

Stand Up For California!
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P.O. Box 355
Penryn, CA 95663

June 7, 2010

Honorable Andrea Lynn Hoch
Legal Affairs Secretary
Office of the Governor
Sacramento, CA. 95814

**RE: 2.2 MILLION DOLLAR BUDGET ISSUE - Improper Diversion of State Money in the
Indian Gaming Special Distribution Fund**

Dear Ms. Hoch:

I write today regarding the “Methodology of the California Gambling Control Commission (CGCC) for Determining a Non-Compact Tribe”.¹ There appears to be an improper diversion of State money in the Indian Gaming Special Distribution Fund (SDF).²

Funds are being disbursed to at least two tribes that have more than the slot limit of 350 machines. This includes the Colorado River Indian Tribe (CRIT) and the Fort Mojave Tribe, both operating casinos in Arizona. Considering the States current economic budget issues, review of SDF disbursements to these two Tribes presents not only a timely opportunity, but a savings of more than 2.2 million dollars annually to the taxpayers of California.

These Tribes, since the initial signing of the 1999 compact and in the case of the Fort Mojave with its amended compact may not be eligible to continue to receive disbursements from the Indian Gaming Revenue Sharing Trust Fund (RSTF) due to (1) over the limit of 350 slot machines mandated in the Tribal State Compacts and amended Compacts, and/or (2) in the case of the CRIT its lack of a Reservation in California.³

Enforcement of the Compact in this area may provide State savings of 2.2 + million dollars annually that would remain in the RSTF, thereby commensurately reducing the amount of money

¹ CGCC January 26, 2006 – Memo – Revenue Sharing Trust Fund Report
www.cgcc.ca.gov/rstfi/2006/RSTF%20Distrib%2017th_CommStaffReport.pdf

² Report by the CGCC for disbursement of the RSTF March 2010

³ The State of California’s long standing position is that the west bank of the Colorado River is not a reservation of the CRIT Tribe. Indeed, the land is federally owned by the Bureau of Reclamations. The court has ruled that the California lands were never conveyed to the Indians and thus, are not reservation land of CRIT or any other Arizona tribe. *United States v. Aranson, et al.*, 696 F 2d 654 (9th Cir 1983) Further, in 1999 the U.S. Supreme Court Order supported a stipulated agreement that the Secretary of the Interior could not determine the western boundary of the CRIT as it presented a conflict of interest. Rather the boundary must be decided by the courts or an Act of Congress. Neither has occurred. California claimed the west bank lands in that agreement.

transferred from the SDF used to back fill the RSTF. This may provide additional dollars for essential State regulation and effective oversight of tribal gaming. This may provide additional dollars to funds set aside for eligible local government reimbursement and members of the public in need of problem and compulsive gambling treatment. (Compact Section 5.2 (a), (b), (c), (d), (e)).

I. Threshold for a Non Compact Definition

A plain reading of the Tribal State Compact raises discrepancies in whether or not CRIT or Fort Mojave in 2010 meets the Compact definition for a Non Compact Tribe.

1. 1999 Tribal State Compact Preamble F

The State has a legitimate interest in promoting the purposes of IGRA for all federally recognized Indian tribes in California, whether gaming or non-gaming. The State contends that it has an equally legitimate sovereign interest in regulating the growth of Class III gaming activities in California. The Tribe and the State share a joint sovereign interest in ensuring that tribal gaming activities are free from criminal and other undesirable elements.

This component in the Preamble addresses **all federally recognized tribes in California**, and the State's legitimate interests in promoting the purposes of IGRA. The purposes of IGRA are found at 25 U.S.C. 2702 (1), (2) and (3) and provide a statutory basis for the operation of gaming by Indian tribes intended to shield tribes from crime and corruption.

2. 1999 Tribal State Compact Section 4.3.2(a)(i)

A Compact Tribe is a tribe having a compact with the State that authorizes that Gaming activities authorized by this Compact. Federally recognized tribes that are operating fewer than 350 Gaming Devices are Non Compact Tribes.

This section provides a clear definition of a Non Compact tribe.

- **CRIT** operates the Blue Water Casino in Western Arizona. www.bluewaterfun.com CRIT boasts on its web site that they have 475 slot machines. Clearly this is 125 slot machines over the limit of 350 machines to qualify as a Non Compact tribe.
- **Fort Mojave** operates the Avi Casino and Resort <http://www.avicasino.com> boasting over 1,100 state-of-the-art slot machines, including the latest penny slots and ticket-in ticket-out machines. Clearly this is 750 slot machines over the limit of 350 machines to qualify as a Non Compact tribe.

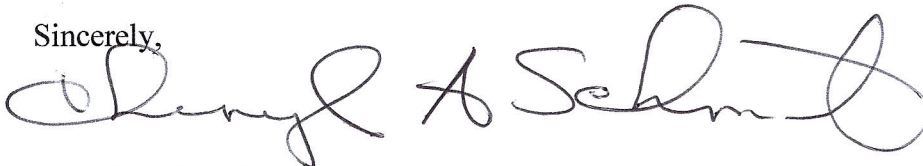
Conclusion:

The language of the compact is plain and direct. "Federally recognized tribes that are operating fewer than 350 Gaming Devices are Non Compact Tribes." There is no language stating on which side of a State boundary the gaming devices must be.

It would appear that CRIT and Fort Mojave are over the slot machine limit for a Non Compact tribe. Moreover, the Tribes may not have accurately filled out the Tribal State Compact Gaming Device Certification Form (CGCC-C2005.02). ***Thus; the Tribes do not appear to meet criteria of the Tribal State Compact in order to continue in 2010 to participate in the RSTF at this current time.***

Thank you once again for the opportunity to express our concerns over the regulatory framework of the Tribal State Compacts and bring to your attention this potentially improper diversion of State money.

Sincerely,

A handwritten signature in cursive script that reads "Cheryl A. Schmit". The signature is written in black ink on a white background.

Cheryl A. Schmit – Director

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CC: Sara Drake – Acting Asst. Attorney General Indian Law and Gaming Unit CA DOJ
Joe Dhillon – General Counsel California Gambling Control Commission
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