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July 20, 2010

Terresa A. Ciau
Executive Director
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA. 95833-4231

RE: Alleged improper Diversion of State Money in the Indian Gaming Special Distribution Fund to the Colorado River Indian Tribes (CRIT) and Fort Mojave Indian Tribe (Fort Mojave)

Dear Ms. Ciau:

Thank you for your letter of June 14, 2010 regarding the Revenue Sharing Trust Fund (RSTF) payments to the CRIT and Fort Mojave. I for one appreciate the hard work of the California Gambling Control’s staff and Commissioners. I think we both agree these are serious and significantly costly issues¹. I thank you for your prompt response.

Nevertheless, the June 14, 2010, letter highlights my concerns and the need for reconsideration of the current CGCC methodology. I repeat this is particularly important considering our states current budget issues. These are 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. The RSTF over the years has experienced shortfalls and relies upon funds from the SDF to be transferred over to meet payments.²

We are in agreement that California has no jurisdiction over “Gaming Devices” in other states. We are in agreement that the compact is silent on whether or not the gaming devices are within the state or in other states. But this section of the compact does not necessarily require CGCC to have jurisdiction over gaming devices; it requires ‘verifiable knowledge’ of the number of gaming devices. The methodology used by the CGCC for determining a non-compact tribe simply states:

“Request” that each non compact tribe that **entered into Compacts** with the State that is to receive a distribution certify the maximum number of gaming devices operated during

¹ **22 million dollars** to CRIT and Fort Mojave over the last decade

² April 28, 2010 Revenue Sharing Trust Fund Report of Distribution of Funds to Eligible Recipient Indian Tribes for the Quarter Ended March 31, 2010 indicates it was necessary to transfer \$101,986.05 to meet the payments. Further that the quarterly amount of the shortfall in payments to all eligible recipients Indian Tribes for the quarter totals **\$7,242,009.55**.

the quarter by completing and filing a Tribal State Compact Gaming Device Certification Form (CGCC-C2005 02)

The count of the CRIT and Fort Mojave tribe's gaming devices is verifiable through the Arizona Department of Gaming. Indeed, the number of gaming devices is posted on the Tribes' and the Arizona Department of Gaming's web sites and contained within the Arizona Tribal State Compacts. A phone call to the National Indian Gaming Commission located in Sacramento can verify this information over the phone.³

Not to be overlooked is the fact that the CRIT like other non compact tribes without gaming devices has no Tribal State Compact with the State of California. That begs the question: What relationship exists with a non compact tribe if a non-compact tribe has not entered into a negotiated agreement signed by the Governor, ratified by the State Legislature, approved or deemed approved by the Secretary of the Interior and published in the Federal Register? The answer is, none. A non-compact Tribe is a 3rd party beneficiary.

The gaming Tribes with more than 350 gaming devices have agreed to contributions to 3rd party non gaming tribes - those tribes with less than 350 gaming devices. Arguably, Compact Tribes could assert this policy is in bad faith as it provides a significant benefit to Tribes with more than the 350 gaming devices simply because they are across a Stateline. But the greatest impact of this policy is to the welfare of the public in and around gaming facilities. Continued payments will needlessly reduce the funds in the SDF as needed to backfill the RSTF. Local governments eligible for reimbursement will have to rely on scare taxpayer funds. We are already witnessing many cities and counties in California being forced by budget woes to lay off essential law enforcement services. I am not suggesting that changing the current methodology will balance the State budget, but it will ensure that the SDF and RSTF will be viable and able to contribute to essential services such as law enforcement.

The CGCC's use of the **1994 Technical Correction Act** better known as the "List Act"– By Senator John McCain is insufficient in determining whether or not a tribe has California Indian Lands. The Act states "*created tribes*" must be treated like "*historic Tribes*". The purpose of the 1994 federal legislation was to prevent tribes from being treated differently by federal offices and agencies. The "List Act" is nothing more than a guidance tool. The "List Act" may be used as a first step in identifying potential beneficiaries to the RSTF.

The amendment is intended to prohibit the Secretary or any other federal official from distinguishing between Indian tribes or classifying them not only on the basis of the Indian Reorganization Act but also on the basis of any other federal law. Other agencies of the federal government may have developed distinctions or classifications between federally recognized Indian tribes based on information provided to those agencies by the Department of the Interior. The amendment to section 16 of the Indian Reorganization Act is intended to address all federal instances where such categories or classifications of Indian tribes have been applied and any statutory basis which may have been used to establish, ratify or implement the categories or classifications. There is nothing in the 1994 "List Act" Congressional record to indicate there

³ The Washoe Tribe of Nevada do not have gaming devices verified by calling the NIGC, a federal agency tasked with the regulation of tribal gaming.

was ever a debate or clarification over California Indian lands. Plainly, more is required to determine Indian lands in California because of our unique federal laws governing our States establishment of Indian lands, Reservations and Rancherias.

The CGCC is competent to federal law. Federal law includes any and all federal actions that may compromise or affect the status of tribe's government or Indian lands in California. It is important to note that the CGCC does an excellent job of verifying the status of a tribal government's organization. In the April 28, 2010 RSTF Report, Alturas Indian Rancheria, California Valley Miwok Tribe and the Death Valley Timbi-Sah Shoshone Band of California payments are withheld until respective Tribal governments are identified. Additionally, a new tribal government the Wilton Rancheria is identified. Conversely, the CGCC falls-down in its review of California Indian lands. The Fort Mojave Tribal lands in California are not nor have been in dispute. However, the CRIT 'claim to lands' has been in dispute with the State for a long period of time. The CGCC as Trustor of the RSTF should give this 'claim of land' greater consideration.

In all three *Arizona v. California* Supreme Court cases the State of California asserted that the disputed land was not part of the CRIT Reservation. The California Attorney General also opined that this land was not in the CRIT Reservation. (See – Attorney General's Opinion Number 63-90, November 18, 1963. See also – *U. S. v. Aranson*, 696 F. 2d 654 (9th Cir.) cert. denied 464 U. S. 982 (1983). On January 14, 1999, the State executed a Stipulation and Agreement by the United States Supreme Court, resolving the third *Arizona v. California* case. CRIT and the U.S. