

California Gambling Control Commission
2399 GATEWAY OAKS DRIVE, SUITE 220
SACRAMENTO, CA 95833
(916) 263-0700 FAX (916) 263-0499
www.cgcc.ca.gov

**MINUTES OF FEBRUARY 24, 2010
COMMISSION MEETING**

OPEN SESSION

1. Call to Order and Pledge of Allegiance.

Chairman Dean Shelton called the meeting to order at 10:00 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 Dean Shelton and Commissioners Stephanie Shimazu, and Alexandra Vuksich present.

3. Readoption of Uniform Tribal Gaming Regulation CGCC-8 - (Tribal-State Gaming Compact Section 8.4.1 (b) & (c))

- Consideration of Readoption of Uniform Tribal Gaming Regulation CGCC-8 in its original form (as developed by the Tribal State Association Task Force, recommended by the Tribal State Association to the Commission for adoption, and thereafter adopted by the Commission on September 24, 2009), for Submission to all Compact Tribes

Staff Counsel Jason Pope gave an oral presentation regarding the readoption of CGCC-8 and a chronological history highlighting stages in the three year regulatory process. CGCC-8 has undergone several variations and modifications over the course of the 3 year regulatory process. The intent and purpose has always remained the same which is to provide a transparent and uniform method for the State to verify that Tribes' gaming operations are Compact compliant in regards to internal control standards. The Commission, at its September 24, 2009 meeting considered the Tribal State Association (Association) Task Force version of CGCC-8 and elected to adopt the Task Force version of CGCC-8 as a proposed regulation. Based on representations from Tribal representatives who indicated this regulation had support and would move through the Compact regulatory process, the Commission also decided to start the Compact regulatory process anew instead of adopting it as a final regulation.

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The CGCC-8 regulation was again sent to the Association for consideration at an Association meeting on December 17, 2009. Consistent with the protocols, no vote was held on the regulation itself, but another meeting was scheduled on February 4, 2010 where a vote would be held. During this December meeting, the Commission received no objections or comments against CGCC-8. At the February 4, 2010 Association meeting, the regulation was disapproved according to the Association protocols. Mr. Pope indicated some tribal representatives may wish to comment on that disapproval however. Prior to the February 4, 2010 Association meeting, Mr. Pope noted that the Commission received no objections or comments about the Task Force version of CGCC-8 that was adopted by the Commission. Indeed at the Association meeting itself, no negative comments were made prior to the vote, and a majority of those present approved it, though that was not enough according to the Association protocols. Mr. Pope indicated that this Commission hearing concerned the next procedural step required under the compact, which is "re-adoption" of CGCC-8 after Association disapproval according to Compact section 8.4.1(b).

Deputy Director Richard Ross gave an oral presentation regarding the purpose and necessity of Uniform Tribal Gaming Regulation CGCC-8.

Public Comment

Chairman Shelton opened the meeting for public comment.

Tuari Bigknife, Deputy General Counsel for Viejas, indicated the tribe supports gaming regulation. He characterized the vote at Cabazon as a success because it was the first time that a majority of tribes present (31 tribes or 56% of those present) supported the regulation. In fact, if the three tribes which abstained had voted in support of the regulation, the measure to approve the regulation would have passed. He proposed several options. One option was to treat the vote as approval because a majority of the quorum supported the measure. He stated that the readoption of CGCC-8 by the Commission is a bad idea. Mr. Bigknife indicated that the tribe would like to have the Commission resubmit CGCC-8 to the Association.

Scott Crowell, representing the Rincon Band of Luiseno Indians, indicated that they believe that unilateral adoption of CGCC-8 without Association approval would be a mistake and would end up in litigation. Mr. Crowell offered other options, including using existing authority under the Compact and taking specific actions against specific tribes. However he strongly endorsed resubmitting the regulation to the Association. While many of Rincon's concerns have been resolved, some remain. But, the vote on February 4 was very close, there is the chance for a positive vote at a future Association meeting which would avoid inevitable litigation. (See Attachment A) He suggested that if the Commission moves forward with the proposed course of action, the positive results from recent efforts would be lost.

Jason Pope offered a clarification of the matter before the Commission in response to Mr. Cowell's comment that this session is for the unilateral adoption of CGCC-8. Mr.

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Pope said the session is for re-adoption of CGCC-8. Mr. Pope then read the second sentence from section 8.4.1 (b) of the 1999 California Tribal-State Gaming Compact, "A regulation that is disapproved by the Association shall not be submitted to the tribe for comment unless it is re-adopted by the state gaming agency as a proposed regulation in its original or amended form with a detailed written response to the Associations objections."

Morris Reid, Chairman of the Picayune Rancheria of the Chukchansi Indians, indicated that the tribe is disappointed that the Commission is going forward with CGCC-8 without sufficient tribal support. Mr. Reid further indicated that the tribe would not stand idle if the CGCC tends to enforce regulation that is inconsistent with the 1999 tribal state compact. Mr. Reid commented that the tribe encourages the Commission to follow the tribal state Association protocol and to provide the parties the ability to provide meaningful modifications to the proposed regulations to address their concerns before any regulation is adopted as final.

John Roberts, Executive Director of San Pasqual Band of Mission Indians Tribal Gaming Commission, indicated the process is working and he feels it is very close to success. Mr. Roberts commented that he thinks they need time to educate some of the regulators and tribal leaders to quell misconceptions regarding the regulation. He appreciates the fact that the Commission, Bureau and NIGC have worked together with the tribes on this towards a common goal. He noted that 31 tribes voted in favor of the regulation and suggested that the possibility for success is well within reach. Mr. Roberts requested the Commission resubmit the regulation to the Association.

Victor Estrada, Council Member of the La Posta Band of Mission Indians, indicated that the tribe will be disappointed and will not stand idle if the Commission moves forward with CGCC-8 without sufficient tribal support and without addressing concerns voiced by the tribe. (See Attachment B)

Jerome Levine, representing Dry Creek Rancheria of Pomo Indians, indicated that this is not an emergency situation and it is an historic opportunity to forge a relationship with the tribes and pushing ahead will only provoke more controversy and litigation. He took issue with those who believe that CGCC-8 deprives the tribes of their primary regulatory authority. He indicated that his view is that the regulation simply sets forth a pattern that can be adopted as a safe harbor. The NIGC standards which are already followed by virtually every tribe are a permissible but not mandatory standard. The state has existing authority under the Compact so there is no emergency. Mr. Levine further indicated that the tribe supports and thinks it's worth the effort to return CGCC-8 back to the Association.

Sharon House, representing Pauma Gaming Commission, suggested the development of a Memorandum of Understanding (MOU) between the tribe and the Commission. Ms. House further indicated that the significance of the MOU approach is twofold in that it is government to government and takes into account individuality of the tribes' Ordinance and Regulations. (See Attachment C)

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Wanda Brown, Vice Chair of the Susanville Indian Rancheria Gaming Commission indicated that the tribes are so close to coming to an agreement; they are not afraid of regulation and take pride in what they do. Ms. Brown asked that the Commission be patient and give the Association a little more time to come to a successful agreement. (See Attachment D)

Richard Armstrong, representing Tuolumne Me-Wuk Tribal Gaming Agency and Big Valley Rancheria Gaming Commission, commented that they encourage the Commission to follow the Association protocol and provide the parties the ability to continue to provide meaningful modifications to the proposed regulation to address their concerns before any regulation is adopted as a final regulation under the compacts. A number of his client tribes submitted comments and concerns prior to the September 24, 2009 meeting. (See Attachment E & F)

Jane Zerbi, representing United Auburn Indian Community, Pala Band of Mission Indians and Jackson Rancheria, urged the Commission to consider the option set out by Viejas at the start of the meeting. Ms. Zerbi further indicated that the majority vote to approve this regulation makes this truly significant and Ms. Zerbi urged the Commission to resubmit CGCC-8 to the Association for a vote.

Jacob Appelsmith, Bureau of Gambling Control indicated he believed all the tribal regulators in the room support CGCC-8 in terms of it's form and what it's trying to do. All agree that the State has some oversight over the tribes but the tribes are the primary regulators. Mr. Appelsmith commented that diplomacy and patience are what is called for here. Mr. Appelsmith opined that there is an opportunity for some more government to government communications. Mr. Appelsmith indicated that the Attorney General is talking directly with tribal councils and he urged continued patience and diplomacy. Mr. Appelsmith further indicated that it is the Attorney General's Office position to respect whatever decision the Commission makes and the Attorney General's Office is constitutionally bound to defend the Commission if it has to litigate the issues.

Chairman Shelton commented that the Commissioners cannot participate the way the Attorney General's Office can. The Commission depends on staff that have represented the Commission well and presented our message. Chairman Shelton shared some history highlighting the actions that brought the Commission to CGCC-8 and the patience the Commission has demonstrated. Specifically, he noted that two tribes approached the Commission requesting a regulation like CGCC-8. Chairman Shelton indicated that the Commission is sincere and respects the government to government relations and believes most of the tribes run a clean operation. Chairman Shelton further indicated that he had not heard any time period put forth as to how long the Commission was expected to be patient.

Commissioner Shimazu commented that time and time again the Commission is asked for patience but the Commission also has a responsibility to the State. The Commission

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has no desire for litigation or to strain the relations with the tribes. Commissioner Shimazu expressed disappointment that the Association voted down CGCC-8 because she felt everyone was working cooperatively and after three years of work; it was going to be an historic event. Commissioner Shimazu indicated that should the Commission readopt, there is still a process to move forward; it's not a final regulation.

Commissioner Vuksich wanted to clarify that there was a reference to a revised regulation and we do not have any revisions. The Commission would be readopting the version that came out of the last vote of the Association. Commissioner Vuksich questioned if the 30 day time period for comment and could that be considered resubmission to the Association.

Jason Pope indicated that currently the regulation was submitted to the Association for an initial meeting back in December and for a vote in February. The Association still has it.

Commissioner Vuksich questioned if they could request an extension of time for a vote.

Jason Pope commented that there didn't need to be a request for an extension of time. If the Association wanted another vote they could take one at a properly noticed meeting. The compact and the protocols that they are operating under do not prohibit a revote on the regulations.

Commissioner Vuksich clarified that a vote to readopt would keep the clock running.

Jacob Appelsmith commented that no one is asking for an open ended extension and going back to the task force. Some tribes abstained or voted against the regulation because they were uncomfortable with the process. Mr. Appelsmith envisioned that the Commission would have something to act on within ninety days.

Jane Zerbi indicated that the protocol itself has a ninety day set time and an action by the Commission to resubmit it to the Association would start that set time.

Richard Armstrong indicated there is a need to enter into a task force mode in the Association to address substantive concerns with the regulation and that the protocol of the Association does provide a structured time frame. There is some work that needs to be done to the regulation. Mr. Armstrong stated that Picayune Chukchansi is willing to host the first meeting.

Jerome Levine stated that those recommending resubmission are talking about resubmitting in its present form. He believes there is just a misunderstanding and a lot of emotion related to the regulation or the process associated with its development.

Chairman Shelton moved to readopt and not set a date for a final vote and have staff work with the Association and the Bureau before we bring it back for a final vote.

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Jacob Appelsmith indicated that he does not favor another task force. He wants to talk about the basic principle of the state working with the tribes.

Ted Pata, Chairman of the Paskenta Gaming Commission indicated the tribe would be willing to host an earlier meeting within 30 to 40 days.

Scott Crowell indicated that from a legal precedence he is very concerned that the Commission is cueing it up for the tribes to have to accept a position that this Commission can override the vote of the Association. Mr. Crowell further indicated he supports resubmission to the Association to ask for another Association vote.

Chairman Shelton reiterated that this is not a final adoption. Between now and the final adoption meeting the Association can come back with consensus or not.

Scott Crowell asked if the Commission was open to the Association meeting and voting to approve before the final adoption.

Chairman Shelton responded that he encouraged the tribes to meet again.

Commissioner Shimazu commented that this is a good compromise because it allows the Commission to move forward and time for the Association to meet again to develop a consensus and allow the Commission to consider a regulation which was approved by the Association. It preserves everything for all. Commissioner Shimazu seconded the motion.

COMMISSION ACTION

Chairman Shelton called for the vote.

The motion made by Chairman Shelton and seconded by Commissioner Shimazu to readopt the CGCC-8 regulation without a set date for the final vote and to have staff work with the Association and Bureau before it is brought back before the Commission for final vote was unanimously carried in a vote by roll call, with Chairman Shelton and Commissioners Shimazu and Vuksich voting yes.

Written comments that were submitted to the Commission by Scott Cromwell, Rincon Band of Luiseno Indians, are incorporated into the minutes as Attachment A.

Written comments that were submitted to the Commission by Victor Estrada, La Posta Band of Mission Indians, are incorporated into the minutes as Attachment B.

Written comments that were submitted to the Commission by Sharon House, Pauma Gaming Commission, are incorporated into the minutes as Attachment C.

Written comments that were submitted to the Commission by Wanda Brown, Susanville Indian Rancheria are incorporated into the minutes as Attachment D.

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Written comments that were submitted to the Commission by Richard Armstrong, Tuolumne Me-Wuk Tribal Council are incorporated into the minutes as Attachment E.

Written comments that were submitted to the Commission by Richard Armstrong, Big Valley Rancheria are incorporated into the minutes as Attachment F.

A complete transcript of the proceeding is incorporated into these minutes as Attachment G.

ADJOURNMENT

Upon motion of Chairman Shelton, seconded by Commissioner Vuksich and unanimously carried in a vote by roll call with Chairman Shelton and Commissioners Shimazu and Vuksich voting yes, the meeting was adjourned at 11:20 a.m.

Rincon Band of Luiseño Indians

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



California Gambling Control Commission Hearing February 24, 2010

Statement re Re-adoption of CGCC-8

I stand before you today on behalf of the Rincon Band of Luiseño Indians. The Rincon Business Committee, and its Chairman Bo Mazzetti are unable to attend the hearing today, and send their regards. Thank you for this opportunity to discuss CGCC-8.

