

CALIFORNIA GAMBLING CONTROL COMMISSION

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DATE: May 29, 2002

TO: Gambling Control Commission

FROM: Gary Qualset, Deputy Director
Licensing and Compliance Division

SUBJECT: Approval of Supplemental Distribution and Report to Legislature for Distribution of Funds from Indian Gaming Revenue Sharing Trust Fund

ISSUE: *Can the Gambling Control Commission (Commission) make a partial supplemental distribution from the Indian Gaming Revenue Sharing Trust Fund (RSTF) with the information currently available to the Commission for the fiscal quarter covering the period April 1, 2001 through June 30, 2001 to the Campo Band of Diegueno Mission Indians?*

The Commission has a fiduciary responsibility for the RSTF as Trustee of the RSTF per all of the Tribal-State Gaming Compacts (Compacts). The Compacts place limitations on the Commission's ability to exercise discretion when making distributions from the RSTF.¹

The State's Budget Act for FY2000-01 and FY2001-02 requires the Commission to submit a report to the Legislature containing specified information before any distributions from the RSTF can be made.² Moreover, the Legislature needs to authorize the Commission to distribute funds

¹ The Compacts state that "...each Non-Compact Tribe in the State shall receive the sum of \$1.1 million per year. In the event that there are insufficient monies in the ...[RSTF]...to pay \$1.1 million per year to each Non-Compact Tribe, any available monies in ...[the RSTF]... shall be distributed to Non-Compact Tribes in equal shares." (Section 4.3.2.1(a)). These Compacts also state that "payments made to Non-Compact Tribes shall be made quarterly and in equal shares out of the ...[RSTF]. The Commission shall serve as the trustee of the ...[RSTF]. The Commission shall have no discretion with respect to the use or disbursement of the trust funds. Its sole authority shall be to serve as a depository of the trust funds and to disburse them on a quarterly basis to Non-Compact Tribes. In no event shall the State's General Fund be obligated to make up any shortfall or pay any unpaid claims." (Section 4.3.2.1(b))

² The Budget Act for FY2000-01 (Chap.52, Item #0855-101-0366(3)) and FY2001-02 (Chap. 106, Item #0855-101-0366(3)) specifies that "...the California Gambling Control Commission shall provide the Chairperson of the Joint Legislative Budget Committee and the chairperson of the committee in each house that considers appropriations a report identifying (1) the methodology for determining a noncompact tribe; (2) a list of the noncompact tribes identified based on the commission's methodology; (3) the methodology for determining the amount of revenue each compact tribe is required to pay into the Indian Gaming Revenue Trust Fund; (4) a trust fund condition report including the amount of revenue received from each compact tribe; and (5) the amount of funds to be distributed to each noncompact tribe. Upon receiving additional expenditure authority for distributing funds under the trust fund, the commission shall submit that information to the chairpersons of the committees on a quarterly basis concurrent

from the RSTF (Gov. Code Section 12012.75). On December 26, 2001, the Commission transmitted a request for a budget augmentation of \$15.6 million via a budget revision request to the Department of Finance along with the required report for submission to the Legislature per the above mentioned budget control language. This request was to cover the amount of funds that the Commission approved for distribution at its December 19, 2001, meeting. The budget revision request and distribution authorizations were subsequently received. At the present time there are still authorized funds available for distribution under this budget augmentation, thus no report for this single tribe distribution is required to be made at this time. The Department of Finance has indicated that a report to the Legislature is not required for this additional supplemental distribution. Commission staff is prepared to, and will, voluntarily report similar information for this additional supplemental distribution as was previously reported in other reports to the Legislature.

The Commission needs to be able to identify the funds that are legitimate gaming device license fee payments to the RSTF, those that are not legitimate payments, and those that it cannot yet identify as legitimate or not-legitimate payments.

