

CALIFORNIA GAMBLING CONTROL COMMISSION

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DATE: September 19, 2001

TO: Gambling Control Commission

FROM: Gary Qualset, Deputy Director
Licensing and Compliance Division

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

ISSUE: *Can the Gambling Control Commission (Commission) make a technical adjustment and additional supplemental, partial distribution from the Indian Gaming Revenue Sharing Trust Fund (RSTF) with the information currently available to the Commission for the three calendar quarters covering the period July 1, 2000 through March 31, 2001?*

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 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 from the RSTF (Gov. Code Section 12012.75).

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)) 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

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)

The initial report to the Legislature, which the Commission approved at its May 10th meeting, provided for a \$50,000 per quarter distribution per eligible tribe for the three quarters covering the period July 1, 2000 through March 31, 2001. The total funds included in the initial distribution equaled approximately \$10.1 million.

The supplemental report to the Legislature, which the Commission approved at its May 30th meeting, provided for an additional \$50,000 per quarter distribution per eligible tribe for the three quarters covering the period July 1, 2000 through March 31, 2001. The total funds included in this supplemental distribution equal approximately \$14.8 million. The cumulative amount distributed to each eligible tribe with this distribution would be \$100,000 per quarter per

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 with the distribution of the funds to the noncompact tribes.”

eligible tribe (i.e., up to \$300,000 per eligible tribe for these three quarters if the tribe was eligible for a distribution for all three quarters). The total funds distributed by the initial and the supplemental distribution equal approximately \$24.9 million.

As of July 17, 2001, the Chicken Ranch Rancheria responded to the Commission's March 22, 2001, letter with satisfactory information that will now enable the Commission to make a partial distribution to them.

RECOMMENDATION: *It is recommended that the Commission (1) approve the attached report to the Legislature for a proposed technical adjustment and additional \$300,000 partial, supplemental distribution of the unaudited but apparently legitimate gaming device license fee payments in the RSTF to the Chicken Ranch Rancheria that has now submitted the requested information to the Commission (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 \$14.4 million in the RSTF 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

**Technical Adjustment and Additional
Supplemental Report to Legislature on
Distribution of Funds from the Revenue Sharing Trust Fund**

September 19, 2001

The Honorable Steve Peace
Chairman, 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:

Item 0855-101-0366 of Chapter 52 of the Statutes of 2000 established a process by which funds held in the Indian Gaming Revenue Sharing Trust Fund (IGRSTF) can be used to augment the \$1,000 fiscal year 2000-01 amount appropriated by this item for distribution to non-compact tribes. At this time, the California Gambling Control Commission (Commission) has requested approval from the Director of the Department of Finance to make a technical adjustment and additional supplemental distribution of funds from the IGRSTF for the quarters ended September 30, 2000, December 31, 2000, and March 31, 2001.

Per the statute, a report identifying five items of information was requested to be provided to the Legislature. The information requested follows:

1. The Methodology for Determining a Non-Compact Tribe

Per Section 4.3.2(a)(i) of the Tribal-State Gaming Compact (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 the 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 technical adjustment and additional supplemental 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.
- B. Classify all tribes identified in step A 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.

- C. Classify all Non-Compact Tribes identified in part 2) of step B as eligible Non-Compact non-gaming tribes and Non-Compact gaming tribes that have submitted the requested information per the March 22, 2001, letter from the Commission to all Compact Tribes.
- D. Prepare a list of Non-Compact Tribes as identified in step C that have not previously been approved for an initial partial distribution.

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 March 31, 2001, is attached as Exhibit 2. A listing of the unaudited amount of revenue received from each Compact Tribe as reported in response to the March 22, 2001, letter from the Commission is attached as Exhibit 3.