Rincon's substantive concerns regarding CGCC 8 are well documented in previous comments submitted to this regulatory body and to the Association. We incorporate our previous comments by this reference. Rincon's concerns remain outstanding and unresolved. Today, however, our comments focus on process and protocol.

Unfortunately, it has become evident that the CGCC's vote today is to unilaterally impose the regulation without Association approval. This is a huge mistake.

The 1999 Compact has a process for adopting State Gaming Agency regulations. Sections 8.4 and 8.4.1 of the 1999 Compact clearly state that a State Gaming Agency regulation shall **not** be effective with respect to a Tribe's Gaming Operation *unless and until* approved by the Association. This basic principle cannot be ignored by the Commission. The State Gaming Agency's power to regulate tribal Gaming Operations is *only* found in the Compact. State laws and regulations cannot and do not provide independent authority to regulate tribal Gaming Operations.

Unilateral Imposition of CGCC-8 is a Compact Amendment. The Compact clearly provides that Tribal Gaming Agencies are the primary regulators of each Tribe's Gaming Operation, and are charged with the adoption and enforcement of Tribal Gaming Agency regulations regarding the subjects found in Section 8.1 of the Compact. Any additional regulatory authority vested within the CGCC can only be the result of a Compact Amendment.

Bo Mazzetti
Chairman

Stephanie Spencer
Vice-Chairwoman

Charlie Kolb
Council Member

Steve Stallings
Council Member

Kenneth Kolb
Council Member

1. Solutions.

You have viable options. You do not need to go down this path.

- a. Solution Number 1. Use existing authority. It is somewhat galling that we find ourselves at this juncture when the State has never made any attempt of which we are aware, to pursue the enforcement provisions of the existing compacts. If a Tribe fails to adopt and enforce adequate tribal regulations then it is in breach of the compact. Chairman Shelton has made statements that there are such tribes out there, although you will not identify or document any such breaches. Instead of imposing an illegal regulation on all tribes, you are better advised to take specific action against the specific unidentified tribes under your existing authority. Notice that Tribe or tribes under the "meet and confer" provisions of the compact, and if no resolution can be reached, then file suit for injunctive relief.
- b. Solution Number 2. Memoranda of Agreement with Interested Tribes. There are clearly a number of tribes that supported the regulation. We suggest that the Commission approach those tribes and discuss the possibility of entering into an MOU. There is no reason that such an MOU could not achieve much of what you seek in CGCC-8. The concept of a MOU is certainly not foreign to the State as the Governor has entered into MOUs with tribes regarding MICS previously. Additionally, the Bureau has entered into MOUs with tribes regarding licensing.
- c. Solution Number 3. Compact Amendment. We have said this before. The Commission is no doubt aware that there are a number of models of effective Compacts in California today. Some of those Compacts specifically require NIGC MICS compliance. Others, such as the 1999 Compacts do not. It is inappropriate for a regulation to make up for the lack of uniformity in the Compacts.

It is not lost on the Rincon Band that the issues that CGCC seeks to address in the form of CGCC-8 might have been addressed in the context of compact amendments if the Governor did not impose a precondition on such negotiations equal to 15% - 25% of the Band's gross gaming revenues. Now that the federal court has


ruled that demands for such fees are an illegal tax under IGRA, you have the opportunity to take CGCC 8 to the Governor for government-to-government negotiations for legitimate compact amendments.

Much of what I say today, the Band has said before. We have taken advantage of virtually every opportunity to comment on your efforts and sadly our words and advice have been disregarded.

If the State, and not just the CGCC, feels that additional state regulatory authority is necessary, then we encourage the Governor to initiate good faith Compact Amendment negotiations with the Rincon Band.

Respectfully,


Bo Mazzetti, Chairman


Stephanie Spencer, Vice Chairwoman


Charlie Kolb, Council Member


Steve Stallings, Council Member


Kenneth Kolb, Council Member



LA POSTA
BAND OF MISSION INDIANS

Post Office Box 1120
Boulevard, California 91905
(619) 478-2113
Fax (619) 478-2125

February 24, 2010

VIA FACSIMILE (916) 263-0499 & Hand Delivery
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, 95833-4231
Attn: Chairman Dean Shelton

Re: Response to Notice of Re-Adoption of CGCC-8

Dear Chairman Shelton:

The La Posta Band of Mission Indians provides the following responses to the California Gambling Control Commission's (CGCC) proposed re-adoption of Uniform Tribal Gaming Regulation CGCC-8 (Minimum Internal Control Standards) (CGCC-8).

The Tribe is concerned that the CGCC is considering the hasty re-adoption CGCC-8 despite the intense opposition and second disapproval by the Tribal State Association (Association) on February 4, 2010.

Our Tribe believes that the following modifications require immediate attention before CGCC-8 should be considered for re-adoption by the CGCC—and certainly before any form of the regulation is re-submitted to the Association for a vote in accordance with the various compacts and the protocol of the Association:

- Establish acceptable terms relating to the frequency and duration of on-site CGCC Minimum Internal Control Standard (MICS) activities;
- Clarify and define the on-site regulatory activities of the CGCC;
- Provide assurance against duplication of on-site regulatory activities by the CGCC and the Bureau of Gambling Control;
- Removal of the Tribal Action Plan mandate;
- Removal of subordinate dispute resolution process whereby the Tribe may appear before the CGCC to resolve CGCC-8 disputes; and
- Creation of a workable and acceptable National Indian Gaming Commission alternative oversight provision.

In the absence of meaningful modifications to the CGCC-8 regulation, our Tribe will be unable consider supporting its approval by the Association. Simply put, the Tribe will not alter its negotiated compact rights outside of the required compacting negotiation process. Please be aware that if the CGCC continues to force the CGCC-8 regulation, that is both inconsistent with the language of our Tribal-State compact and lacks the support of California gaming tribes, our Tribe will have no choice but to take all necessary action to protect our rights and our sovereignty.

We respectfully urge the CGCC, to consider the above modifications when advancing and re-considering the imposition of CGCC-8 upon the Tribe.

Sincerely,



Gwendolyn Parada, Chairperson
La Posta Band of Mission Indians

cc: Tribal Gaming Commission
George Skibine, Acting Chairman, National Indian Gaming Commission
Arnold Schwarzenegger, Governor, State of California
Edmund G. Brown, Attorney General, State of California
Jacob Appelsmith, Bureau Chief, Bureau of Gambling Control, State of California

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February 24, 2010

California Gambling Control Commission
2399 Gateway Oaks, Suite 220
Sacramento, California 95833

RE: COMMENTS READOPTON OF CGCC 8

Dear Chairman Shelton and Commissioners:

The Pauma Band of Mission Indians would like to take this opportunity to present the following comments in regard to the readoption of the CGCC 8 as proposed on September 24, 2009. Please be advised that the Pauma Band would like to reiterate its previous concerns and comments as submitted in the Tribe's previous correspondence. The previously submitted comments are being provided for the record and for the consideration of the California Gambling Control Commission. The Tribe would like to focus upon issues that were already addressed in regard to CGCC 8. Pauma believes they are of such importance that they bear repeating.

Pauma does appreciate that the Association Task – Force process did improve the original version of CGCC 8 but it also recognizes that each Tribe has a right to express what is in its best interest. Pauma believes that the Association and its protocol works, but "the one size fits all" is not the answer to every issue.

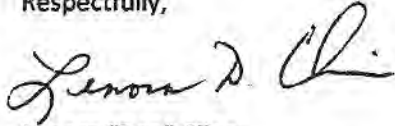
Pauma is very aware of the importance of Section 7.4 of the Compact but it is also aware of the need for an orderly process when the CGCC is attempting to perform a Compact compliance review in regard to Section 8.1. Therefore, the Tribe is suggesting an alternative approach to the CGCC 8 and that is the development of a Memorandum of Understanding (MOU) between the Tribe and the CGCC. This MOU approach has already been in place with Department of Justice, the Division of Gambling Control in order to define those gaming employees who must submit applications for a determination of suitability to the State Gaming Agency as part of the state certification process identified within the Compact at Section 6.5.6. These MOUs have been working since approximately 2004. The significance of the MOU approach is twofold, 1) that said documents were developed on a government to government basis, and 2) that said approach took into consideration the individuality of the Tribes' Ordinance and Regulations;

Pauma has adopted the Federal Minimum Internal Control Standards and believes that it provides the integrity required to run and maintain a Gaming Operation, such as Pauma's. The Tribe is suggesting that procedures that assist in a compliance review of Section 8.1 be developed in an MOU format. It would assist the State and the Tribe in knowing what to expect of each other when a compliance review by the State occurs at Pauma.

Chairman Devers sends his regrets that he is unable to make this presentation, but he would urge the CGCC to take into consideration the above mentioned government to government approach of the development of an MOU as opposed to the CGCC 8, as well as the previous comments submitted by Pauma and he would invite the California Gambling Control Commission to meet with the Pauma Government in order to discuss the Memorandum of Understanding.

Thank you for your time and attention to the above.

Respectfully,

A handwritten signature in cursive script that reads "Lenora D. Cline". The signature is written in black ink and is positioned above the printed name and title.

Lenora "Dee" Cline
Pauma Gaming Commissioner President



Pauma Band of Mission Indians

P.O. Box 369 • Pauma Valley, CA 92061 • (760) 742-1289 • Fax (760) 742-3422

Established 1893

September 3, 2009

Attn: Mr. Pope, Legal Division
California Gambling Control Commission
2399 Gateway Oaks, Suite 100
Sacramento, CA 95833

BY FAX (916-263-0452)

RE: Comments Concerning CGCC's Re-Adoption of CGCC-8

Dear Mr. Pope:

In response to the California Gambling Control Commission's ("CGCC") letter dated August 20, 2009, the Pauma Band of Mission Indians ("Tribe") and the Pauma Gaming Commission hereby jointly submit the following comments regarding CGCC-8. These comments are in addition to those already set forth in our comment letter dated February 19, 2008, the Pauma Gaming Commission's comment letter of October 12 or 13, 2008, the Tribe's comment letter of November 2008, and our joint comment letter of May 2009.¹

First, we reiterate that the April 15, 2009 draft of CGCC-8 circulated by the CGCC is a significant improvement on its earlier draft. We appreciate the progress CGCC made in addressing some of the tribes' comments and concerns. In addition, we commend the CGCC's staff for their active participation the Association Task Force's summer meetings in which tribal and state delegates attempted to resolve some of the outstanding issues concerning the proposed regulation. The Tribe and the Pauma Gaming Commission believe the Task Force's revised version of CGCC-8, dated August 6, 2009, does represent an improvement on the April 15, 2009 CGCC draft of CGCC-8.

The Tribe has adopted the National Indian Gaming Commission's ("NIGC") Minimum Internal Control Standards ("MICS") in its gaming laws and also therein expressly authorized the NIGC to continue to monitor and enforce the Tribe's compliance with the MICS. Therefore, we support the concept of carving out an exemption from the CGCC-8 for Tribes with such NIGC oversight, as reflected in section (o) of the April 15, 2009 CGCC draft and section (m) of the August 6, 2009 Task Force draft.

However, we remain unable to support either version of CGCC-8 on the ground that said sections, as drafted, represent an improper attempt to amend the Tribal-State Compact in circumvention of section 12.1 of the Compact, because these sections impose obligations on the Tribe and Tribal Gaming Agency to share information and take other action that is not required under the Tribe's Tribal-State Compact.

¹ Despite repeated requests, as outlined in said correspondence, the Tribe has never received confirmation that this correspondence was incorporated into the official record concerning the development of CGCC-8. We ask that the CGCC resolve this outstanding issue.

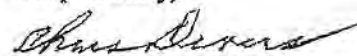
At the same time, the Tribe and the Pauma Gaming Commission recognize the potential benefit of having a streamlined process in place to permit the CGCC to carry out some form of inspection under section 7.4 of the Tribal-State Compact to ensure compliance with Section 8.1 of the Compact. For this reason, the Tribe and the Pauma Gaming Commission suggest an alternative approach for the CGCC to pursue instead of CGCC-8.

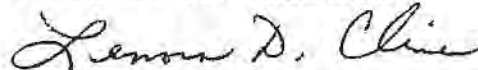
Specifically, we would be interested in pursuing a MOU with the CGCC, on a government-to-government basis, to provide for a streamlined inspection process relating to the SGA's role in ensuring compliance with the internal control standards contemplated by Section 8.1 of the Compact. This approach is similar to that adopted by the NIGC when it entered into an MOU with this Tribe and others to arrive at a streamlined process for reporting to the NIGC on licensing and background investigations or to that adopted by the then Division of Gambling Control when it entered into an MOA with us concerning the definition of "non-key Gaming Employees" under our Tribal-State Compact.

We recognize from the Task Force discussions that there are some tribes that support the August 6, 2009 Task Force draft of CGCC-8. Perhaps there are other tribes who are even supportive of the April 15, 2009 CGCC draft. For this reason, we would have no objection to the CGCC adopting a version of CGCC-8 that made it clear that it is an opt-in regulation. That is, the regulation would only apply to those tribes that consent to its application.

In summary, the Pauma Band of Mission Indians and the Pauma Gaming Commission respectfully ask the CGCC: 1) not to adopt CGCC-8 but rather to pursue an MOU with the Tribe on a government-to-government basis to achieve the objective reflected in section (o) of the April 15, 2009 CGCC draft and section (m) of the August 6, 2009 Task Force draft; and/or 2) to adopt the version of CGCC-8 that has the most tribal support but as an opt-in regulation.

Respectfully,


Chris Devers, Chairman
Pauma Band of Mission Indians


Lenora "Dee" Cline, President
Pauma Gaming Commission

c.c. Dean Shelton, Chairperson, CGCC



Pauma Band of Mission Indians

P.O. Box 369 • Pauma Valley, CA 92061 • (760) 742-1289 • Fax (760) 742-3422

Established 1893

May 26, 2009

BY FAX (916-263-0452)

Attn: Evelyn Matteucci, Chief Counsel
California Gambling Control Commission
2399 Gateway Oaks, Suite 100
Sacramento, CA 95833

RE: Comments Concerning CGCC's Re-Adoption of CGCC-8

Dear Ms. Matteucci:

This Pauma Band of Mission Indians ("Tribe") and the Pauma Gaming Commission hereby jointly submit their comments regarding the California Gambling Control Commission's ("CGCC") latest version of CGCC-8, dated April 15, 2009.