BACKGROUND:

Each of the 61 Tribal-State Gaming Compacts states the following:

- The Compact is “evidence [of] the goodwill and cooperation of the Tribe and State in fostering a mutually respectful government-to-government relationship that will serve the mutual interests of the parties.” (Section 1.0)
- “The Revenue Sharing Trust Fund is a fund created by the Legislature and administered by the California Gambling Control Commission, as Trustee, for the receipt, deposit, and distribution of monies pursuant to this Section 4.3.2.” (Section 4.3.2(ii))
- “The Tribe may acquire and maintain a license to operate a Gaming Device by paying into the Revenue Sharing Trust Fund, on a quarterly basis, in the following amounts...” (Section 4.3.2.2(a)(2))
- Licenses draws “...shall continue until tribes cease making draws, at which time draws will be discontinued for one month or until the Trustee is notified that a tribe desires to acquire a license, whichever occurs last.” (Section 4.3.2.2(a)(3)(vi))
- As a condition of acquiring licenses to operate Gaming Devices, a non-refundable one-time pre-payment fee shall be required in the amount of \$1,250 per Gaming Device being licensed, which fees shall be deposited in the Revenue Sharing Trust Fund.” (Section 4.3.2.2(e))
- “The Tribe shall not conduct any Gaming Activity authorized by this Compact if the Tribe is more than two quarterly contributions in arrears in its license fee payments to the Revenue Sharing Trust Fund.” (Section 4.3.2.3)

To date the Commission has distributed \$39.8 million from the RSTF covering the five fiscal quarters from July 1, 2000 through September 30, 2001. The distributions that have been made were partial distributions of monies in the RSTF pending the receipt, validation, and auditing of information related to license fee payments into the RSTF. These partial distributions amounted

with the distribution of the funds to the noncompact tribes.” For FY2001-02 item (3) in the above list was not required to be included.

to \$100,000 per quarter per eligible tribe (i.e., up to \$500,000 per eligible tribe for these five quarters if the tribe was eligible for a distribution for all five quarters).

The current supplemental distribution that is being proposed for approval is again \$100,000 per quarter per eligible tribe and will cover the fiscal quarter from April 1, 2001 through June 30, 2001. Once again, this distribution will be a partial distribution of funds for the quarter pending resolution of issues related to Compact gaming device license fee payment methodologies. The previous distributions that were approved by the Commission at its December 19, 2001 meeting were recommended and approved on a conditional basis pending receipt of certification of the maximum number of gaming devices operated each quarter by each eligible tribe. A distribution was only made after receipt of certification and eligibility was determined.

Since the last distributions were made, the Commissioners and Commission staff have been meeting and discussing the interpretation and implementation of the Compact related to gaming device license fee payment methodologies. A continuing dialog with numerous tribal officials has occurred over the last year-and-a-half on this important issue. It is essential for the stability of the RSTF that the payment methodology be resolved as soon as possible. To that end, the Commission recently met with tribal officials throughout the state so that all positions could be heard. These meetings were held throughout the state in February.

Based on previous information that was provided to Commission staff by administrative staff of the Campo Band of Diegueno Mission Indians (Tribe) it was believed that the Tribe would not be eligible for a distribution under the previously approved distribution at the December 19, 2001 Commission meeting, and therefore was not included on the list of eligible tribes to receive a partial distribution from the RSTF. However, based on the procedure to require the receipt of certification of the maximum number of gaming devices operated each quarter by each eligible tribe it was subsequently determined that the Tribe was eligible for a distribution for one of the two quarters that were approved at the December 19, 2001 Commission meeting.

As of March 11, 2002, the Tribe responded to the Commission's request for certification that was sent to all federally-recognized tribes in California. The response received indicated that the Tribe was eligible for a partial distribution for the first of the two quarters most recently approved.

RECOMMENDATION: *It is recommended that the Commission (1) approve the and attached report to the Legislature for a proposed supplemental and additional \$100,000 partial distribution of the unaudited but apparently legitimate gaming device license fee payments and interest income in the RSTF to the Campo Band of Diegueno Mission Indians that has now been determined to be eligible in accordance with the Commission's identified methodology for determining a Non-Compact Tribe (see Attachment #1), (2) indicate that it is neither affirming at this time the number of gaming devices for which license fees may have been paid, nor the manner in which the Compact Tribes calculated their quarterly fee payments, and (3) retain a fiscally-prudent reserve of approximately \$7.0 million in the RSTF following the distribution of monies after the December 19, 2001, distribution and until the basis for the license fee payments and the conflicting license fee payment methodologies are resolved, and until the Commission has complete, audited information on which to base a complete distribution.*

