



March 6, 2012

Speaker pro Tempore Darrell Steinberg
The Honorable Roderick D. Wright
California State Senate
State Capitol, Room
Sacramento, CA 95814

RE: SB 1463 (Wright and Steinberg)

Dear Senators Steinberg and Wright:

The Yocha Dehe Wintun Nation strongly opposes your recently introduced SB 1463 (Wright and Steinberg). This bill would purport to legalize Internet poker within the boundaries of the State of California for an initial two-year period while establishing a framework for expansion to other Internet games thereafter. SB 1463 is premised on the assertion that “Californians participate in illegal online gambling on unregulated Internet gambling Web sites every week.” The bill further states that those sites are operated by offshore operators unregulated by United States authorities. While SB 1463 is intended to legalize Internet gambling throughout California, it does so at the expense of Tribal Nations, which have a demonstrated history of responsible gaming. It suffers, in fact, from numerous and serious flaws, and does nothing to address the true underlying problem related to the unlawful operations of Internet gaming in violation of the Unlawful Internet Gambling Enforcement Act of 2006. We urge you and your colleagues in the Legislature to withdraw the proposed legislation given its fundamental deficiencies.

The Bill Is A Trojan Horse For A Massive Expansion of Gaming Throughout California

SB 1463 constitutes an unprecedented expansion of gaming activities in the State of California. As an initial matter, the legislation authorizes Internet poker at race tracks which, with few exceptions, currently do not even offer poker. More ominously, the legislation establishes a framework for the California Department of Justice (CDOJ) to authorize the expansion into other Internet games after an initial two-year period of allowing poker only. SB 1463 requires affirmative action on the part of the Legislature *within 90 days* in order to override the Department’s approval of additional gaming activity. In the absence of such Legislative action, the CDOJ proposal becomes law. Such an expansion would create a mechanism to fundamentally redefine the scope of permissible gaming throughout California — and as shown below — it would do so without regard to Constitutional limitations and contractual obligations of the State in its tribal compacts, and without careful consideration by the Legislature or the active participation of the California electorate.

Yocha Dehe Wintun Nation

PO Box 18 Brooks, California 95606 p) 530.796.3400 f) 530.796.2143 www.yochadehe.org

The Legislation Violates California's Constitution And Tribal Compacts

If enacted, the proposed legislation would violate the California Constitution. SB 1463 provides for the CDOJ to issue an unlimited number of licenses to entities with existing gaming relationships with the State of California, including federally recognized Indian tribes with tribal-state gaming compacts, card clubs, horse racing associations and advance deposit wagering providers. However, in 1984, Californians amended the State's Constitution to add Article IV, Section 19, subdivision (e) ("Section 19(e)"). That provision prohibits casinos of the type currently operating in Nevada and New Jersey except for those operating on Indian lands. In effect, the proposed legislation purports to open the door to just this type of gaming, throughout California, in contravention of the State's constitution.

In addition, a computer modified to permit the user to play poker games would constitute an illegal slot machine and, for that reason as well, would be unconstitutional under Section 19(e). The California Attorney General has previously stated that electronic versions of card games, such as poker, are prohibited slot machines. 66 Ops. Cal. Atty. Gen. 276 (1983).

Furthermore, California tribes possess the exclusive right to operate casino-style gaming devices under gaming compacts negotiated with the State under the Indian Gaming Regulatory Act. SB 1463 purports to tread on those rights, as the term Gaming Device, as set forth in Section 2.6 of the 1999 Compact, and incorporated in the 2004 Compact, is broadly and plainly defined and certainly sufficiently broad to include computers that are connected to networks providing "Internet poker," not to mention other Internet games of chance CDOJ would be empowered to approve. ("Gaming Device" means, in relevant part, "a slot machine, including an electronic, electromechanical, electrical, or video device that, for consideration, permits: individual play with or against that device or the participation in any electronic, electromechanical, electrical, or video system to which that device is connected . . .")

A system that enables gamblers to play a game for a prize and with an element of chance, including poker and other games, on a computer — as SB 1463 proposes — constitutes a "Gaming Device" under the tribal compacts with the State of California. Nothing in the definition limits it to house-banked games, like traditional slot machines. Accordingly, the legislation purports to authorize non-tribal entities to operate gaming devices in violation of the State's contractual promise of exclusivity to Tribal governments.

The Legislation Violates Fundamental Tribal Rights of Sovereignty and Self-Regulation

As drafted, the proposed legislation violates the sovereign right of federally-recognized tribal governments to regulate gaming activities within their own territory. In order for a tribal entity to participate in the proposed regulatory scheme, SB 1463 specifically requires the governing body of the tribal entity to waive its sovereign immunity, and be subject to the State's authority, in order to qualify for a gaming license. Under the Indian Gaming Regulatory Act, Congress respected the inherent sovereign rights and authority of tribal governments, giving state governments no rights to impose regulatory requirements on tribal governments except those to which the tribes agreed in a compact. SB 1463 would make a mockery of such principled protections. The governing body of Yocha Dehe Wintun Nation is highly troubled by a regulatory scheme that would eviscerate existing rights, and further require us and other tribes to abdicate our sovereign rights as a condition to participate.

SB 1463 Would Impose What Amounts To A Tax On Tribal Governments

SB 1463 requires an upfront non-refundable payment of \$30 million to be credited against future, unknown revenues. Apparently, the fee as described is intended to be credited against a monthly deposit in the amount of ten percent (10%) of generated gross revenues. However, payment is required without regard to the amount of the gross revenues actually derived from a licensee's operation. Because the fee is non-refundable, and not tied to generated revenues, it is tantamount to a tax on the tribes, which is violative of their rights as federally-recognized sovereign governments, and thus, illegal under bedrock federal law.

The Legislation Would Risk A Known Revenue Stream For A Highly Speculative One

The economic benefits of Internet poker are highly questionable. On the other hand, the State of California receives over \$350 million in Compact fees every year from tribes that responsibly game throughout the State. Adoption of the legislation would risk a material breach of the Compacts, possibly compelling tribes to withhold their fees pending litigation. We question adoption of legislation that would risk this known revenue stream for a highly speculative one.

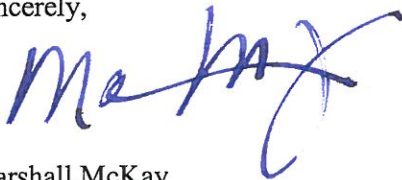
The Bill Would Allow Internet Gaming Revenues To Flow Outside The State

In addition, SB 1463 opens the door to the broad involvement of companies and individuals located outside the State of California. Although the bill purportedly requires that all potential applicants and licensees be domiciled in the State of California, it nevertheless grants licensees the unfettered authority to use their discretion to engage the expertise of personnel not physically present in the State to address technological problems, investigate suspected fraud and make software and configuration changes. This provision would allow out-of-state interests to extract substantial revenue from California with no ties to the State, other than the fact that they "partner" with a licensee.

In sum, because of the bill's fundamental defects, and the serious concerns outlined above, the Yocha Dehe Wintun Nation vigorously opposes SB 1463. We urge you to withdraw this bill which would violate the California Constitution and the exclusivity provisions of our Compact, threaten our sovereign rights and impose illegal taxes on our Nation.

Thank you for your consideration.

Sincerely,



Marshall McKay
Tribal Chairman