As a preliminary matter, the Tribe objects to the CGCC's failure to confirm whether the Tribe's comment letter dated February 19, 2008, and the Pauma Gaming Commission's comment letter dated October 12, 2008, have been made part of the CGCC-8 record, as we had requested in the Tribe's November 2008 comment letter.

We have reviewed the proposed amendments to CGCC-8 dated April 15, 2009, and while we believe the amendments represent an improvement on the prior draft of October 1, 2008, these latest amendments do not overcome some of the Tribe's fundamental concerns about the regulation and so we continue to oppose adoption of the regulation by the CGCC.

For the reasons already set forth in our February 19, 2008, comment letter and the Association's Taskforce report, it is our position that the CGCC's attempt to adopt and enforce the NIGC's MICS, or standards equally as comprehensive and stringent, as statewide regulations is an improper attempt to amend the terms of the Tribal-State Compact in circumvention of section 12.1 of the Compact.

In addition, as we expressed in our comment letter dated October 12, 2008, it is our position that the CGCC does not have the authority to unilaterally impose CGCC-8 after it has been rejected by the Association. 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 Band of Mission Indians' gaming operation.

Should the CGCC proceed with adopting CGCC-8, we ask, without prejudice to our previously stated objections, that the first sentence of section (o) be amended to read as follows: "Sections (c), (d), (e), (f), (g), (h), (i), (j), and (l) shall not apply to any Tribe's Class III gaming operation while the Tribe has a gaming ordinance or regulation in effect that provides for NIGC monitoring and enforcement of the MICS...." (underlining added to indicate amendment to current draft). The reason for this request is that the Pauma Band of Mission Indians does authorize NIGC monitoring and enforcement of the MICS but it provides for this in a gaming regulation rather than its Gaming Ordinance, i.e., section VI of Gaming Regulation No. 015, Tribal Internal Control Standards. Under section 3 of its Gaming Ordinance, the Tribe's gaming regulations have the full force of law and are deemed to be "ordinances" as that term is used in the Compact. The regulations are only inferior to the Gaming Ordinance in that the Ordinance prevails to the extent of any conflict or inconsistency between a regulation and the Ordinance.

In summary, the Pauma Band of Mission Indians asks the CGCC not to adopt CGCC-8 as a final regulation and to either abandon the regulation or submit the amended version of CGCC-8 to the Association for consideration.

Respectfully,



Chris Devers, Chairman
Pauma Band of Mission Indians



Lenora "Dee" Cline, President
Pauma Gaming Commission

c.c. Dean Shelton, Chairperson, CGCC

November 20, 2008

BY FAX (916-263-0452)

Attn: Evelyn Matteucci, Chief Counsel
California Gambling Control Commission
2399 Gateway Oaks, Suite 100
Sacramento, CA 95833

RE: Comments Concerning CGCC's Re-Adoption of CGCC-8

Dear Ms. Matteucci:

This Pauma Band of Mission Indians ("Tribe") hereby submits its comments regarding the California Gambling Control Commission's ("CGCC") re-adoption of CGCC-8 on October 14, 2008.

As an initial matter, the Tribe objects to the comment deadline set by the CGCC. The Tribal-State Compact provides for a 30-day comment period, which commences "after submission of the proposed regulation to the Tribe." (Sec. 8.4.1 (c).) The CGCC has apparently interpreted this deadline as running from the date it sent the regulation to the Tribe. A more appropriate and reasonable interpretation of section 8.4.1(c) is that when a notice and regulation is served by mail, the 30-day comment period should be deemed to start five days after the mailing (*see, e.g.*, Code of Civil Procedure section 1013(a).) The Tribe therefore asks that the Commission accept as timely submitted any tribal comments received by the close of business on November 24, 2008.

As another preliminary matter, the Tribe objects to the CGCC's failure to include the joint comments submitted by the Tribe and the Pauma Gaming Commission in its "Detailed Response to Tribal-State Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8)" or the exhibits attached thereto. These comments were submitted to the CGCC by letter dated February 19, 2008, and the Tribe requested 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."

The Pauma Gaming Commission brought this omission to the CGCC's attention in a letter dated October 13, 2008, which was submitted to the CGCC at its meeting on

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With respect to the CGCC's re-adoption of CGCC-8, the Pauma Band of Mission Indians adopts and incorporates by reference herein the comments set forth in the attached Pauma Gaming Commission's letter of October 13, 2008. Without limiting the generality of the foregoing, the Tribe emphasizes that the CGCC's re-adoption of CGCC-8 is invalid and CGCC-8 has no legal effect with respect to the Tribe's gaming operation because it has not been approved by the Association, as expressly and clearly required by section 8.4.1(a) of the Tribal-State Compact. The only exception to prior approval of the Association is the "exigent circumstances" exception contained in section 8.4.1(a). In addition, since the CGCC amended CGCC-8 after it was reviewed by the Association, the amended version should have been re-submitted to the Association for approval and not sent out to the Tribe for comment.

The Tribe disagrees with the CGCC's position that section 8.4.1(b) provides an exception to the general rule of section 8.4.1(a) requiring prior Association approval. Section 8.4.1(b) cannot be read to negate or render meaningless the clear requirement for Association approval set forth in section 8.4.1(a). Moreover, an interpretation of section 8.4.1 that would permit the CGCC to unilaterally impose statewide regulations in the face of disapproval by the Association flies in the face of well-established principles of tribal sovereignty and, in particular, the rule that civil-regulatory laws do not apply to tribes in California. These principles formed the backdrop for the negotiation of the Tribal-State Compacts and it defies reason that the parties to the compacts would have created the Association specifically for the purpose of approving proposed state-wide gaming regulations but then permitted the CGCC to effectively override the Association by adopting a regulation that was not supported by any other delegate to the Association, including the other arm of the State Gaming Agency.

In summary, the Pauma Band of Mission Indians asks the CGCC not to adopt CGCC-8 as a final regulation and to either abandon the regulation or submit the amended version of CGCC-8 to the Association for consideration.

Respectfully,



Chris Devers, Chairman
Pauma Band of Mission Indians

c.c. Dean Shelton, Chairperson, CGCC
Dee Cline, President, Pauma Gaming Commission

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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

Post Office Box 89 • Pauma Valley, CA 92061
Ph: (760) 742-1020 • Fax: (760) 742-3387

JW NOV 11 2008

With respect to the CGCC's re-adoption of CGCC-8, the Pauma Band of Mission Indians adopts and incorporates by reference herein the comments set forth in the attached Pauma Gaming Commission's letter of October 13, 2008. Without limiting the generality of the foregoing, the Tribe emphasizes that the CGCC's re-adoption of CGCC-8 is invalid and CGCC-8 has no legal effect with respect to the Tribe's gaming operation because it has not been approved by the Association, as expressly and clearly required by section 8.4.1(a) of the Tribal-State Compact. The only exception to prior approval of the Association is the "exigent circumstances" exception contained in section 8.4.1(a). In addition, since the CGCC amended CGCC-8 after it was reviewed by the Association, the amended version should have been re-submitted to the Association for approval and not sent out to the Tribe for comment.

The Tribe disagrees with the CGCC's position that section 8.4.1(b) provides an exception to the general rule of section 8.4.1(a) requiring prior Association approval. Section 8.4.1(b) cannot be read to negate or render meaningless the clear requirement for Association approval set forth in section 8.4.1(a). Moreover, an interpretation of section 8.4.1 that would permit the CGCC to unilaterally impose statewide regulations in the face of disapproval by the Association flies in the face of well-established principles of tribal sovereignty and, in particular, the rule that civil-regulatory laws do not apply to tribes in California. These principles formed the backdrop for the negotiation of the Tribal-State Compacts and it defies reason that the parties to the compacts would have created the Association specifically for the purpose of approving proposed state-wide gaming regulations but then permitted the CGCC to effectively override the Association by adopting a regulation that was not supported by any other delegate to the Association, including the other arm of the State Gaming Agency.

In summary, the Pauma Band of Mission Indians asks the CGCC not to adopt CGCC-8 as a final regulation and to either abandon the regulation or submit the amended version of CGCC-8 to the Association for consideration.

Respectfully,



Chris Devers, Chairman
Pauma Band of Mission Indians

c.c. Dean Shelton, Chairperson, CGCC
Dee Cline, President, Pauma Gaming Commission

1/27/08



Pauma Band of Mission Indians

P.O. Box 369 • Pauma Valley, CA 92061 • (760) 742-1289 • Fax (760) 742-3422

Established 1893

February 19, 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 February 21, 2008

Dear Chairman Shelton:

The Pauma Band of Mission Indians and the Pauma Gaming Commission submit this letter for the CGCC's consideration at its meeting on February 21, 2008, and request that this letter be made part of the record for said meeting.

The purpose of this letter is to respectfully request that the California Gambling Control Commission not adopt the draft regulation CGCC-8 as a proposed regulation for submission to the Association.

The Pauma Band of Mission Indians and the Pauma Gaming Commission join in the comments contained in the Association's Regulatory Standards Taskforce Final Report and Statement of Need dated February 13, 2008. In addition to disapproving CGCC-8 on the basis that it is unnecessary, duplicative, unfairly discriminatory and unduly burdensome, we disapprove of CGCC-8 because it is an unauthorized attempt to renegotiate the terms of our Tribal-State Compact.

While the decision, *Colorado River Indian Tribe v. NIGC* (2006) 466 F.3d 134, does raise questions about the role of the NIGC in regulating class III gaming activities, the Pauma Gaming Commission wishes to impress upon the CGCC that the decision does not create a regulatory crisis or void. California tribes, as sovereign governments, are self-regulating and follow their own stringent internal control standards. The Tribes have an even stronger interest than the State or federal government in ensuring that their gaming facilities are operated in manner that protects tribal assets and promotes public confidence in the integrity of Indian gaming.

RECEIVED

OCT 16 2008

JM

The Pauma Band of Mission Indians adopted the NIGC's minimum internal control standards as tribal law, and the Pauma Gaming Commission continues to oversee the gaming operation's compliance with those standards as part of its day-to-day regulatory activities and as part of an annual external audit. Moreover, the Pauma Gaming Commission has continued to share the audit results with the NIGC.

The NIGC's authority to promulgate and enforce their MICS in relation to Class III gaming was called into question even before the NIGC promulgated the MICS as a final rule, effective February 4, 1999. (See, 64 Fed. Reg. (Jan. 15, 1999) 589, 590 ["Commenters disagreed as to whether the Commission has the statutory authority to promulgate regulations on MICS."]) The CRIT case itself was filed back in 2001, and at all three levels of review (i.e., the Department of Interior's Office of Hearings and Appeals' Administrative Law Judge [May 2, 2002], the D.C. Federal District Court [Aug. 24, 2005] and the Federal Court of Appeals [Oct. 20, 2006]) the holding was the same.

The Pauma Band of Mission Indians' original Tribal-State Compact was executed by Governor Davis on May 1, 2000, and amendments were executed by Governor Davis on June 21, 2004. Thus, it was public knowledge at the time the State negotiated with this Tribe that the NIGC's authority to promulgate and enforce MICS with respect to Class III gaming was questionable at best.

The State could have expressly addressed the MICS issue in the Tribe's original Compact or the subsequent 2004 amendments, as the State of Arizona did when it negotiated new Compacts with Arizona tribes in 2003, which expressly require gaming tribes in that state to implement the NIGC's MICS, as amended from time to time. The California Gambling Control Commission's attempt to adopt and enforce the NIGC's MICS as statewide regulations is an improper attempt to amend the terms of the Tribal-State Compact in circumvention of section 12.1 of the Compact.

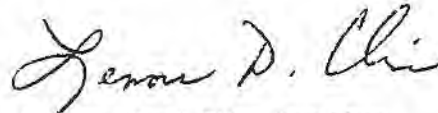
It is our position that under the plain terms of our Tribal-State Compact, i.e., sections 8.1 and 7.4, the Pauma Gaming Commission is the only entity authorized to promulgate minimum internal control standards for the Tribe's gaming operation and to ensure compliance with same. At most, the Compact authorizes the CGCC to confirm whether the Pauma Gaming Commission has promulgated the minimum standards contemplated by section 8 and whether it ensures enforcement of same. The Pauma Gaming Commission is willing to provide the CGCC with an annual certification to this effect as an alternative to the proposed CGCC-8.

In closing, the Pauma Band of Mission Indians and the Pauma Gaming Commission urge the CGCC not to adopt CGCC-8 as a statewide regulatory standard.

Respectfully,



Chris Devers, Chairman
Pauma Band of Mission Indians



Lenora "Dee" Cline, President
Pauma Gaming Commission

c.c. Alexandra Vuksich, Commissioner, CGCC
Stephanie Shimazu, Commissioner, CGCC
Cyrus Rickards, General Counsel, CGCC



SUSANVILLE INDIAN RANCHERIA

February 24, 2010

VIA FACSIMILE (916) 263-0499 & Hand Delivery
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, 95833-4231
Attn: Chairman Dean Shelton

Re: Response to Notice of Re-Adoption of CGCC-8

Dear Chairman Shelton:

The Susanville Indian Rancheria provides the following responses to the California Gambling Control Commission's (CGCC) proposed re-adoption of Uniform Tribal Gaming Regulation CGCC-8 (Minimum Internal Control Standards) (CGCC-8).

The Tribe is concerned that the CGCC is considering the hasty re-adoption CGCC-8 despite the intense opposition and second disapproval by the Tribal State Association (Association) on February 4, 2010.