Attachment #1

**Supplemental Report on Additional Distribution of Funds
from the Revenue Sharing Trust Fund**

May 29, 2002

Honorable Steve Peace, Chair
Joint Legislative Budget Committee
California State Capitol
Sacramento, CA 95814

RE: Report on Distribution of Funds from the Indian Gaming Revenue Sharing Trust Fund

Dear Senator Peace:

Pursuant to Provisions 2 and 3 of Item 0855-101-0366 of the Budget Act of 2000 and 2001 that establish a process by which funds held in the Indian Gaming Revenue Sharing Trust Fund (IGRSTF) can be used to augment the \$1,000 amount appropriated by these items for distribution to non-compact tribes, we are submitting the following information. The California Gambling Control Commission (Commission) has requested approval from the Director of the Department of Finance to make an additional supplemental distribution of funds from the IGRSTF for the quarter ended June 30, 2001 in fiscal year 2000-01.

Per the Budget Acts of 2000 and 2001, reports identifying five items of information for fiscal year 2000-01 and four items for fiscal year 2001-02 are requested to be provided to the Legislature per the above noted Items. For fiscal year 2001-02 the item requesting the methodology for determining the amount of revenue each compact tribe is required to pay into the IGRSTF was not requested. This was item number three of Provision 3 for the Budget Act of 2000. The information reported for this item cited the Tribal-State Gaming Compact (Compact) regarding this matter. This information is again provided in this distribution request. Future requests for augmentation that are for funds only related to fiscal year 2001-02 quarters will not include the above noted item. The information requested follows:

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 tribe that is to receive a distribution certify the maximum number of gaming devices operated each quarter by completing and filing a Tribal State Gaming Compact Gaming Device Certification Form (CGCC-C2000.02), copy attached.
- 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.
- 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. The Methodology for Determining the Amount of Revenue Each Compact Tribe is Required to Pay into the Indian Gaming Revenue Sharing Trust Fund

All Compact Tribes are required to make payments into the IGRSTF in accordance with the terms of the Compact as noted in Section 4.3.2.2(a)(2) and Section 4.3.2.2(e) of the Compact. These sections of the Compact read as follows, respectively:

Sec. 4.3.2.2(a)(2) The Tribe may acquire and maintain a license to operate a Gaming Device by paying into the Revenue Sharing Trust Fund, on a quarterly basis, in the following amounts:

Number of Licensed Devices	Fee Per Device Per Annum
1-350	\$0
351-750	\$900
751-1250	\$1950
1251-2000	\$4350

Sec. 4.3.2.2(e) As a condition of acquiring licenses to operate Gaming Devices, a non-refundable one-time pre-payment fee shall be required in the amount of \$1,250 per Gaming Device being licensed, which fees shall be deposited in the Revenue Sharing Trust Fund....

4. A Trust Fund Condition Report Including the Amount of Revenue Received From Each Compact Tribe

A trust fund condition statement for the IGRSTF as of September 30, 2001, is attached as Exhibit 2. A listing of the unaudited amount of revenue from each Compact Tribe as received by, or reported to, the Commission is attached as Exhibit 3.

5. 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 amount of the partial distribution is equal to \$100,000 for each quarter that a tribe is eligible to receive a distribution. The recommended distribution to each tribe listed in Exhibit 1 is subject to verification of eligibility and receipt of a Tribal State Gaming Compact Gaming Device Certification Form (CGCC-C2000.02).

Sincerely,

John Hensley
Chairman
California Gambling Control Commission

Attachments

cc: Honorable Deirdre Alpert, Chair, Senate Appropriations Committee
Honorable Darrell Steinberg, Chair, Assembly Appropriations Committee

Exhibit 1

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

Non-Compact Indian Tribe	Amount of Funds Recommended to be Distributed
Campo Band of Diegueno Mission Indians	\$100,000
Total	\$100,000 ¹

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 Gaming Compact Gaming Device Certification Form (CGCC-C2000.02) 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 period ended September 30, 2001

