



GAMBLING CONTROL COMMISSION

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June 1, 2009

Mr. Charles Rochon, President
Board of Directors
Colorado River Residents for Justice
P.O. Box 1099
Blythe, CA 92225

Re: Eligibility of the Colorado River Indian Tribes (CRIT) to Receive Revenue Sharing Trust Fund (RSTF) Monies

Dear Mr. Rochon:

This Letter is sent in response to your letter dated September 12, 2008, in which you inquired about CRIT and its receipt of money from the Revenue Sharing Trust Fund (RSTF). Please accept our apologies for the delay in responding to your inquiry.

The State of California has a trustee obligation in its management of the RSTF to the Compacted and Non-Compacted tribes in California based on the 1999 Compacts.¹ Under section 4.3.2(a)(ii), the Commission is to serve as "Trustee, for the receipt, deposit, and distribution of monies paid pursuant to ... section 4.3.2" of the Compacts. Section 4.3.2.1(b) further states that the "Commission shall serve as the trustee of the fund." The Governor's Executive Order D-31-01 and D-66-03 further requires the California Gambling Control Commission (Commission) to administer the RSTF on behalf of California. As a result of this obligation, the Commission must ensure that it makes RSTF payments only to eligible Tribes under the Compacts.

The Compacts define who shall receive payments in two provisions. First, section 4.3.2.1(a) states:

"[t]he Tribe agrees with all other Compact Tribes that are parties to compacts having this Section 4.3.2 that **each Non-Compact Tribe in the State shall receive the sum of \$1.1 million per year.**" (Emphasis added.)

¹ All references to the "Compacts" and Compact sections in this letter are in regards to the 1999 Compacts, unless otherwise stated.

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In addition, Section 4.3.2(a) states in pertinent part:

“For the purposes of this Section 4.3.2 and Section 5.0, the following definitions apply ... (i) 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.” (Emphasis added.)

The Compacts created a scheme where certain tribes (Compact Tribes operating “Gaming Devices” pursuant to licenses drawn from the license pool) would pay into the RSTF and others (Non-Compact Tribes) would receive money from the RSTF. The Commission believes both “Non-Compact Tribe” and “Gaming Devices” must only be considered to the extent that they are in the state of California. The Compacts make this requirement clear throughout in various provisions including, for instance, preamble section F which provides:

“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.**” (Emphasis Added.)

Therefore, a Tribe that is situated in California and in another state may be a “Non-Compact Tribe” with fewer than 350 “Gaming Devices” in operation in California, while still having more than 350 slot machines in another state, or cumulatively in California **and** another state, so long as it is not operating more than 349 “Gaming Devices” in California. Such a Tribe would be entitled to continue to receive RSTF payments under the Compacts. The Compacts make it clear that the Commission has “no discretion” under 4.3.2.1(b) “with respect to the use or disbursement of the trust funds” to such a Tribe.

The Commission is also aware of the issue of whether a Tribe is in fact “in the State.” The Commission follows the Compacts’ definition of “Tribe” as being “a **federally recognized** Indian tribe or an authorized official or agency thereof.” (Emphasis added.) The Federal government through the Bureau of Indian Affairs provides a list pursuant to 25 CFR 83 for “Procedures for Establishing that an American Indian Group Exists as an Indian Tribe.” This list is then published in the Federal Register as “Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs.” This most recent list published on April 4, 2008 and found at Volume 73, pages 18553-18557 of the Federal Register (copy attached) currently lists the following multi-state tribes within California and other states:

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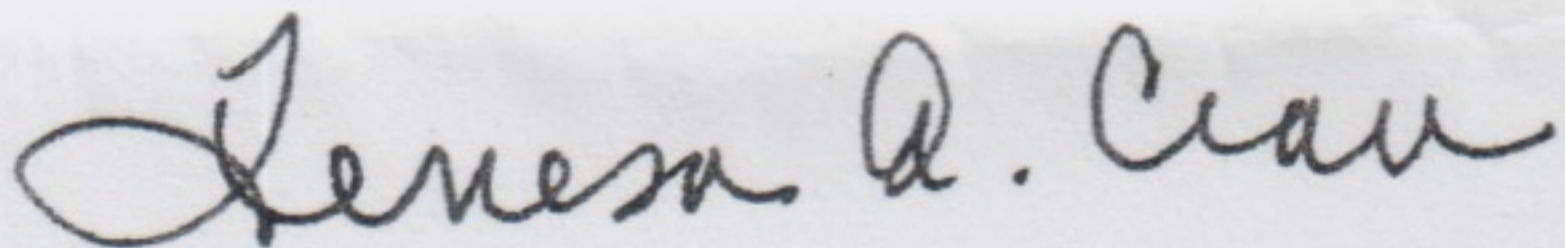
- 1) Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California;
- 2) Fort Mojave Indian Tribe of Arizona, California & Nevada;
- 3) Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches); and
- 4) Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona.

In regard to CRIT, the Commission is aware of the ongoing dispute about CRIT's land claims in California. The Commission is also aware of reports that CRIT has over 350 slot machines in operation in Arizona. However, the Commission has determined that CRIT does not have 350 "Gaming Devices" in California. Furthermore, for the purposes of sections 4.3.2(a)(i) and 4.3.2.1(a), the Federal Register lists CRIT as being in both California and Arizona. Therefore, it is a "Non-Compact Tribe" and eligible to receive RSTF payments. The Commission is obliged to make these payments to them.

Please note that the Commission does not concede, nor should its continued RSTF payments to CRIT be construed to concede or imply a belief on the part of the Commission or the State of California that CRIT has land or even valid land claims in the State of California. Rather, the Commission at this time is merely deferring to the Bureau of Indian Affairs and the listing as currently reflected in the Federal Register, which shows CRIT as a California and Arizona tribe. The RSTF payments will continue to be made until such time as a federal court, the BIA or Congress determines otherwise.

If you have any questions or concerns, please do not hesitate to contact Evelyn M. Matteucci, Chief Counsel, at (916) 263-4792 or Jason Pope, Staff Counsel, at (916) 263-3616.

Sincerely,



TERRESA A. CIAU
Executive Director

Enclosure

cc: Dean Shelton, Chairman, CGCC
Stephanie Shimazu, Commissioner, CGCC
Alexandra Vuksich, Commissioner, CGCC
Andrea Hoch, Governor's Office
Robert Mukai, Department of Justice
Cheryl Schmit, Stand Up for California