
MEMORANDUM

TO: TRIBAL COUNCIL
FROM: MIKE SCANLON
SUBJECT: UPDATE
DATE: MAY 30, 2003

Per our on going effort to renegotiate your compact, I would like to briefly provide a few items for your review. Included below and on the attached pages are the following:

- Suggested Revenue Sharing Strategies
- Suggested Environmental Strategies
- Print Advertisement with Call-to-Action
- Several Opinion-maker letters written on your behalf

Revenue Sharing

During our conference call in late April, we had discussed several options for revenue sharing and agreed to work closely with your staff to further develop a strategy that the Council had agreed to formulate. To expedite this procedure, and to add to the discussion and internal debate, I wanted to provide you with a few examples of revenue sharing plans that may prove useful for your purposes. By no means are these an exhaustive list, and we believe that these may be altered to best meet the Council's objectives.

- a. Current Plan -- Our intention is to fight to maintain the current revenue sharing plan under which you currently operate. However, if you desire changes to that provision, some questions may need to be considered. Such as, should there be a more uniform system whereby all tribes pay either flat fees or percentages? Should there be a change or clarification to the definition of net win? It is important to note, that we believe that the current revenue sharing plan is not on the table for negotiation. We also believe that the council is reasonably satisfied with the current system, at least as compared to having to give up some positions in exchange for some capitulation from the Governor.

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- b. For those machines in excess of 2000 there may be several options for revenue sharing including some of those listed below.
1. Apply the current highest rates. That is either \$4350 annual flat fee or 13 percent of net win to all machines in excess of 2000.
 2. Propose a flat fee or net win percentage that would apply to all new machines.
 3. Propose a graduated scale of flat fees or net win percentages, which increase every 250, 500 or 1000 machines. If we proposed a graduated scale, should we use the same rates of graduation which exists in the current revenue sharing provisions? There, the flat fees increase by about 120% (from \$900 to \$1950 to \$4350) at each new level. The net win percentages increase by 3% (from 7% to 10% to 13%) at each new level.
 4. Propose an entirely new "per machine" fee or percentage or a "per block of machines" fee or percentage. In other words, instead of imposing, for example, a \$4350 annual flat fee on each machine over 2000, impose an annual flat fee of \$1 million (approximately \$4350 x 250) for the right to use each block of 250 machines in excess of 2000.

c. Revenue Distribution

Some additional questions should also be addressed, specifically regarding where the funds generated from the machines above 2000. That is, should those funds be donated to the state's general fund or should they be given to the two existing funds? An additional suggestion would be to create a new fund that the Tribes themselves could control and distribute, in full or in part, to local governments.

Again, these are merely suggestions that may prove to spur additional discussion and debate. Furthermore, it may prove useful for your staff to use some of these proposed solutions in a number of hypothetical scenarios for future growth. As we stated previously, we are ready to work closely with you and your staff to develop the most advantageous proposal for you and the Tribe.

The Director

Environmental Provisions

As you know, the compact's current environmental provisions require tribes to submit all environmental impact reports to the Governor's Office of Planning and Research and the county board of supervisors so that they may be distributed to the public. Thereafter, tribes must consult with the local board of supervisors and/or city council, including meeting with them to discuss mitigation of significant adverse off-reservation environmental impacts. Also, tribes must meet with and provide an opportunity for comment by members of the public who reside nearby and might be affected by the proposed project. Finally, the tribe simply must keep the board or council, and the public, apprised of the progress of a project, and must "make good faith efforts to mitigate any and all significant adverse off-reservation environmental impacts."

As we discussed last month, and in recent conversations and updates, we are currently reviewing the Tribe's current agreements with its local governments. We believe that the Tribe's history and partnership with local municipalities is something of which to be proud and upon which we can build. However, we know that the Governor is receiving enormous pressure from local governments and their statewide organization to win concessions from the Tribes with regard to section 10.8.

One plan that is being circulated, and discussed with the counties and local municipalities, is a plan that would represent a compromise position between the tribes and local governments. The proposed plan requires that tribes and local governments meet and confer in good faith on environmental issues for up to 45 days. If no agreement was reached in that time, either side could demand arbitration on the question of whether the other side acted in good faith. If the arbitrator finds that a party did not act in good faith, the parties would be ordered to meet and confer again, this time with the assistance of a mediator. The mediator, however, would have no power to bind the parties to any result. If the parties could not reach agreement after some period of time, they would go their separate ways. This proposal also would allow either the tribes or the state to demand further renegotiation of the environmental review section of the compact in 4 years. We will continue to monitor the progress of such a plan, but would like to make the Council aware of this proposal that is being circulated and encourage it to begin to review these concepts and discuss the attributes and drawbacks of such a plan.

Additionally, as we have discussed several times, we have been analyzing your current land-use agreements. They are certainly a tremendous example of the Tribe's willingness to work cooperatively with local governments. The model that could be applied to the environmental provisions would be to give the local governments the opportunity to evaluate the environmental impact, and if either party is unhappy, the tribe would be the final arbiter, just as with your land-use agreements.

Obviously, the details of either of these plans would be crucial, but we feel that it is vital, as we mentioned in the last conference call, that the Tribal Council have a defined position on some of these issues as it may become useful and beneficial for us to approach the Governor first with a proposal, rather than letting him, or other Tribes, steer the discourse.

Grassroots

It is becoming clear that the Governor is quite distracted by the recall rumors and whisperings around the state. It has been said that Governor Davis is not a "multi-tasker", which is to say, he is focused squarely on one issue at a time, and right now he is focused on his political survival. The result is great delay. We feel that it is necessary to mobilize your political army once again. We have attached for your review and approval, a half page print advertisement with a call to action. As you will see, we have maintained a very positive message that has been very well received in Sacramento, especially in comparison to some of the other Tribes' messages. We have added language, however, that drives the point home and reinforces more clearly and directly that the Governor needs to *move now*. All of our messaging work done last fall and winter indicates that voters are supportive of the Tribe's position when they know that jobs will be created. Voters know, and the governor should know, that the time is now for job creation.

As you know, the print ad will be readied upon your approval. However, prior to its release we want to bring to your attention a potentially important issue, just as we had done in previous efforts. Specifically, advertisements such as this may be covered by California campaign finance and lobby disclosure law. Generally, entities spending more than \$5,000 to influence legislative or administrative action may have to comply with certain registration and disclosure requirements. As you know, this advertisement will cost far in excess of \$5,000.

While we are not experts in California law, we are very aware of the ongoing legal battle that the Tribe is currently waging regarding California's campaign finance law. Therefore, before the advertisement is approved and placed, we thought you might wish to review this matter with your legal counsel to determine 1) whether you would be required to comply with these registration and disclosure requirements, and 2) whether any actions taken with regard to this mailer will in some way affect or influence your litigation strategy.

While we have raised this very same issue before, we are aware that some issues may have changed in the past several months with regard to your legal strategy and therefore, wished to raise the issue once again.

Grasstops

Additionally, we have attached a number of opinion-maker letters that have been written on your behalf. As you know, these individuals are business leaders, and influential people in the state of California. These people have close ties to the Governor and carry tremendous clout with the political leadership in Sacramento.