	2001 – 02
BEGINNING BALANCE	\$ 43,987,486.89
REVENUES AND TRANSFERS	
Revenues:	
150300 Income from surplus money investments	0.00
216900 License fees held in trust	<u>3,134,362.50</u>
Totals, Revenues	\$ <u>3,134,362.50</u>
Totals, Resources	\$ 47,121,849.39
EXPENDITURES	
Disbursements:	
	<u>24,500,000.00</u>
Totals, Expenditures	\$ <u>24,500,000.00</u>
FUND BALANCE	\$ 22,621,849.39

Exhibit 3**Unaudited Amount of Revenue From Each Compact Tribe as Received by, or Reported to, the Commission**

Compact Tribe	Revenue Received or Reported
Agua Caliente Band of Cahuilla Indians	\$1,676,544
Alturas Rancheria	0
Augustine Band of Mission Indians	437,500
Barona Band of Mission Indians	1,611,519
Berry Creek Rancheria	437,500
Big Sandy Rancheria	250,000
Big Valley Rancheria	500,000
Bishop Paiute Tribe	0
Blue Lake Rancheria	0
Buena Vista Rancheria	1,812,500
Cabazon Band of Mission Indians	709,775
Cahto Indian Tribe of the Laytonville Rancheria	0
Cahuilla Band of Mission Indians	125,000
Campo Band	500,000
Chemehuevi Indian Tribe	75,000
Chicken Ranch Rancheria	0
Colusa Rancheria	0
Cuyapaipe Band of Mission Indians	1,250,000
Dry Creek Rancheria	1,562,500
Elem Indian Colony	0
Elk Valley Rancheria	0
Hoopa Valley Tribe	0
Hopland Reservation	562,500
Jackson Rancheria	612,500
Jamul Indian Village	0
La Jolla Band of Luiseno Indians	0
Manchester Point Arena Rancheria	0
Manzanita Band of Mission Indians	0
Middletown Rancheria	187,500
Mooretown Rancheria	625,000
Morongo Band of Mission Indians	486,950
Pala Band of Mission Indians	2,062,500
Paskenta Band of Nomlaki Indians	375,000
Pauma/Yuima Band of Mission Indians	625,000

Pechanga Band of Mission Indians	833,750
Picayune Rancheria	1,562,500
Exhibit 3 (continued)	
Unaudited Amount of Revenue From Each Compact Tribe as Received by, or Reported to, the Commission	
Compact Tribe	Revenue Received or Reported
Pit River Tribe	0
Quechan Indian Nation	0
Redding Rancheria	\$437,500
Resighini Rancheria	0
Rincon Band of Mission Indians	3,879,375
Robinson Rancheria	0
Rohnerville Rancheria	0
Rumsey Rancheria	862,500
San Manuel Band of Mission Indians	1,282,500
San Pasqual Band of Diegueno Indians	2,062,500
Santa Rosa Rancheria	3,180,725
Santa Ynez Band	1,550,000
Sherwood Valley Rancheria	0
Shingle Springs Rancheria	0
Smith River Rancheria	0
Soboba Band of Mission Indians	1,261,250
Susanville Indian Rancheria	0
Sycuan Band of Mission Indians	3,310,442
Table Mountain Rancheria	3,442,813
Trinidad Rancheria	0
Tule River Reservation	427,500
Tuolumne Rancheria	312,500
Twenty-Nine Palms Band of Mission Indians	2,610,563
United Auburn Indian Community	812,500
Viejas Band of Kumeyaay Indians	1,675,100
Total	\$45,988,806 ¹

Footnotes:

1. The total amount of revenue reported above, \$45,988,806, includes payments totaling \$1,033,775 that were made on behalf of some tribes by Sides Accountancy Corporation to the Indian Gaming Revenue Sharing Trust Fund (Fund) that have been deposited into the Fund in an uncleared collection liability account pending the receipt of an accounting of payments made. Subsequent to the preparation of the most recent fund condition statement, information was

received that provided the detailed accounting needed to properly identify payments made on an individual tribal basis. See Exhibit 2 for a copy of a trust fund condition statement for the Fund as of September 30, 2001, which is the most recent quarter-end for which a distribution has been recommended for payment. Included in the total revenues and resources reported is interest of \$2,166,819.