the commission's regulatory reach have to be measured within the context of the debate at the time, he said.

"They were very different issues getting into very different areas that were, and in most cases remain, not appropriate for state gambling commission intervention," Forman said.

Others still aren't so sure.

I. Nelson Rose, a Whittier Law School professor who specializes in gambling law, said the state lacks clear authority to conduct broad audits of tribal casinos. He also recalled tribes' efforts to squeeze the gambling commission's early budgets.

"You can't regulate if your budget is dependent on the whims of politicians who are subject to political pressure from the tribes," he said.

Find this article at:

<http://www.signonsandiego.com/news/state/20070528-9999-1n28casinos.html>

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GOVERNOR ARNOLD SCHWARZENEGGER

March 30, 2007

The Honorable Byron Dorgan
 Chairman
 Senate Committee on Indian Affairs
 838 Hart Senate Office Building
 Washington, DC 20510

The Honorable Craig Thomas
 Ranking Member
 Senate Committee on Indian Affairs
 838 Hart Senate Office Building
 Washington, DC 20510

Re: NIGC Class III Gaming Authority: Minimum Internal Control Standards

Dear Chairman Dorgan and Senator Thomas,

As you are aware, the Court of Appeals for the District of Columbia recently ruled in *Colorado River Indian Tribes v. National Indian Gaming Commission*, that the National Indian Gaming Commission does not have authority to enforce Minimum Internal Control Standards (MICS) for class III gaming. This ruling has the potential to greatly impact California, and I would support federal legislation that would confirm the NIGC's authority to establish and enforce the MICS for class III gaming.

California has over 100 federally-recognized Indian tribes. Currently, 66 of those tribes have tribal-state gaming compacts. There are 56 tribal casinos in operation in California and several more in the planning and development stage. Our gaming compacts require tribes to adopt and comply with rules and regulations governing various internal control areas and to provide for significant state regulatory oversight. Our approach with the compacts and state oversight of internal controls has been to complement, rather than duplicate, NIGC's activities. This has worked well for California. I believe that strong state, federal and tribal regulation and oversight of class III gaming best serves the public interest and furthers the goals of the Indian Gaming Regulatory Act.

I encourage and support efforts at the federal level to confirm and clarify the NIGC's authority.

Sincerely,

 A handwritten signature in black ink, appearing to read "Arnold Schwarzenegger".

Arnold Schwarzenegger

cc: The Honorable Dianne Feinstein