

**CALIFORNIA GAMBLING CONTROL COMMISSION**

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DATE: October 29, 2004

TO: Gambling Control Commission

FROM: Gary Qualset, Deputy Director  
Licensing and Compliance Division

SUBJECT: Revenue Sharing Trust Fund Report of Distribution of Funds to Non-Compact Tribes for the Quarter Ended September 30, 2004

**ISSUE:** *Can the Gambling Control Commission (Commission) make a current quarterly distribution from the Indian Gaming Revenue Sharing Trust Fund (IGRSTF) to each eligible Non-Compact Tribe for the quarter ended September 30, 2004?*

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

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

To date, the Commission has approved the distribution of approximately \$117.87 million in license fees, payments, and interest income from the IGRSTF covering sixteen fiscal quarters from July 1, 2000 through June 30, 2004. The current distribution being proposed will make a distribution of the actual amount of license fees received and any interest income that may have been deposited in the IGRSTF for the quarter ended September 30, 2004, leaving an undistributed balance of license fees, payments received, and interest income in the IGRSTF as of that date of less than \$1.00.

As shown in Exhibit 1, all eligible tribes will be receiving \$84,370.00 for this distribution. Total license fees of approximately \$5.89 million and interest earned of \$25,270.81 for the quarterly period ended September 30, 2004 and deposited in July 2004 into the IGRSTF for the quarter ended September 30, 2004 amounted to approximately \$5.90 million. A portion of the interest earned is allocated to previously approved distributions held in abeyance in the IGRSTF on behalf of one (1) tribe in the amount of \$6,374.99. Approved distributions will be held only in the event there is no existing tribal chairperson or representative with whom the BIA conducts government-to-government relations, or there is some other unusual situation which calls into question the Commission's ability to distribute funds to the tribe or otherwise carry out its obligation pursuant to Section 4.3.2.1 (b). The remaining receipts are equally distributed to the seventy (70) tribes listed in Exhibit 1 as eligible Non-Compact recipient tribes (pending receipt of outstanding eligibility certification forms, if any). Thus, the equal share distribution amount per tribe for this quarter is as noted above.

At the end of the calendar quarter for distribution and as of the close of business on September 30, 2004, the amount of outstanding license fee payments due into the IGRSTF was approximately \$4.10 million. If the total license fee payments due at the end of this quarter had been paid into the IGRSTF, recipient tribes would have received \$58,625.70 in additional moneys

along with this quarter's distribution. The Commission makes quarterly distributions on a cash basis based on the amount of available funds in the IGRSTF for each quarter. Total outstanding and due license fee payments for the quarter ended September 30, 2004 are summarized in Table 1 below:

<b>Table 1</b>		
<b>Indian Gaming Revenue Sharing Trust Fund License Fee Payment Aging Schedule as of September 30, 2004</b>		
<b>Quarter(s) in Arrears</b>	<b>Number of Tribes</b>	<b>Amount of License Fees Due</b>
Less than 1	5	\$449,712.11
1	8	3,511,437.28
2	1	142,650.00
<b>Totals</b>	<b>14</b>	<b>\$4,103,799.39</b>

Compact Section 4.3.2.3 provides that a tribe shall not conduct any gaming activity authorized by the Compact if the tribe is more than two quarterly contributions in arrears in its license fee payments into the IGRSTF. The Commission, as administrator, sends out quarterly invoices for the payment of license fees near the beginning of each quarter. Additionally, the Commission follows standard collection practices, which includes noticing those of past due amounts, and has initiating procedures if action is needed under the provisions of Compact Section 4.3.2.3 noted above.