Our Tribe believes that the following modifications require immediate attention before CGCC-8 should be considered for re-adoption by the CGCC—and certainly before any form of the regulation is re-submitted to the Association for a vote in accordance with the various compacts and the protocol of the Association:

- Establish acceptable terms relating to the frequency and duration of on-site CGCC Minimum Internal Control Standard (MICS) activities;
- Clarify and define the on-site regulatory activities of the CGCC;
- Provide assurance against duplication of on-site regulatory activities by the CGCC and the Bureau of Gambling Control;
- Removal of the Tribal Action Plan mandate;
- Removal of subordinate dispute resolution process whereby the Tribe may appear before the CGCC to resolve CGCC-8 disputes; and
- Creation of a workable and acceptable National Indian Gaming Commission alternative oversight provision.

February 24, 2010

In the absence of meaningful modifications to the CGCC-8 regulation, our tribe will be unable consider supporting its approval by the Association. Simply put, the Tribe will not alter its negotiated Compact rights outside of the required compacting negotiation process. Please be aware that if the CGCC continues to force the CGCC-8 regulation, that is both inconsistent with the language of 1999 Tribal-State compact and lacks the support of California gaming tribes, our Tribe will have no choice but to take all necessary action to protect our rights and our sovereignty.

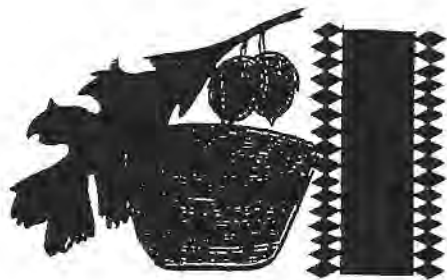
We respectfully urge the CGCC, to consider the above modifications when advancing and re-considering the imposition of CGCC-8 upon the Tribe.

Sincerely,



Stacy Dixon, Chairman
Susanville Indian Rancheria

cc: Tribal Gaming Commission
George Skibine, Acting Chairman, National Indian Gaming Commission
Arnold Schwarzenegger, Governor, State of California
Edmund G. Brown, Attorney General, State of California
Jacob Appelsmith, Bureau Chief, Bureau of Gambling Control, State of California

**TUOLUMNE ME-WUK TRIBAL COUNCIL**

Post Office Box 699
TUOLUMNE, CALIFORNIA 95379
Telephone (209) 928-5300
Fax (209) 928-1677

February 23, 2010

VIA FACSIMILE (916) 263-0499 & Hand Delivery
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, 95833-4231
Attn: Chairman Dean Shelton

Re: Response to Notice of Re-Adoption of CGCC-8

Dear Chairman Shelton:

The Tuolumne Band of Me-Wuk Indians (Tribe) provides the following responses to the California Gambling Control Commission's (CGCC) proposed re-adoption of Uniform Tribal Gaming Regulation CGCC-8 (Minimum Internal Control Standards) (CGCC-8).

The Tribe is concerned that the CGCC is considering the hasty re-adoption CGCC-8 despite the intense opposition and second disapproval by the Tribal State Association (Association) on February 4, 2010.

Our Tribe believes that the following modifications require immediate attention before CGCC-8 should be considered for re-adoption by the CGCC—and certainly before any form of the regulation is re-submitted to the Association for a vote in accordance with the various compacts and the protocol of the Association:

- Establish acceptable terms relating to the frequency and duration of on-site CGCC Minimum Internal Control Standard (MICS) activities;
- Clarify and define the on-site regulatory activities of the CGCC;
- Provide assurance against duplication of on-site regulatory activities by the CGCC and the Bureau of Gambling Control;
- Removal of the Tribal Action Plan mandate;
- Removal of subordinate dispute resolution process whereby the Tribe may appear before the CGCC to resolve CGCC-8 disputes; and
- Creation of a workable and acceptable National Indian Gaming Commission alternative oversight provision.



February 24, 2010

VIA FACSIMILE (916) 263-0499 & Hand Delivery
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, 95833-4231
Attn: Chairman Dean Shelton

Re: Response to Notice of Re-Adoption of CGCC-8

Dear Chairman Shelton:

The Big Valley Rancheria of Pomo Indians (Tribe) provides the following responses to the California Gambling Control Commission's (CGCC) proposed re-adoption of Uniform Tribal Gaming Regulation CGCC-8 (Minimum Internal Control Standards) (CGCC-8).

The Tribe is concerned that the CGCC is considering the hasty re-adoption CGCC-8 despite the intense opposition and second disapproval by the Tribal State Association (Association) on February 4, 2010.

Our Tribe believes that the following modifications require immediate attention before CGCC-8 should be considered for re-adoption by the CGCC—and certainly before any form of the regulation is re-submitted to the Association for a vote in accordance with the various compacts and the protocol of the Association:

- Establish acceptable terms relating to the frequency and duration of on-site CGCC Minimum Internal Control Standard (MICS) activities;
- Clarify and define the on-site regulatory activities of the CGCC;
- Provide assurance against duplication of on-site regulatory activities by the CGCC and the Bureau of Gambling Control;
- Removal of the Tribal Action Plan mandate;
- Removal of subordinate dispute resolution process whereby the Tribe may appear before the CGCC to resolve CGCC-8 disputes; and
- Creation of a workable and acceptable National Indian Gaming Commission alternative oversight provision.

February 24, 2010

In the absence of meaningful modifications to the CGCC-8 regulation, our Tribe will be unable to consider supporting its approval by the Association. Simply put, the Tribe will not alter its negotiated Compact rights outside of the required compacting negotiation process. Please be aware that if the CGCC continues to force the CGCC-8 regulation, that is both inconsistent with the language of 1999 Tribal-State compact and lacks the support of California gaming tribes, our Tribe will have no choice but to take all necessary action to protect our rights and our sovereignty.

We respectfully urge the CGCC, to consider the above modifications when advancing and re-considering the imposition of CGCC-8 upon the Tribe.

Sincerely,



Valentino Jack, Chairman
Big Valley Rancheria of Pomo Indians

cc: Tribal Gaming Commission
George Skibine, Acting Chairman, National Indian Gaming Commission
Arnold Schwarzenegger, Governor, State of California
Edmund G. Brown, Attorney General, State of California
Jacob Appelsmith, Bureau Chief, Bureau of Gambling Control, State of California

STATE OF CALIFORNIA
GAMBLING CONTROL COMMISSION

COMMISSION MEETING

California Gambling Control Commission

2399 Gateway Oaks Drive

Suite 100

Sacramento, California 95833

FEBRUARY 24, 2010

10:00 A.M.

**CERTIFIED
COPY**

Reported by: Desiree C. Tawney, CSR No. 12414



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1 APPEARANCES:

2

DEAN SHELTON
Chairman

3

4 STEPHANIE SHIMAZU
Commissioner

5

6 ALEXANDRA VUKSICH
Commissioner

7 JOY CALKIN
Staff Services Analyst

8

9 TERRI A. CIAU
Executive Director

10 JOE DHILLON
Chief Counsel, Legal Division

11

12

13 Public Speakers:

14 Jason Pope
Richard Ross
15 Tuari Bigknife
Scott Crowell
16 Morris Reid
John Roberts
17 Victor Estrada
Jerome Levine
18 Sharon House
Wanda Brown
19 Richard Armstrong
Jane Zerbi
20 Jacob Appelsmith
Ted Pata

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BE IT REMEMBERED, that on FEBRUARY 24, 2010,
commencing at the hour of 10:00 A.M., at the California
Gambling Control Commission, 2399 Gateway Oaks Drive, Suite
100, Sacramento, California, before me, DESIREE C. TAWNEY,
Certified Shorthand Reporter in and for the county of
Placer, state of California, the following proceedings took
place:

(The following proceedings were held on the record.)

CHAIRMAN SHELTON: Call the meeting to order. Ask you
to please stand for the Pledge of Allegiance.

(Pledge of Allegiance.)

CHAIRMAN SHELTON: Roll call, please.

JOY CALKIN: Chairman Shelton?

CHAIRMAN SHELTON: Here.

JOY CALKIN: Commissioner Shimazu?

COMMISSIONER SHIMAZU: Here.

JOY CALKIN: Commissioner Vuksich?

COMMISSIONER VUKSICH: Here.

JOY CALKIN: Thank you.

CHAIRMAN SHELTON: Mr. Pope.

JASON POPE: Good morning, Mr. Chairman,
Commissioners. Jason Pope, staff counsel here at the

1 We're here today regarding CGCC-8, a regulation put
2 forward by the Commission intended to provide protocols for
3 interactions over State Gaming Agency Compact inspections
4 related to internal control standards.

5 While CGCC-8 has undergone several variations and
6 modifications over the course of the three-year regulatory
7 process, the intent and purpose has always remained the
8 same, which is to provide a transparent and uniformed
9 method for the State to verify that the Tribes gaming
10 operations are Compact-compliant in regards to internal
11 control standards.

12 Today's hearing is concerning the next procedural
13 step required under the Compact, which is re-adoption of
14 CGCC-8 after Association disapproval according to the
15 Compact Section 8.4.1(b).

16 Some of the highlights of the more than three-year
17 regulatory process may be helpful to the Commissioners
18 consideration of re-adoption.

19 CGCC-8 was first introduced to the Association of
20 Tribal and State Gaming Regulators in 2007 following the
21 Colorado River Indian Tribes decision, which determined
22 that the National Indian Gaming Commission did not have the
23 authority to promulgate Class III gaming regulations.

24 The Association soon thereafter created the first
25 Association Task Force which reviewed the regulation and

1 issued a report on February 13, 2008 which essentially
2 rejected CGCC-8 as a whole.

3 The Commission modified CGCC-8 in light of the Task
4 Force comments and objections and adopted it as a proposed
5 regulation under the Compact on March 27, 2008.

6 This version was presented to the Association at a
7 meeting on May 7, 2008. And in line with the Association
8 protocols, no vote was then held.

9 On September 4, 2008 the Association held a subsequent
10 meeting where CGCC-8 was disapproved. The Commission was
11 the lone vote in favor of the regulation. Again, in
12 response to the comments and objections, the Commission
13 amended CGCC-8 in a version which was re-adopted on October
14 14, 2008 in line with the Compacts.

15 The Commission tentatively scheduled a meeting
16 December 2008 as a date where CGCC-8 would be adopted as a
17 final regulation under Compact Section 8.4.1(c). In light
18 of the numerous comments and objections from Tribes, the
19 Commission took the meeting off calendar and directed
20 Commission staff to work with Tribal representatives and
21 attorneys on another version.

22 As a result of these efforts, staff sent out a draft
23 of CGCC-8 on April 16, 2009 which incorporated a number of
24 key revisions. The Commission tentatively scheduled a
25 meeting in June where this version would be voted on as a

1 final regulation.

2 Prior to the Commission meeting the Association met on
3 June 4, 2009 where it established a new Task Force to
4 consider the April version of CGCC-8. The Commission never
5 held the June meeting. Instead, the Commission staff
6 participated in numerous Task Force meetings and
7 discussions where several Tribal delegates and the Bureau
8 of Gambling Control also participated in.

9 Ultimately the Task Force produced a report on August
10 6, 2009 which included a revised version of CGCC-8. The
11 Association considered this revised version of CGCC-8 at
12 its September 17, 2009 meeting whereby motion it approved
13 the August 6, 2009 Task Force Report and recommended this
14 Commission adopt this revised version of CGCC-8.

15 This Commission one week later at its September 24,
16 2009 meeting considered the Task Force version. The
17 Commission elected to adopt the Task Force version of
18 CGCC-8 as a proposed regulation.

19 Based on representations from Tribal representatives
20 who indicated this regulation had support and would move
21 through the Compact regulatory process, the Commission also
22 decided to start the Compact regulatory process anew
23 instead of adopting that version as a final regulation.

24 CGCC-8 was again sent to the Association for
25 consideration at an Association meeting on December 17,

1 2009. Again, in line with the protocols, no vote was held
2 on the regulation itself but another meeting was scheduled
3 on February 4, 2010 where a vote would be held.

4 During this December meeting the Commission received
5 no objections or comments against CGCC-8.

6 At the February 4, 2010 Association meeting, the
7 regulation was again disapproved according to the
8 Association protocols. Some Tribal representatives present
9 may wish to comment on that disapproval, however.

10 It should be noted prior to the February 4th, 2010
11 Association meeting the Commission received no objections
12 or comments about the Task Force version of CGCC-8 that was
13 ultimately adopted by the Commission. Indeed at the
14 Association meeting itself no negative comments were made
15 prior to the vote. And the majority of those present
16 approved it; though that was not enough, according to the
17 Association protocol.

18 And at this time I'll toss it over to Deputy Director
19 Dick Ross, who is prepared to discuss CGCC-8 and the
20 continuing need for it.

21 RICHARD ROSS: Mr. Chairman, Commissioners, Richard
22 Ross, Deputy Director, Compliance Division, California
23 Gambling Control Division.

24 The February 4th meeting provides no factor upon which
25 I can respond to, no negative comments were made. So I

1 cannot, for the Commissioners benefit, respond to the
2 issues that generated the negative vote.

3 Had there been, it would probably put this meeting
4 into a more defined content about the regulation.

5 The history of Regulation 8 begins in 2006 and has
6 moved through a number of different public forums including
7 a Government Operations Committee hearing on May 14 of '07
8 where this Commission and this Chairman testified regarding
9 the value of the internal controls, the internal control
10 reviews and the value of the accountability.

11 And I believe this Commission has worked diligently in
12 a very open and transparent and -- and I think cooperative
13 manner to identify a basis by which the Commission and the
14 Tribes can work together in this area.

15 No one has ever contested the value of internal
16 controls. Sophisticated businesses all have internal
17 controls. In the gaming industry there is a significant
18 risk associated with intensive cash operations. Internal
19 controls first and foremost protect the Tribes and their
20 interests and their assets.

21 The State's responsibility to ensure that the Compacts
22 are complied with significantly rely upon internal
23 controls. Section 8.0 is fundamentally focused upon that
24 and is part and parcel of the State's responsibility to
25 review the compliance with the Compact.