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

The amount of the technical adjustment and additional funds to be distributed to the Non-Compact Tribe that had not previously submitted the requested information is listed in Exhibit 1

that is attached. The amount of additional funds to be distributed is shown in the column entitled "Amount of Technical Adjustment and Additional Funds Recommended to Be Distributed At the September 19, 2001 Commission Meeting". The amount of the technical adjustment and additional partial distribution is equal to \$100,000 for each quarter that a tribe is eligible to receive a distribution. This is equivalent to the previous amounts that were approved for each quarter that a tribe was eligible to receive a distribution for as recommended in the reports presented at the May 10 and 30, 2001, commission meetings. The Tribe listed in Exhibit 1 is now being recommended to receive \$100,000 for each quarter for which they are eligible to receive a distribution because they have responded to the Commission letter dated March 22, 2001, that requested certain gaming device information.

Sincerely,

John Hensley
Chairman
California Gambling Control Commission

attachments

cc: The Honorable Deirdre Alpert, Chairwoman, Senate Appropriations Committee
The Honorable Carole Migden, Chairwoman, 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 to be Distributed**

Non-Compact Indian Tribe	Amount of Initial Funds Recommended to Be Distributed At May 10, 2001 Commission Meeting	Amount of Additional Funds Recommended to Be Distributed At May 30, 2001 Commission Meeting	Amount of Technical Adjustment and Additional Funds Recommended to Be Distributed At September 19, 2001 Commission Meeting	Total of Technical Adjustment and Additional Funds Recommended to be Distributed
Chicken Ranch Rancheria	\$ 0	\$ 0	\$ 300,000	\$ 300,000
Total	\$ 0	\$ 0	\$ 300,000	\$ 300,000 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.

EXHIBIT 2

**CALIFORNIA GAMBLING CONTROL COMMISSION
INDIAN GAMING REVENUE SHARING TRUST FUND
FUND CONDITION STATEMENT
AS OF MARCH 31, 2001**

ASSETS

CASH:

Cash in State Treasury	\$39,612,434.03
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Total Assets	\$39,612,434.03
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LIABILITES AND FUND EQUITY

LIABILITIES	0
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FUND EQUITY	\$39,612,434.03
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Total Liabilities and Fund Equity	\$39,612,434.03
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Exhibit 3**Unaudited Amount of Revenue Reported by Each Compact Tribe in Response to the March 22, 2001 Commission Letter**

Compact Tribe	Revenue Reported
Agua Caliente Band of Cahuilla Indians	\$1,401,969
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	698,750
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	1,250,000
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	466,250
Pala Band of Mission Indians	2,062,500
Paskenta Band of Nomlaki Indians	375,000

Exhibit 3 (continued)	
Unaudited Amount of Revenue Reported by Each Compact Tribe in Response to the March 22, 2001 Commission Letter	
Compact Tribe	Revenue Reported
Pauma/Yuima Band of Mission Indians	625,000
Pechanga Band of Mission Indians	833,750
Picayune Rancheria	1,562,500
Pit River Tribe	0
Quechan Indian Nation	0
Redding Rancheria	\$437,500
Resighini Rancheria	0
Rincon Band of Mission Indians	2,062,500
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	2,071,250
Santa Rosa Rancheria	1,910,000
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	2,436,213
Table Mountain Rancheria	2,648,188
Trinidad Rancheria	0
Tule River Reservation	435,000
Tuolumne Rancheria	314,250
Twenty-Nine Palms Band of Mission Indians	2,610,563
United Auburn Indian Community	812,500
Viejas Band of Kumeyaay Indians	1,380,050
Total	\$40,336,502^{1,2}

Footnotes:

1. The total amount of revenue reported above, \$40,336,502, includes payments to the Indian Gaming Revenue Sharing Trust Fund (Fund) that were made by a tribe(s) after the most recent fund condition statement as of March 31, 2001. See Exhibit 2 for a copy of a trust fund condition

statement for the Fund as of March 31, 2001, which is the most recent quarter-end for which a fund condition statement has been prepared.

2. It could not be determined with information available if some of the above payments were made to the Fund through Sides Accountancy Corporation on, or after March 13, 2001.