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

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

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

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

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

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

- A. Identify all tribes in the State of California that are Federally-recognized based on information obtained from the U. S. Department of Interior, Bureau of Indian Affairs, and a legal opinion received from the State Attorney General's Office.
- B. Request that each Non-Compact Tribe that entered into Compacts with the State that is to receive a distribution certify the maximum number of gaming devices operated during the quarter by completing and filing a Tribal-State Compact Gaming Device Certification Form (CGCC-C2004.01). Receive this form from each eligible tribe in accordance with the streamlined verification procedure implemented by the Commission. This form was mailed to Tribes for completion and filing and is also available on the Commission's website at [www.cgcc.ca.gov](http://www.cgcc.ca.gov).
- C. Classify all tribes identified in step A based on the information obtained in step B as either: 1) Compact Tribes operating 350 or more gaming devices, 2) Non-Compact Tribes as defined by the Compact, or 3) non-compact gaming tribes.
- D. Classify all Non-Compact Tribes identified in part 2) of step C as eligible Non-Compact non-gaming tribes and Non-Compact gaming tribes that have submitted the requested certification form to the Commission if required.
- E. Prepare a list of Non-Compact Tribes based on the most recent information reported to the Commission.

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

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

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

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

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

The amount of funds to be distributed to each Non-Compact Tribe is listed in Exhibit 1 that is attached. The recommended distribution to each tribe listed in Exhibit 1 is subject to verification of eligibility and receipt of a Tribal-State Compact Gaming Device Certification Form (CGCC-C2004.01) if required.

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

*1) the Commission approve distribution of the current full quarterly amount of approximately \$5.90 million of all payments made by tribes and any interest income received by the IGRSTF during the most recent quarter ended September 30, 2004, to the listed tribes that are determined to be eligible Non-Compact Tribes in accordance with the Commission's identified methodology for determining a Non-Compact Tribe as shown in Exhibit 1 attached to this report, and any interest accrued for previously approved distributions held in abeyance in IGRSTF but not immediately disbursed, and*

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

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

<b>Non-Compact Indian Tribe</b>	<b>Amount of Funds Recommended to be Distributed</b>
Alturas Indian Rancheria	\$84,370.00
Bear River Band of the Rohnerville Rancheria	84,370.00
Benton Paiute Reservation	84,370.00
Big Lagoon Rancheria	84,370.00
Big Pine Reservation	84,370.00
Big Sandy Rancheria	84,370.00
Bridgeport Paiute Indian Colony	84,370.00
Buena Vista Rancheria	84,370.00
Cahto Indian Tribe of the Laytonville Rancheria	84,370.00
Cahuilla Band of Mission Indians	84,370.00
California Valley Miwok Tribe	84,370.00
Cedarville Rancheria	84,370.00
Chemehuevi Indian Tribe	84,370.00
Cher-Ae Heights Indian Community	84,370.00
Chicken Ranch Rancheria	84,370.00
Cloverdale Rancheria	84,370.00
Cold Springs Rancheria	84,370.00
Colorado River Indian Tribes	84,370.00
Cortina Rancheria	84,370.00
Death Valley Timbi-Sha Shoshone Tribe	84,370.00
Elem Indian Colony	84,370.00
Elk Valley Rancheria	84,370.00
Enterprise Rancheria	84,370.00
Ewiiapaayp Band of Kumeyaay Indians	84,370.00
Federated Indians of Graton Rancheria	84,370.00
Fort Bidwell Indian Community	84,370.00
Fort Independence Reservation	84,370.00
Fort Mojave Indian Tribe	84,370.00
Greenville Rancheria	84,370.00
Grindstone Rancheria	84,370.00
Guidiville Rancheria	84,370.00
Hoopa Valley Tribe	84,370.00
Inaja-Cosmit Mission Indians	84,370.00

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

<b>Non-Compact Indian Tribe</b>	<b>Amount of Funds Recommended to be Distributed</b>
Ione Band of Miwok Indians	84,370.00
Jamul Indian Village	84,370.00
Karuk Tribe of California	84,370.00
La Jolla Band of Mission Indians	84,370.00
La Posta Band of Mission Indians	84,370.00
Lone Pine Reservation	84,370.00
Los Coyotes Band of Cahuilla Indians	84,370.00
Lower Lake Rancheria	84,370.00
Lytton Rancheria	84,370.00
Manchester Point Arena Rancheria	84,370.00
Manzanita Mission Indians	84,370.00
Mechoopda Indian Tribe	84,370.00
Mesa Grande Mission Indians	84,370.00
Northfork Rancheria	84,370.00
Paiute Bishop Community	84,370.00
Pinoleville Rancheria	84,370.00
Pit River Tribe	84,370.00
Potter Valley Rancheria	84,370.00
Quartz Valley Indian Community	84,370.00
Quechan Tribe of Fort Yuma	84,370.00
Ramona Mission Indians	84,370.00
Redwood Valley Rancheria	84,370.00
Resighini Rancheria	84,370.00
Round Valley Indian Tribe	84,370.00
Santa Rosa Band of Cahuilla Mission Indians	84,370.00
Santa Ysabel Mission Indians	84,370.00
Scotts Valley Band of Pomo Indians	84,370.00
Sherwood Valley Pomo Indians	84,370.00
Shingle Springs Rancheria	84,370.00
Smith River Rancheria	84,370.00
Stewarts Point Rancheria	84,370.00
Susanville Indian Rancheria	84,370.00
Table Bluff Reservation	84,370.00
Torrez-Martinez Mission Indians	84,370.00