1 Regulation 8 does not set a specific standard. Great
2 care has finally been applied to ensure that a particular
3 standard is not the only benchmark but means of identifying
4 standards applicable to the particular Tribe's activities.

5 But the Regulation 8 does create a structure for the
6 State to operate within. It restricts no Tribal authority
7 and provides for transparency between the individual Tribe
8 and the State in a unified, uniform manner in which we look
9 at the implementation of internal controls.

10 Regulation 8, as last proposed, was constructed with
11 Tribal values, participation and concurrence in both form
12 and substance.

13 Not all parties agreed on all aspects, the State
14 Gaming Agency included. The plurality did.

15 In harkening back to the Compact, Compact Section
16 8.4.1, upon which this meeting is fundamentally based, is a
17 process agreed to by the Association members in their
18 compacts with the State.

19 This regulation conveys and codifies a uniformity in
20 implementing the State's carrying out its role. It is very
21 clear. It is very open. It is very defined.

22 That is all. I think it is time to move on.

23 CHAIRMAN SHELTON: Before I ask the Commissioners,
24 does the Association have a designated spokesperson?

25 So how many people here intend to speak so I know if

1 I'm going to put a time limit on this or not?

2 We can live with that. Public comment?

3 TUARI BIGKNIFE: Good morning, Commissioners. My name
4 is Tuari Bigknife. I'm legal counsel with Viejas Band of
5 Kumeyaay.

6 First, I want to start off by saying Viejas, like all
7 of the other Tribes in California that are engaged in
8 gaming, strongly support gaming regulation. It is an
9 essential element to effectively running a gaming
10 operation.

11 Tribes spend millions of dollars a year regulating to
12 protect customers, to protect Tribal assets and, of course,
13 to ensure integrity of the games.

14 Viejas voted in favor of CGCC-8 and supported it
15 throughout the Task Force process -- this latest Task Force
16 process.

17 Rome was not built in a day, neither is good
18 regulation. It's a process that requires patience,
19 listening, educating and understanding. The Association
20 functions much like the UN, I guess. You're not going to
21 get everybody to agree to everything.

22 But today it is very critical the Commission in
23 evaluating its decision takes a look at all of the options.
24 I would urge that the one on the table today, this
25 re-adoption route, is not the only option.

1 The February 4, 2010 vote at Cabazon was not a
2 failure. If you actually look over the course of CGCC-8
3 over the past three years, it was a success. It was
4 actually the first time you had a vote where the majority
5 of Tribes that were present supported the regulation. In
6 fact, there were three abstentions. Nobody really knows
7 why they abstained. Those three votes, even under the
8 Association protocols, would have carried the day. We
9 would have had a very different discussion here today.

10 It evidences a major shift in the support for CGCC-8.
11 56 percent of the Tribes voted in favor of this.

12 What action can CGCC take? I took a look at the issue
13 and thought about it.

14 I propose there are several options. The first being
15 no action at all. Of course, we know that is not
16 acceptable to the Commission, especially after all of this
17 work for the past three years. We wouldn't be here today
18 if it was.

19 The second is what is on the table today, vis-a-vi,
20 the agenda. That is the re-adoption route. I would
21 suggest this is a bad idea. Why? It threatens to undue
22 the process that has been built over the past three years
23 following the protocols and everything that the Association
24 in conjunction with the other Association members from the
25 State has tried to do. It puts the Association at risk,

1 the Association process. You've probably heard this
2 referred to as the "override potential" in the Compact;
3 that somehow the Association serving as a mechanism for
4 vetting and approving regulation and ultimately the
5 gatekeeper of regulation that pertains to gaming with the
6 Tribes is put at risk by going around it.

7 It transforms the issue of CGCC-8 and whether we can
8 get a regulation that gains enough approval to pass. It
9 changes that issue of CGCC-8 and instead turns it into a
10 Compact dispute; namely, whether or not the Association is
11 going to have any future validity or role for purposes of
12 gaming regulation.

13 I would urge that the 30 -- definitely speak for
14 Viejas and I'm sure the majority of the Tribes, if not all.
15 You're going to have the 31 that voted in favor now
16 challenge the action simply because the Association is now
17 at risk. That is something each Tribe bargained for in
18 entering into the '99 Compact. It didn't change in any of
19 the Compacts that followed.

20 What this will do from a timing standpoint as well is
21 it will keep CGCC-8 even further from becoming reality. It
22 is going to be tied up in dispute resolution process, meet
23 and confer, arbitration or litigation. The reality is
24 CGCC-8 will be a distant reality. It will be in the hands
25 of probably one person to decide rather than a room full of

1 individuals each representing their interests, which is why
2 the Association is a good idea, which is why the
3 Association is still the way to resolve this issue.

4 Another position that the Commission can take is that
5 the Association by majority vote actually approved CGCC-8
6 in February. Now, this conflicts with the '02 protocols
7 which require a two-thirds majority but it does not
8 necessarily conflict with the Compact.

9 If you take a look -- and I had to go into the history
10 book for some of this -- but if you take a look at the
11 original protocols, there is no mention whatsoever of a
12 two-thirds super majority required to approve anything.

13 In fact, some funny anecdotal points, there actually
14 was a vote by the Association on whether a majority -- a
15 simple majority of the simple majority of members -- so
16 basically a majority of a quorum -- what happened on
17 February 4. That was actually an option that was
18 considered when the protocols were amended in 2002. What
19 actually ended up in the protocols is two-thirds super
20 majority was another option.

21 Well, the vote difference between those was 22 to 18.
22 There wasn't an agreement of the minds on that. Actually,
23 the protocols themselves did not even pass by a two-thirds
24 majority of votes. You have to recall over the history of
25 time the Association operated under a majority rules

1 situation, such that CGCC-8 under that reasoning passed at
2 Cabazon. That is something I think the Association should
3 consider in its evaluation.

4 One of the things that a lot of Tribes had voted in
5 favor walked away from Cabazon with a bad taste in their
6 mouth because they felt their voice was not counted as much
7 as those who voted against it. Each Tribe, of course,
8 negotiated the Compact believing its voice was going to be
9 heard -- and I believe for purposes of uniform regulation
10 was going to be heard as much as every other Tribes voice.

11 Now I know the Commission has been criticized a lot
12 for not following the protocols. So another route that can
13 be considered here is realize that the vote that took place
14 in February is not the end, not the finish line. The
15 finish line is a lot closer than it has ever been at any
16 other point in time.

17 The Association is still the mechanism to get the
18 matter resolved. I've talked about two concepts of how you
19 get to effective regulation: Patience, which the CGCC has
20 definitely exhibited over the course of time with this
21 regulation, and education. As you've heard today from your
22 own staff, we don't know why some of the Tribes voted no.
23 It is important to make sure we educate further about
24 CGCC-8, what the Task Force did and how that process was
25 arrived at.

1 So one of the options that the Commission should also
2 consider is actually re-submitting CGCC-8 to the
3 Association to work through those final issues. Because
4 maybe the Association has not done enough educating of its
5 delegates on this regulation and perhaps some more needs to
6 be done. And I think a few more months of patience and
7 education could actually see this process come to an end
8 much quicker and a resolution that is good for all.

9 Now I put on my taxpayer hat for a moment. As a
10 citizen of California with the fiscal crisis that the State
11 is facing, do we want to spend a lot of money litigating an
12 issue? Do we want to spend a lot of taxpayer money on
13 something where an informal Association resolution could
14 actually justify the result and achieve the result that
15 everyone wants in a quicker and less expensive manner? I
16 think the last two options are the way to go.

17 Thank you.

18 CHAIRMAN SHELTON: Thank you. Next. Is that it?

19 SCOTT CROWELL: Good morning, thank you for the time
20 for public comment.

21 I have a brief statement that the Rincon Tribal
22 Council actually adopted yesterday. I'd like to make a
23 couple of ad hoc comments.

24 CHAIRMAN SHELTON: May I interrupt you? I forgot to
25 ask the gentleman to spell his last name. I'm sure you've

1 got it.

2 State your name and spell your last name for the
3 record.

4 SCOTT CROWELL: My name is Scott Crowell,
5 C-r-o-w-e-l-l on behalf of the Rincon Band of Luiseno
6 Indians.

7 I stand before you today on behalf of the Rincon Band
8 of Luiseno Indians.

9 The Rincon business committee and its chairman, Bo
10 Mazzetti, are unable to attend the hearing today and send
11 their regards.

12 Thank you for the opportunity to discuss the CGCC-8.

13 Rincon's substantive concerns about CGCC-8 are
14 well-documented in previous comments submitted to this
15 regulatory body and to the Association. We incorporate our
16 previous comments by this reference.

17 Rincon's concerns remain outstanding and unresolved.
18 However, our comments today focus on process and protocol.

19 Unfortunately, it has become evident CGCC's vote today
20 is to unilaterally impose the regulation without
21 Association approval. We believe this is a huge mistake.

22 The 1999 Compact has a process for adopting State
23 Gaming Agency regulations. Section 8.4 and 8.4.1 of the
24 1999 Compact clearly state the State Gaming Agency
25 regulation shall not be affected with respect to a Tribes

1 gaming operation unless and until approved by the
2 Association. This basic principle cannot be ignored by the
3 Commission. The State Gaming Agency's power to regulate
4 Tribal gaming operations is only found in the Compact.

5 State laws and regulations cannot and do not provide
6 independent authority to regulate Tribal gaming operations.

7 Unilateral and position of CGCC-8 is a Compact
8 amendment. The Compact clearly provides the Tribal Gaming
9 Agencies are the primary regulators of each Tribes gaming
10 operations and are charged with the adoption and
11 enforcement of Tribal Gaming Agency regulations regarding
12 the subjects found in Section 8.1 of the Compact. Any
13 additional regulatory authority vested with the CGCC can
14 only be the result of the Compact amendment.

15 Now, we believe there are solutions. You have viable
16 options. You do not need to go down this path.

17 Solution number one: Use existing authority. It is
18 somewhat galling that we sit here today at this juncture
19 when the State has never made any attempt, which we are
20 aware of, to ensue the enforcement provisions of the
21 existing Compact. If a Tribe fails to adopt and enforce
22 adequate Tribal regulations, then it's a breach of the
23 Compact.

24 Chairman Shelton has made statements that there are
25 such Tribes out there, although you will not identify or

1 document any such breaches. Instead of imposing what we
2 believe to be an illegal regulation on all Tribes, we
3 believe you are better advised to take specific action
4 against specific and identified Tribes under your existing
5 authority. Notice that Tribe or Tribes under the meet and
6 confer provisions under the Compact. And if no resolution
7 can be reached, then sue that Tribe in Federal Court for
8 injunctive relief. You've never done that.

9 Solution number two: Memoranda of Agreement with
10 interested Tribes. There are a number of Tribes that
11 supported the regulation. We suggest the Commission
12 approach those Tribes and discuss the possibility of
13 entering into an MOU. There is no reason such MOU cannot
14 achieve much of what you seek in CGCC-8. The concept of
15 an MOU is certainly not foreign to the State. The governor
16 has entered into MOU's with Tribes regarding MICS
17 previously.

18 Additionally, the Bureau has entered into MOU's with
19 Tribes regarding licensing.

20 Solution number three: Compact amendments. We've
21 said this before. The Commission is no doubt aware there
22 are a number of models of effective Compacts in California
23 today. Some of the compacts specifically require NIGC MICS
24 compliance. Others, such as the 1999 Compacts, do not. It
25 is inappropriate for the regulation to make up for the lack

1 of uniformity that exist in the Tribal State Compacts.

2 It is not lost upon the Rincon Band that the issues
3 the CGCC seeks to address in the form of CGCC-8 might have
4 been addressed in the context of the Compact amendments if
5 the governor did not impose a precondition to the Compacts
6 in negotiations equalled to 15 to 25 percent the Bands
7 gross gaming revenue.

8 Now that the Federal Court ruled such demands and such
9 fees are an illegal tax under IGRA, you have the
10 opportunity to take CGCC-8 -- the governor -- for
11 government to government negotiations for legitimate
12 Compact amendments.

13 Much of what I say today the Band has said before. We
14 have taken advantage of virtually every opportunity to
15 comment on your efforts. Sadly, our words of advice have
16 been disregarded.

17 If the State and not just CGCC feels additional State
18 regulatory authority is necessary, then we encourage the
19 governor to initiate good faith Compact amendment
20 negotiations with the Rincon Band.

21 Respectfully, Bo Mazzetti and all five members of the
22 council.

23 I have copies of the formal comment for the
24 Commission.

25 Now, let me make a couple of ad hoc comments. I agree

1 and appreciate virtually everything I've heard from the
2 representative of Viejas with the exception of taking the
3 interpretation that you disregard the protocol and take the
4 position that the Association voted yes.

5 I think going down that route will result in the same
6 inevitable litigation that moving unilaterally would
7 accomplish. But I strongly endorse the idea of taking it
8 back to the Association.

9 Rincon voted no. Our concerns have been mostly
10 unresolved but many of our concerns were resolved in the
11 last -- the last version of CGCC-8 that was prepared. I
12 think you're all well-aware we submitted a formal meet and
13 confer notice to the State when we thought last September
14 you were prepared to move forward with the April draft of
15 CGCC-8. We withdrew that because we thought that there was
16 substantial progress.

17 I agree, Rome is not built in a day. And I think that
18 we can get there from here. Rincon's substantive concerns
19 remain in ambiguity in what the constant -- in what an
20 audit under the CGCC-8 would look like. That is something
21 that could be, you know, possibly worked out in further,
22 you know, discussions and potential tweaking of the
23 existing regulation.

24 I can only speak for Rincon. The vote was very close.
25 If you send it back to the Association, there is

1 the -- I think the chance that we can get a positive vote
2 out of the Association and avoid the litigation route that
3 I think is otherwise inevitable.

4 The State's track record for litigation against Tribes
5 under the 1999 Compact is not good. Rincon, in the past,
6 has taken on litigation issues alone.

7 If you move down this path, we won't be alone in the
8 litigation. We don't want litigation. We don't want a
9 situation to where the work that has been accomplished in
10 terms of coming closer and closer in terms of reaching some
11 kind of agreement and accord on how to approach this issue
12 gets thrown to the wayside and we wind up with a
13 controversial and adversarial situation moving forward. I
14 don't think that is helpful to anyone.

15 So I really encourage this Commission to not pursue
16 the unilateral position of this regulation upon the Tribes.

17 As you've heard from the representative from Viejas,
18 even the number of the tribes that voted yes have to take
19 issue with the Commission moving unilaterally to override
20 the vote of the Association.

21 Send it back to the Association. We're a lot closer
22 than we've ever been. If you move forward with your
23 proposed form of action today, all of that is going to be
24 forgotten.

25 Thank you very much.

1 CHAIRMAN SHELTON: Thank you.

2 JASON POPE: Mr. Chairman, if I may read the Compact
3 section just -- quick. And I'm referring to 8.4.1(b).
4 This is in response to Mr. Crowell's statement that today's
5 discussion is for unilateral adoption of CGCC-8.

6 Today's session is for the re-adoption of CGCC-8. I
7 quote the second sentence in 8.4.1(b): "A regulation that
8 is disapproved by the Association shall not be submitted to
9 the Tribe for comment unless it is re-adopted by the State
10 Gaming Agency as a proposed regulation in its original or
11 amended form with a detailed written response to the
12 Association's objections."

13 Thank you.

14 RICHARD ROSS: Mr. Chairman?

15 CHAIRMAN SHELTON: Gentlemen, let's just move on.
16 Okay. Thank you.

17 I know what you're trying to do and I appreciate it
18 but I want to hear the next speaker.

19 I saw somebody out there. There you go.

20 Don't be nervous.

21 MORRIS REID: Hello. My name is Morris Reid. I'm
22 chairman of Picayune Rancheria of Chukchansi Indians. I
23 spoke and brought forth information at the February 4th
24 meeting.

25 CHAIRMAN SHELTON: Please spell your last name.

1 MORRIS REID: R-e-i-d.

2 CHAIRMAN SHELTON: Thank you.

3 MORRIS REID: Yes. Okay. In that, we still stand
4 behind that. I'm just -- I'd like to say that we do have
5 some concerns. And, also, I'd like to thank you, too, for
6 letting me speak here today and letting us come forward to
7 express our feelings on the direction of CGCC-8.

8 And I'd just like to read a few points. We're not
9 going to go altogether into our points. I think our points
10 were made. And I think everything that now has to come
11 together to be together by us to come out with some
12 determination in working together today here.

13 And I'd just like to say the Tribe is disappointed
14 that the CGCC has continued to move forward on CGCC-8
15 without sufficient Tribal support.

16 That was the vote. And on February 4th only 29 of 64
17 member of Tribes of the Tribal State Association voted to
18 approve the CGCC -- voted to approve the regulation CGCC-8.
19 Our Tribe was not one of the 29 for the number of
20 reasons -- for a number of reasons, which we stated.

21 And CGCC-8 is simply not justified as there is no void
22 in MICS regulations. With these concerns in mind, our
23 Tribe will not stand idly if the CGCC tends to enforce the
24 regulation that is inconsistent with the 1999 Tribal State
25 Compact.

1 We encourage the CGCC to follow the Tribal State
2 Association protocol, provide the parties ability to
3 provide meaningful modifications to the proposed
4 regulations to address our concerns before any regulation
5 is adopted as final by the CGCC-8.

6 At this point we feel our comments still remain
7 outstanding and unresolved.

8 And so with that, I thank you again for letting me
9 speak here.

10 CHAIRMAN SHELTON: Thank you.

11 JOHN ROBERTS: Good morning, Commissioners. I am John
12 Roberts, R-o-b-e-r-t-s. I am the executive director of the
13 San Pasqual Gaming Commission. I was also the chairman of
14 the Task Force on both go-rounds.

15 I'm not here speaking on behalf of the Task Force;
16 purely as a representative from San Pasqual. I'll keep it
17 brief.

18 It has been a long process. I've spent the better
19 part of three years of my professional life watching this
20 thing go from one way to the other. I was initially one of
21 the most vocal critics of this, as you all recall. Over
22 time the process that was put in place actually started to
23 work. People started listening to each other,
24 compromising. People quit digging their heels in. We've
25 gotten to the point where we're very close to success on

1 this.

2 I find myself in a strange position of also agreeing
3 with almost everybody up here at different points here and
4 there.

5 I think what concerns me about the meeting and having
6 talked with other Tribes, I think there is still a need for
7 a brief period of time to educate some of the regulators
8 and also some of the Tribal leaders. I think there is
9 still a huge misconception of what this regulation actually
10 is. And, also, being a lawyer I still remember things
11 taught to me years ago, which is: A really good lawyer
12 keeps his clients out of court. I think that is something
13 as a taxpayer -- same thing. I don't want to see us
14 waisting a lot of time, money and effort on a regulation
15 that really is not as harmful as some make it out to be.

16 I think we're close to success on this. I appreciate
17 the process that has taken place. I appreciate the fact
18 that the Commission and the Bureau and NIGC have worked
19 together on this for a common goal. I think it is
20 something that in ten years of gaming in California it
21 is -- I consider it a significant breakthrough.

22 So I would hope that clear heads prevail and everybody
23 takes a step back, takes a look at this and is not
24 confrontational but in the spirit of cooperation.

25 And there are those that have strong feelings on both

1 sides. I think, again, over time when you see that the
2 vote went unanimously against this regulation to actually a
3 majority -- I believe it was 31 Tribes voted in favor -- I
4 think that the possibility for success is well within our
5 reach.

6 And I would ask you to reconsider and re-submit to the
7 Association for reconsideration. I think we're that close.
8 And I think it is well worth maybe taking a few extra
9 months just to ensure that all possible avenues have been
10 explored.

11 Thank you.

12 CHAIRMAN SHELTON: Thank you.

13 VICTOR ESTRADA: Good morning. My name is Victor
14 Estrada. I'm a council member. That is E-s-t-r-a-d-a.
15 I'm a council member from La Posta Band of Mission Indians.

16 And I'd just like to say that the La Posta Band of
17 Mission Indians will be disappointed if the CGCC continues
18 to move forward on CGCC-8 without sufficient Tribal support
19 and without addressing the concerns voiced by our Tribe.

20 On behalf of the Tribe, I have a correspondence from a
21 chairwoman that I'd like to submit as part of this
22 meeting's record.

23 With these concerns in mind, our Tribe will not stand
24 idle if the CGCC intends to enforce a regulation that is
25 inconsistent with our Tribal State Compact.

1 Thank you. Who may I hand this to?

2 CHAIRMAN SHELTON: Mr. Pope.

3 JASON POPE: I'll take it.

4 JEROME LEVINE: Thank you. Jerome Levine,

5 L-e-v-i-n-e, attorney representing various Tribes including
6 Dry Creek. On their behalf,, I make these comments.

7 I want to begin by, first of all, pointing out that
8 this issue with CGCC-8 is not typical of what you can
9 expect every time there is a need to have some interchange
10 with the Tribes. I remind you that we passed CGCC-2 when
11 there was a need to do that. We had nowhere near this kind
12 of situation.

13 You've got a tiger by the tail for a lot of reasons
14 that may or may not have been well-advised along the way
15 but that is where you are right now but you're not in an
16 emergency situation. And the historic opportunity you have
17 right now to forge a relationship with the Tribes, I think,
18 can't be overlooked. You do have an opportunity that is
19 unique in California history. It is unique in the history
20 of Tribal State relations. It may be in other states as
21 well.

22 When the Compacts were first negotiated in 1999 the
23 Association was a concept that the Tribes and the State
24 both promoted as a form and a way in which there could be
25 these kinds of dialogues. And indeed, that has happened

1 and you've done that successfully. I think this will be
2 successful.

3 I would urge you that at this juncture this issue has
4 become so charged that, as the last speaker has indicated,
5 if you simply push ahead all you're going to do is provoke
6 more controversy and no doubt litigation and just
7 essentially throw the whole effort that you've put into
8 this and all of the resources of both the State and the
9 Tribes, which neither can afford, to resolve an issue that
10 really is more procedural than anything else at this point.

11 I do take some issue with those who believe that
12 CGCC-8 deprives the Tribes of their primary regulatory
13 authority. I've made that clear. Our position is and has
14 been consistently that in its present form, which you've
15 worked very hard to reach an agreement on or at least a
16 consensus on, it does a marvelous thing for both the State
17 and the Tribes. That is, it simply sets forth a pattern
18 that can be adopted as a safe harbor. That is the NIGC
19 standard that is already in effect by virtually every Tribe
20 in this room.

21 The difference is that you started out making that
22 mandatory, whereas CGCC-8 simply says if that is followed,
23 then that is the kind of standard that the Compact alludes
24 to but is not mandatory. If you want to adopt another
25 standard, then go back to the Compact.

1 As Mr. Crowell said, you can go back to the Compact.
2 You've got the Compact in effect now. You have all of the
3 enforcement tools in effect now. There is nothing
4 prohibiting you if there is an actual problem out there
5 right now, while this gets worked out, from moving forward
6 in any way that the Compact provides for in enforcing
7 either -- whatever your concerns are.

8 So there is no emergency here but there is an
9 opportunity, if not handled judiciously, to throw the
10 entire concept of a working relationship with the Tribes
11 that you've worked so hard to accomplish into chaos.

12 So I support those who say that while it may take a
13 month or two to move forward -- and I certainly can't
14 guarantee you that the votes will change. Hope springs
15 eternal. I can say it certainly is worth the effort.

16 I think you've heard today, in fact, from others that
17 there is some sentiment that that is going to happen.
18 There are many of us that would continue to work towards
19 reaching that goal and -- and you're so close that I would
20 just urge you, again, not to throw this into the abyss of
21 litigation and uncertainty and the waste of resources that
22 will occur if you simply try to move ahead on some
23 interpretation of the Compact that is not going to be
24 agreed upon. There is an opportunity here.

25 And to repeat myself -- can't do that too often in

1 this situation -- I would urge you to consider returning it
2 and seeing if we can't get that vote that is necessary so
3 that we're consistent with the -- with the Compact and with
4 the Association.

5 Thank you.

6 CHAIRMAN SHELTON: Thank you.

7 SHARON HOUSE: Good morning, Chairman, Commission,
8 staff. Thank you for allowing me to speak. Tribal leaders
9 and Tribes, thank you for allowing me to speak.

10 I'm here representing the Pauma -- Sharon House,
11 H-o-u-s-e.

12 I'm here representing Pauma today in regard to the
13 re-adoption of CGCC-8. Many of the comments that they
14 have have been presented already so we won't go into
15 that -- into many of those. But it is very difficult to
16 sit and listen and hear some of the people you enjoy
17 disagreeing with you're actually agreeing with. I wanted
18 to make that comment.

19 I also wanted to thank Mr. Ross for his comments about
20 accountability. I think it is one of the primary issues of
21 MICS. And I believe that prior to this I had indicated
22 when I made a presentation is that I have been the co-chair
23 and this is extremely important of the very first MICS
24 group that was introduced by the Tribes by the National
25 Indian Gaming Association. It was the Tribes that brought

1 forward an actual MICS. Yes, they did use other
2 jurisdictions. But it was the Tribes who did this. So
3 we're very aware.

4 I appreciate your comments, Mr. Ross.

5 I would like to go further into this. This is --
6 I'm -- they had requested that I read this and I'm not
7 really good at -- I'm used to speaking forward and not
8 reading. So I'm going to read it. Please excuse me if I
9 make some mistakes.

10 And I'm also going to be introducing the previous
11 comments that Pauma -- they have not changed. The comments
12 are almost all the same. They will be reintroduced and
13 presented.

14 Pauma does appreciate that the Association Task Force
15 process did improve the original version of CGCC-8 but it
16 also recognizes that each Tribe has the right to express
17 what is in the best interest of their own Tribe. It
18 believes that the Association and its protocols work but
19 the one-size-fits-all is not the answer to every issue.

20 Pauma is very aware of the importance of Section 7.4
21 of the Compact. It is also aware of the need for an
22 orderly process when the CGCC is attempting to perform a
23 Compact compliance review in regard to Section 8.1.

24 Therefore, the Tribe is suggesting an alternative
25 approach to the CGCC-8. And that is the development of a

1 Memorandum of Understanding between the Tribes and the CGCC
2 in order to define -- I mean -- in the CGCC.

3 This MOU approach has already been in place since
4 2004. It has worked. It was in regard to a gray area in
5 Section 6.56 where it said key employees had to be sent
6 forward to the Division.

7 So what it did was it's more important and it really
8 comes into play in this situation is that these MOU's have
9 been working since that time.

10 The significance of the MOU approach is two-fold.
11 That said documents were developed on a government to
12 government basis and that said approach took into
13 consideration the individuality of the Tribes ordinance and
14 regulations.

15 All the Tribes are asking for right now is that there
16 be a protocol and an efficient way to do a compliance
17 review.

18 Pauma has adopted the federal Minimum Internal Control
19 Standards and believes it provides the integrity to run and
20 maintain a gaming operation such as Paumas.

21 The Tribe is suggesting that procedures that assist in
22 a compliance review of Section 8.1 be developed in an MOU
23 format; that it would assist the State and the Tribe in
24 knowing of what to expect from each other when a compliance
25 review by the State occurs at Pauma.

1 Chairman Devers sends his regrets that he is unable to
2 make this presentation but he would urge the CGCC to take
3 into consideration the above-mentioned government to
4 government approach of the development of an MOU as opposed
5 to the regulation as well as the previous comments
6 submitted by Pauma. He would invite the California
7 Gambling Control Commission to meet with the Pauma
8 government in order to discuss the possible Memorandum of
9 Agreement.

10 With that, I'd like to say thank you.

11 CHAIRMAN SHELTON: Thank you. I see all these hands
12 going up.

13 WANDA BROWN: Good morning. My name is Wanda Brown,
14 B-r-o-w-n. I'm with the Susanville Indian Rancheria. I'm
15 vice chair on the Gaming Commission.