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

<b>Non-Compact Indian Tribe</b>	<b>Amount of Funds Recommended to be Distributed</b>
Upper Lake Band of Pomo Indians	84,370.00
Washoe Tribe of Nevada & California	84,370.00
Yurok Tribe of the Yurok Reservation	84,370.00
<b>Total</b>	<b>\$5,905,900.00<sup>1</sup></b>

## Footnotes:

1. The total amount of distribution to each tribe is subject to audit and verification by the Commission. Future distributions may be adjusted for any overpayments or underpayments that may have been made. If a tribe is subsequently determined to be a "Compact Tribe" by definition of the Compact, and is therefore not eligible for future distributions, any overpayments that may be made are subject to refund by a tribe(s) to the Commission. The above distributions are being recommended for distribution on a conditional basis and are subject to verification of eligibility. Distributions will only be made after receipt of a Tribal-State Compact Gaming Device Certification Form (CGCC-C2004.01) that indicates eligibility in accordance with the terms of the Compact.

## EXHIBIT 2

### CALIFORNIA GAMBLING CONTROL COMMISSION 0366 - INDIAN GAMING REVENUE SHARING TRUST FUND FUND CONDITION STATEMENT

For the three months ended September 30, 2004

Cash Basis

BEGINNING BALANCE	\$	10,848,051.12
REVENUES AND TRANSFERS		
Revenues:		
150300 Income from surplus money investments		25,270.81
216900 License fees held in trust		5,886,965.00
		<hr/>
Totals, Revenues	\$	<u>5,912,235.81</u>
Totals, Resources	\$	16,760,286.93
EXPENDITURES		
Disbursements:		
Distribution	\$	8,621,728.69
		<hr/>
Totals, Expenditures	\$	<u>8,621,728.69</u>
FUND BALANCE, prior to distribution	\$	8,138,558.24
Disbursements, pending distribution		5,905,900.00
Assembly Bill No. 673 (Chapter 210, Statutes of 2003) and Government Code section 12090.90 reserve pending audit resolution		275,000.00
Previously approved funds and interest held on behalf of one (1) tribe <sup>1</sup>		<u>1,957,657.92</u>
FUND BALANCE, after distribution	\$	<u><u>0.32</u></u>

Footnotes:

1. Held for Buena Vista Rancheria.

**Exhibit 3****Amount of Revenue from Each Compact Tribe Received by the Commission Through September 30, 2004 for the Fiscal Year Ending June 30, 2005**