16 I have brought along a letter that I will submit to
17 the Commission for review. I won't read it. I would just
18 like to say on behalf of our Tribe that we're so close to
19 coming to full agreement with the proposed CGCC-8. We
20 applaud the work that has gone into this and the Task
21 Force, those that have really worked hard. Jacob
22 Appelsmith, who I think I first met him when we attended
23 the Black Oak, the forming of the second Task Force.

24 It gives us a lot of pride to see we can come together
25 and come from a place of being so far apart to finally

1 finding agreement. And we have just a little bit further
2 to go and I think you will have all Tribes coming together.
3 And I think that is a big thing. It's a big thing for the
4 State to be able to work with the Tribes. We're not afraid
5 of regulation. You know, the State of California needs to
6 recognize that. We take a lot of pride in what we do.

7 So we are asking that you would be a little bit more
8 patient and a little bit more work and come to probably a
9 hundred percent agreement on this proposed CGCC-8.

10 Thank you.

11 CHAIRMAN SHELTON: Somehow I doubt that.

12 Mr. Armstrong?

13 RICHARD ARMSTRONG: Richard Armstrong,
14 A-r-m-s-t-r-o-n-g.

15 Good morning, Commissioners, staff, Tribal members,
16 representatives. I come before you representing the
17 Tuolumne Band of Me-Wuk Indians, the Resighini Rancheria
18 and the Big Valley Rancheria.

19 On behalf of Tuolumne and Big Valley I have written
20 comments that I'd like to submit and make part of the
21 record.

22 I'll spare a lot of time here and just say that on
23 behalf of these Tribal clients and our other Tribal clients
24 our office represents we would incorporate and adopt the
25 statements made by the representatives of Rincon, Picayune,

1 La Posta and Susanville this morning.

2 Additionally, we would adopt and incorporate portions
3 of those comments made by Viejas. And I certainly
4 appreciate the candid remarks that Mr. Bigknife provided.

5 A lot has been said about Rome being built in a day
6 and the future of this regulation. And if you step back
7 and take a birds-eye view of how this process has gone, I
8 think we've all been in this situation once or twice where
9 we've attempted to do something and we've engaged in the
10 process of completing a task and we realized after some
11 time and amount of struggle that we were going down the
12 wrong road or doing something backwards. I purchased
13 something at Ikea and tried to put it together without
14 reading instructions. It is sometimes quite a mess. Thank
15 God it didn't take two and a half years to figure it out.

16 But here CGCC-8 was for two and a half years not
17 fostered and worked upon by the parties in the most
18 efficient and effective methodical manner. It was only
19 until -- and I say this with all due respect -- the Bureau
20 chief, Jacob Appelsmith, really dove into this regulation.

21 And on behalf the clients we represent -- I've said
22 this more than once -- we certainly appreciate the time and
23 effort that your office has put into this regulation.

24 I, too, see that there has been major movement from
25 two and a half years ago until the most recent vote. And I

1 think a lot of that movement is a direct effect of the
2 meaningful, effective, efficient work that Mr. Appelsmith
3 and the Tribal delegates that participated in the Task
4 Force, many of my Tribal clients included, in coming to the
5 Task Force version. But because of the time frames that we
6 were given and the complex nature of this regulation --
7 we're not dealing with one Compact in the state. There is
8 64 member Tribes of the Association. I won't even begin to
9 count the number of different Compacts. It is just not the
10 '99 Compact. There is a 2003 Compact, 2004 amendment,
11 2006, 7 and 8. It is a complex and very delicate dance
12 that needs to be danced with respect to this regulation.
13 And the time frame we had to work on this regulation over
14 the summer just was not enough.

15 And just to clarify two quick points and I'll sit down
16 and be quiet, a number of our client Tribes did submit
17 their concerns about the Task Force version. The CGCC has
18 been presented with those concerns, identified areas of the
19 regulation that we felt still needed to be worked upon. So
20 I'm not sure the statement that there has been no
21 opposition to this version is a hundred percent correct
22 because prior to your September 24th adoption of the
23 proposed regulation those concerns were indeed raised. And
24 we would incorporate those concerns as well as the
25 continuing issues that have been submitted.

1 And then I'd just like to finish by saying we
2 encourage the CGCC to follow the Tribal State Association
3 protocol and provide the parties the ability to continue to
4 provide meaningful modifications to the proposed regulation
5 to address our concerns before any regulation is adopted as
6 a final regulation under the Compact.

7 Thank you.

8 CHAIRMAN SHELTON: Thank you.

9 JANE ZERBI: Good morning. Jane Zerbi, Z-e-r-b-i,
10 attorney with the United Auburn Indian Communities, the
11 Pala Band, the Jackson Rancheria.

12 I'll try to make my comments brief. I just want to
13 start off by acknowledging I was here at your last meeting
14 and these Tribes acknowledged and thanked you for actions
15 at that last meeting and I'd like to start there in terms
16 of you re-adopting -- you adopting the Task Force revised
17 regulation which these Tribes support and sending it back
18 to the Association.

19 I'd also like to urge you to consider the options set
20 out by the representative from Viejas at the beginning of
21 this meeting.

22 I think that it is very significant that a majority of
23 Association delegates at the Cabazon meeting approved this
24 regulation. I think it is significant, as pointed out by
25 that representative, that the Compact speaks to whether a

1 regulation is approved or disapproved.

2 I do think, too, in the one option being urged today
3 that should you choose to re-submit CGCC-8 that as for the
4 Association protocols the Viejas representative pointed out
5 the historical vote. It was very close. I can tell you
6 these three Tribes have voted for a simple majority,
7 meaning a majority required present to approve under that
8 protocol. I think it would be a good opportunity for that
9 to be reconsidered if, in fact, you choose today to send a
10 revised CGCC-8 back to the Association.

11 One further comment. I know you've heard a lot of the
12 comments and I know this process has been going on for some
13 time but in some ways thinking about some of the things
14 going on outside of Indian country and some of the gridlock
15 we see in local and state and federal politics, you know,
16 in some ways in thinking about it it makes the majority
17 vote that approved this regulation even more significant.

18 I would urge you to consider having the Association
19 vote on this and also looking at all of the options set out
20 and considering that the 31 delegates approved this
21 regulation and that it really does show support for CGCC-8.

22 CHAIRMAN SHELTON: Thank you. Mr. Appelsmith?

23 JACOB APPELSMITH: Thank you, Chairman. Jacob
24 Appelsmith, A-p-p-e-l-s-m-i-t-h from the Bureau of Gambling
25 Control.

1 Thanks for the opportunity to speak. Thank you to all
2 of the Tribal regulators for coming. I really do
3 appreciate it. It is very important we show how interested
4 we are in this.

5 I think most importantly I want it to be clear that I
6 believe all of the Tribal regulators in this room support
7 CGCC-8 in terms of its form and what it's trying to do.

8 There are disagreements with the process of how you
9 get to that regulation but in general all Tribal regulators
10 believe in the NIGC MICS; that the State has some oversight
11 over the Tribes; that the Tribes are the primary regulators
12 but that we all together can get to where we need to get
13 into regulation.

14 So that is why I was disappointed in the Association's
15 vote. I think it sent the contrary message to the public
16 and I don't think that is really what the Tribes meant to
17 send.

18 So again, I understand they have -- some Tribes have
19 issues with the process. I think some of them believe this
20 is really a Compact negotiation issue, not something that
21 should be done in the regulation.

22 With that said, I would echo the comments of everyone
23 that diplomacy and patience are what are called for here.
24 I've asked you to be patient before and I can understand if
25 you're tired of being patient. I asked you a year ago

1 after we were two years into this to give us another shot
2 at it. We won over the majority of Tribes. I think we've
3 really won over the vast majority of the regulators.

4 What I think there is an opportunity here for are some
5 more government to government communications. The Attorney
6 General himself has been doing that in the last week
7 talking directly to Tribal council people and he has
8 committed to doing that again. That is where I think
9 somewhat of the process didn't go as far as it could and
10 why I do think a re-submittal may produce a different
11 result. It may not. You may still get this voted down.
12 You may be here two months from now. I do think there is
13 that possibility.

14 Even though I think the regulators communicated well
15 with each other, we didn't do as good of a job maybe as we
16 could have done in terms of government to government
17 communications. So that is really why I have some cause
18 for optimism here. The Attorney General has a lot of
19 reason to be optimistic about this. He is willing to
20 commit his personal time to this in his busy season to make
21 those contacts himself.

22 With that, I would urge patience. I would urge
23 continuation of diplomacy. The worse case scenario is
24 we're back here in another couple months basically with the
25 same question before you that the Association is not able

1 to bring this over the top.

2 CHAIRMAN SHELTON: What will you have to say then,
3 Mr. Appelsmith? When it comes back in a couple months,
4 what will be your position then?

5 JACOB APPELSMITH: Our position will be to respect
6 whatever decision the Commission makes.

7 In terms of the legal issues, the procedures under the
8 protocols, the Attorney General's office has said it will
9 defend the Commission if it has to litigate these issues.

10 I think that is not a good result for Tribal gaming.
11 I don't think it's a good result for the State. I think
12 there is a lot of good will in this room right now. I
13 think a lot of that will turn if we get into a battle over
14 the protocols and the Compact and procedures and what is
15 commonly being referred to now as an override.

16 The Attorney General will defend the Commission if it
17 is sued over this issue because the Attorney General
18 believes you've got a good regulation. And the Attorney
19 General is Constitutionally bound in California to do so.

20 CHAIRMAN SHELTON: Thank you.

21 JACOB APPELSMITH: You're welcome.

22 CHAIRMAN SHELTON: You know, I came down here this
23 morning and I was not going to say anything. We'll have
24 another meeting if we do whatever the Commissioners decide
25 here today if we vote to re-adopt this.

1 We started out in a relationship here where three
2 Commissioners can't attend your meetings. We didn't write
3 the Gambling Control Act. We did not write the Brown Act.
4 So we can't participate out there like Mr. Appelsmith can
5 and the Attorney General. And it must be nice but we can't
6 do that. We depend on our staff and I think our staff has
7 represented us very well and carried our message in what we
8 wish to do.

9 These Commissioners weren't part of the original
10 CGCC-8. I was. And why did I do that? I had a dream one
11 night that I wanted CGCC-8? I don't think so. I had two
12 Tribes that I have not seen in any of these meetings that
13 came to me and asked me for CGCC-8. And yet I have not
14 seen a member of either of those Tribes come up here and
15 stand up and support me.

16 And we weren't writing this to write the regulation.
17 We already knew what the Compact said. And I said that at
18 the time. What you folks came to me and said is: It would
19 be nice if we all had this -- had to have it. We've got
20 problems out there, Chairman. This is a good way to do it.
21 The Association just adopted CGCC -- CGCC-7. It's not easy
22 to say, is it.

23 The protocol and the relationship is just vastly
24 approved. You know, new players to work with within your
25 organization. You've made changes. You had new

1 Commissioners. That is where it started.

2 We sat down and wrote it and tried to write it with
3 the Association. And you disagreed with everything we put
4 in it. Some of the things were good disagreements. I'm
5 not saying they weren't. They were very good and they made
6 sense.

7 Then we backed off and said, "You write it." And you
8 did.

9 And your Task Force -- you assigned to do it under the
10 leadership of Mr. Roberts -- adopted it. And you bring it
11 back to us. And the Association adopted, I assume. And
12 you bring it back to us and we support you. We vote for
13 it.

14 In the meantime, you have meetings which my staff has
15 not had the privilege to be invited to. You have a meeting
16 in the morning and then you have an Association meeting in
17 the afternoon where everything is worked out before you
18 walk in a room. Apparently you've been having meetings at
19 the Attorney General's office that my staff has not been
20 invited to.

21 Then you come in here and say, "Show some patience."
22 Well, I think we have. We're at a three-year period and we
23 have been very sincere and I respect you. I respect the
24 government to government relationships. I respect where
25 you're going. I absolutely know most of you run a good,

1 clean operation. But you haven't given me -- you haven't
2 come in and said, "Sixty days we'll be back one way or the
3 other." You're saying, "Spread it out some more." So
4 you're not giving us any definition of what time you're
5 looking at, what you consider a time, whether it's 30 days,
6 120 days or whether you're going to stretch the Association
7 out here for a period of another three years and out-wait
8 it.

9 Then you say, "No threats. But by God if you don't do
10 what we want to do, we'll sue you and we're good at it."

11 We did not enter this for lawsuit purposes. We didn't
12 enter this to force you into anything. We entered it to
13 work with you.

14 Then I -- some of you went out and brought in NIGC and
15 signed up agreements and we said, "Okay. We understand
16 that but we'll work with you on that, too." And we did.

17 We can't do MOA's and MOU's. The governor's office
18 says we do not have the authority. They do Compact
19 negotiations. That is why we don't do it.

20 The Bureau works under a different obligation. The
21 Attorney General is elected separately. He can do whatever
22 he wants to do when he sees right to do. Apparently it has
23 worked. I'm glad.

24 We do have restrictions we work under here, folks.
25 God bless you all. I don't know. If you give me some

1 light at the end of the tunnel, something I can hang onto
2 maybe I'd listen to you but you haven't given me some light
3 and some definition of a period of time.

4 So I'm going to shut up and turn it over to my
5 Commissioners.

6 COMMISSIONER SHIMAZU: Every time we've come back
7 about something it has been asked, "Hey, can you hold off?
8 Can we work together?" After some point we go, "We can't
9 do it anymore." Then we come back and hear from the
10 Tribes. It makes sense. Yes, we do want to avoid
11 litigation. We don't want to have litigation. We don't
12 want to strain the relationships with the Tribes. We would
13 love to be able to work together cooperatively.

14 It is just after -- where does it end? And I thought
15 we were so close. And after the last vote we both made
16 concessions with the Task Force. We agreed to them. Some
17 of those were difficult. I thought, no, it's great. We're
18 both showing we're trying to meet together and work
19 together.