<b>Compact Tribe</b>	<b>Revenue Received Fiscal Year to Date</b>	<b>Revenue Received Inception to Date</b>
Agua Caliente Band of Cahuilla Indians	\$137,287.50	\$3,323,993.75
Alturas Indian Rancheria	0.00	187,500.00
Augustine Band of Mission Indians	0.00	437,500.00
Barona Band of Mission Indians	184,087.50	3,038,200.27
Bear River Band of the Rohnerville Rancheria	0.00	0.00
Berry Creek Rancheria	0.00	617,500.00
Big Sandy Rancheria	0.00	0.00 <sup>2</sup>
Big Valley Rancheria	0.00	500,000.00
Blue Lake Rancheria	0.00	437,500.00
Buena Vista Rancheria	0.00	0.00 <sup>2</sup>
Cabazon Band of Mission Indians	316,687.50	2,642,004.55
Cahto Indian Tribe of the Laytonville Rancheria	0.00	0.00
Cahuilla Band of Mission Indians	0.00	125,000.00
Campo Band of Diegueno Mission Indians	0.00	500,000.00
Chemehuevi Indian Tribe	0.00	0.00 <sup>2</sup>
Cher-Ae Heights Indian Community	0.00	0.00
Chicken Ranch Rancheria	0.00	0.00
Colusa Rancheria	0.00	312,500.00
Dry Creek Rancheria	333,750.00	5,841,996.58
Elem Indian Colony	0.00	0.00
Elk Valley Rancheria	0.00	0.00
Ewiiapaayp Band of Kumeyaay Indians	0.00	2,437,433.22
Hoopla Valley Tribe	0.00	0.00
Hopland Band of Pomo Indians	350,625.00	1,659,883.57
Jackson Rancheria	243,562.50	2,296,189.72
Jamul Indian Village	0.00	0.00
La Jolla Band of Luiseno Indians	0.00	0.00
Manchester Point Arena Rancheria	0.00	0.00
Manzanita Band of Mission Indians	0.00	0.00
Middletown Rancheria	0.00	187,500.00
Mooretown Rancheria	0.00	625,000.00
Morongo Band of Mission Indians	0.00	497,300.00
Paiute Bishop Tribe	0.00	0.00
Pala Band of Mission Indians	0.00	12,687,534.25
Paskenta Band of Nomlaki Indians	0.00	437,500.00

**Exhibit 3 (Continued)****Amount of Revenue from Each Compact Tribe Received by the Commission Through September 30, 2004 for the Fiscal Year Ending June 30, 2005**

<b>Compact Tribe</b>	<b>Revenue Received Fiscal Year to Date</b>	<b>Revenue Received Inception to Date</b>
Pauma/Yuima Band of Mission Indians	0.00	875,000.00
Pechanga Band of Mission Indians	0.00	1,034,505.62
Picayune Rancheria	551,250.00	7,092,719.18
Pit River Tribe	0.00	0.00
Quechan Indian Nation	0.00	0.00
Redding Rancheria	0.00	687,500.00
Resighini Rancheria	0.00	0.00
Rincon Band of Mission Indians	222,500.00	5,730,746.58
Robinson Rancheria	0.00	275,000.00
Rumsey Rancheria	299,880.00	3,977,291.92
San Manuel Band of Mission Indians	224,550.00	3,930,547.81
San Pasqual Band of Diegueno Indians	285,000.00	4,988,671.23
Santa Rosa Indian Community	0.00	10,497,851.51
Santa Ynez Band	328,875.00	5,756,664.04
Sherwood Valley Rancheria	0.00	0.00
Shingle Springs Rancheria	0.00	1,238,750.00
Smith River Rancheria	0.00	0.00
Soboba Band of Mission Indians	216,262.50	2,993,680.59
Susanville Indian Rancheria	0.00	0.00
Sycuan Band of Mission Indians	584,962.50	10,239,247.71
Table Mountain Rancheria	292,312.50	5,116,670.03
Tule River Reservation	256,725.00	1,870,224.04
Tuolumne Rancheria	0.00	737,500.00
Twenty-Nine Palms Band of Mission Indians	344,625.00	6,032,353.77
United Auburn Indian Community	456,424.73	5,788,952.06
Viejas Band of Mission Indians	257,597.77	2,692,366.54
<b>Totals</b>	<b>5,886,965.00</b>	<b>120,348,278.54</b>
Interest	25,270.81	3,457,475.78
<b>Grand Totals</b>	<b>\$5,912,235.81<sup>1</sup></b>	<b>\$123,805,754.32</b>

## Footnotes:

1. See Exhibit 2 for a copy of a fund condition statement for the Fund for the quarter ended September 30, 2004, which is the most recent quarter-end for which a distribution has been recommended for payment.
2. Prepayment receipts were returned to payor tribes for the return of unused putative gaming device licenses issued by Sides Accountancy Corporation. Licenses in equal number were issued by the Commission on September 5, 2002 resulting in \$2,137,500 in prepayment fees to the Fund.