20 It was -- I was in shock. It was very disappointing
21 when the Association did not approve it. I thought, oh,
22 great. We're there and it is going to be historic. And it
23 is wonderful we've waited all this time. And we were
24 patient.

25 It is just hard because I hear you and I think, yes, I

1 don't want litigation. It would be wonderful if we can get
2 the reg in place. Yes, we want to work with the Tribes.
3 Then at some point you look at the three years and it makes
4 me pause. I think, are we just going to keep going on and
5 on? We have some responsibility on behalf of the State.

6 I'm a little torn. I always come in saying, no, we
7 can't wait any longer. Then I hear the Tribes. Again, we
8 don't want to be in a fight. But you know at some point we
9 have to move forward.

10 I want to say, too, if we -- let's say we've adopted
11 staff's recommendation to re-adopt. It's not a final
12 regulation. With that, I mean, there is still a process to
13 move forward. So I don't know if that would prevent the
14 Association in the meantime doing what they wanted to do or
15 need something to throw out there. I don't want people to
16 misunderstand we're voting for a final reg. It is just to
17 re-adopt, you know, the prior version.

18 COMMISSIONER VUKSICH: I wanted to clarify that there
19 was a reference to a revised reg and we don't have any
20 revisions. We just would be re-adopting what came out of
21 the last vote at the Association.

22 I think I'd like to know what our flexibility is. I
23 know if we re-adopt there is a 30-day time frame for
24 comment. Can that be considered a time to re-submit or is
25 re-submit even the correct term to use here? Isn't

1 technically this still at the Association?

2 JASON POPE: Yes, Commissioner. Currently the
3 regulation was already submitted to the Association for an
4 initial meeting back in December and for a vote in
5 February. The Association still has it.

6 COMMISSIONER VUKSICH: Could they request an extension
7 of time for another vote?

8 JASON POPE: I don't think there needs to be a request
9 for an extension. If they wanted to have another vote,
10 they could.

11 The Compact and the protocols that we're operating
12 under do not prohibit a re-vote on the regulation. The
13 protocols that have been adopted by the Association seem to
14 allow for that. I know the protocols specifically state
15 under (c)(2)(a) that there would be an initial meeting
16 where no vote would be held and under (c)(2)(b) there would
17 be at least one subsequent meeting where discussions or a
18 vote could be held. There could be an additional vote at
19 another subsequent meeting as long as it was properly
20 noticed.

21 The protocols merely state that once a regulation has
22 been disapproved, the Commission has to re-adopt it as a
23 proposed regulation before the Commission were to do
24 anything. That is why we're here for re-adoption and not
25 an adoption as a final regulation.

1 COMMISSIONER VUKSICH: This just keeps the clock
2 running --

3 JASON POPE: Correct.

4 COMMISSIONER VUKSICH: -- if we re-adopt?

5 JASON POPE: Correct. Some Tribal representatives --

6 COMMISSIONER VUKSICH: Charlie Brown passes the ball
7 back to Lucy. Then we see what happens again?

8 JASON POPE: I would defer to some Tribal attorneys on
9 that matter.

10 COMMISSIONER VUKSICH: Perhaps Mr. Appelsmith.

11 JACOB APPELSMITH: No one is asking for some
12 open-ended extension and going back to the Task Force.
13 Although I think there are some technical quibbles with the
14 regulation. I don't think that is really what the issue
15 is.

16 So I don't see there being a real purpose for the Task
17 Force to get back and start arguing about semantics and
18 language and all of those sorts of things. This is really
19 an issue of I think some Tribal governments voted against
20 it or abstained from this because they did not feel
21 comfortable with their understanding of the process. That
22 is where I think we can do government to government.

23 We're not asking for an open-ended time frame. I
24 think this is something -- there is a room full of
25 attorneys who hold the protocols sacred who could tell you

1 what is allowed and not allowed. I don't want there to be
2 procedural hang-ups with any of this.

3 I really envision something this Commission would have
4 to be able to act on however it would please to do so
5 within ninety days.

6 COMMISSIONER VUKSICH: Does that fit within their
7 protocol timelines?

8 JACOB APPELSMITH: I believe it does. Whether
9 Mr. Pope's reading of it or even a more conservative one
10 that would say it would have to be presented back to the
11 Association in 30 days and then 30 days after this it would
12 be voted on by them again.

13 COMMISSIONER VUKSICH: Do we have any keepers of the
14 protocols here? Okay. Jane. Or both. Ladies first.

15 JANE ZERBI: I'm happy to speak to that from my point
16 of view.

17 It does not mean an unended timeline. The protocol in
18 itself has a ninety day set time. I think what you saw in
19 the last process was Tribes really trying to understand
20 that you would like to get something moving as you have
21 expressed in acknowledging the actions you have taken in
22 terms of sending it back. It was within a sixty day
23 timeline. There was a few days to maybe ensure the right
24 notice went out.

25 I think to your question Commissioner Vuksich that an

1 action by the CGCC to re-submit it to the Association would
2 then start that. And I think you would have Tribes here
3 that would be willing to host the meeting to begin that
4 process. And my estimate would be, again, about the same
5 time that you're looking somewhere between sixty and ninety
6 days. Obviously those hosting would understand you would
7 want it to get back sooner rather than later.

8 COMMISSIONER VUKSICH: Thank you.

9 RICHARD ARMSTRONG: Richard Armstrong. Just to
10 respond to Mr. Appelsmith's comment.

11 I think there is a need to enter into a Task Force
12 mode at the Association for purposes of addressing the
13 areas of the substances that have been identified by the
14 Tribes. But as Ms. Zerbi said, the protocols of the
15 Association do provide a structured time frame for that to
16 happen.

17 There is a meeting that the Picayune Rancheria of the
18 Chukchansi Indians has offered to host at the February 4th
19 meeting. I'm not sure that meeting has been set but
20 obviously that host Tribe is out there and available to
21 host that first meeting in the process. But certainly
22 there is some areas of the regulation that I think would
23 be, you know, substantively honed before this massive
24 approval that some have talked about.

25 I'm not sure it is just re-submitting it and hoping

1 votes change. There is some work that needs to be done.
2 There is a timeline. It is not open-ended.

3 CHAIRMAN SHELTON: Now you've just made up my mind.

4 COMMISSIONER SHIMAZU: My comment was directed towards
5 I thought it was going to be re-submitting and it would
6 happen within a short period of time, not opening the whole
7 Task Force up to --

8 JEROME LEVINE: Please remember that a majority of the
9 Tribes there did support it in its present form. Those of
10 us who are urging it be re-submitted to the Association are
11 talking about re-submitting it in its present form.

12 Many of us believe there is simply in some ways a
13 misunderstanding by some. Again, it may be the historical
14 background of how this regulation came up. I don't know
15 what the reading is. But there is a lot of emotion
16 attached to this.

17 Just to clarify, the fact that the Tribes may have met
18 does not mean they had anything wired or predetermined in
19 terms of the Association meeting. In fact, perhaps just
20 the opposite. You might consider the fact that it is good
21 for the Tribes to get together and reach as much of a
22 consensus. There was a majority that was reached here.
23 Unfortunately, they were two or three votes short. It's
24 not unusual. Congress goes through that all of the time.
25 It goes back through and re-submits and reconsiders.

1 Please consider that here. I'm not --

2 CHAIRMAN SHELTON: You also have to recognize that
3 there is a little skepticism built into that, too. That is
4 why they passed the Brown Act.

5 JEROME LEVINE: Understood. That is why I started out
6 by saying this is not necessarily -- does not have to be a
7 model for the way all of these kinds of situations have
8 arisen and we have examples where this has not been the
9 case.

10 CHAIRMAN SHELTON: I don't know of any commissioner
11 board that works under the protocols we work under here who
12 start off with nobody on the Commission that's in the
13 industry and the experience and is prohibited from working
14 outside employment and doing all of these things.

15 This Commission is very dedicated here to do the right
16 thing. I think I speak for my two Commissioners. The last
17 thing we want to do is do anything that is destructive to
18 our relationship.

19 But having said that, we do have a certain amount of
20 responsibility to make some tough decisions. I don't want
21 to be before a hearing like what is going on with Toyota.
22 Why did you let this happen? You did not take any action
23 for three years, Commission.

24 That all rests on our doorstep. We have to be a
25 little more different.

1 I talked to -- thank you, Mr. Levine.

2 I spoke to chief legal counsel. He tells me there is
3 no set time. I think I heard that from some of the
4 attorneys today.

5 So I'm going to do something. You're not going to
6 like it. I'm going to do it. We'll try to live with it.
7 I'll make a motion that we re-adopt and not set a date for
8 final vote and have staff work with the Association and
9 Mr. Appelsmith, the Bureau, before we bring it back for a
10 final vote. I'm not open to taking this thing back out and
11 rehashing it again with the Task Force and putting the Task
12 Force in that position. It is what it is and it is up to
13 the Association to say yea or nay.

14 JACOB APPELSMITH: Real quick. I don't disagree with
15 Mr. Armstrong that a Task Force could improve things about
16 the regulation. The regulation itself has built into it a
17 provision for the Tribes and the State to meet in the
18 future to improve it. There will be things in there that
19 don't work for one side. No question about it. That is
20 what further regulation and further meetings are about.

21 That said, I don't think anyone is going to change
22 their mind voting yes or no based on anything a Task Force
23 can do at this point.

24 I would not favor a Task Force coming back. That is
25 not what we're putting forward. We want to basically talk

1 to people about the basic principles of what the State and
2 Tribes can achieve together.

3 CHAIRMAN SHELTON: That is why I'm giving the time
4 limit for the final adoption which will give you the
5 opportunity to do that.

6 TED PATA: May I approach?

7 CHAIRMAN SHELTON: Certainly.

8 TED PATA: Thank you, Mr. Chairman. My name is Ted
9 Pata, P-a-t-a. I'm with the -- I'm the chairman of the
10 Paskenta Gaming Commission.

11 And Paskenta would be willing to host an earlier
12 meeting within 30 to 40 days, if that is possible.

13 CHAIRMAN SHELTON: Thank you. It's very kind of you.
14 Mr. Crowell?

15 SCOTT CROWELL: I appreciate the suggestion of
16 creating an environment where maybe we can reach a
17 conclusion.

18 However, I'm -- from the legal precedent, I'm still
19 very concerned you're queuing it up for the Tribes to have
20 to accept a position that this Commission can override the
21 vote of the Association. That is why I think the better
22 reasoned approach would be -- would be to re-submit it to
23 the Association and ask for another Association vote.
24 Because even if you build the consensus during the period
25 of time that you're talking about, you wind up with a

1 situation where the Tribes are in the position of having to
2 acknowledge that you're moving forward without the
3 affirmative Association vote.

4 CHAIRMAN SHELTON: I appreciate that. That is the
5 meaning behind by motion because it is not a final
6 adoption. So if something comes out of your meeting that
7 you can bring forward at the final adoption, there won't be
8 a final adoption. There shouldn't be.

9 This is your opportunity between then and now -- now
10 and then to reach either a consensus or come back and say
11 "We don't want to work with you."

12 SCOTT CROWELL: You're open to the idea that we would
13 come up with a situation where there would be another
14 Association vote that would be approving something --

15 CHAIRMAN SHELTON: I would encourage that. I would
16 certainly encourage that. I wish I could attend.

17 SCOTT CROWELL: Thank you.

18 CHAIRMAN SHELTON: I really do.

19 COMMISSIONER SHIMAZU: I think it's a good compromise.
20 It's allowing us to move forward but letting everyone know,
21 yes, we would like to have a consensus. We would like to
22 have an Association-approved regulation and that we
23 can -- we're willing to work with everyone in terms of
24 timelines. We're not going to set hard deadlines and we're
25 able to see if everyone is moving forward. It kind of

1 preserves everything for everyone. So it's a good
2 suggestion.

3 Did you make a motion?

4 CHAIRMAN SHELTON: I made a motion.

5 COMMISSIONER SHIMAZU: Second.

6 CHAIRMAN SHELTON: Any comment?

7 COMMISSIONER VUKSICH: No.

8 CHAIRMAN SHELTON: Call for the vote.

9 JOY CALKIN: Commissioner Shimazu?

10 COMMISSIONER SHIMAZU: Aye.

11 JOY CALKIN: Commissioner Vuksich?

12 COMMISSIONER VUKSICH: Aye.

13 JOY CALKIN: Chairman Shelton?

14 CHAIRMAN SHELTON: Aye.

15 JOY CALKIN: Motion approved -- or carried.

16 CHAIRMAN SHELTON: Motion carried. Having said that
17 and taking a lead from some of you folks here today, I'm
18 going to direct the Compliance Section to go out and start
19 visiting some Tribes. And if they shut the door in their
20 face, they shut the door in their face.

21 So I thank for your input. Move to adjourn.

22 COMMISSIONER VUKSICH: Second.

23 CHAIRMAN SHELTON: Call for the vote.

24 JOY CALKIN: Commissioner Shimazu?

25 COMMISSIONER SHIMAZU: Aye.

1 JOY CALKIN: Commissioner Vuksich?

2 COMMISSIONER VUKSICH: Aye.

3 JOY CALKIN: Chairman Shelton?

4 CHAIRMAN SHELTON: Aye.

5 JOY CALKIN: Motion carried for adjournment.

6 CHAIRMAN SHELTON: Thank you. I thank you for your
7 participation. I've enjoyed listening to you, believe it
8 or not. I do.

9 (End of proceedings.)

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CERTIFICATE
OF
CERTIFIED SHORTHAND REPORTER

The undersigned certified shorthand reporter of the state of California does hereby certify:

That the foregoing Commission meeting was taken before me at the time and place therein set forth;

That the testimony of the public and all objections made at the time of the hearing were recorded stenographically by me and thereafter transcribed, said transcript being a true copy of my shorthand notes thereof.

In witness whereof, I have subscribed my name this date March 8, 2010.



Desiree C. Tawney

Certificate Number 12414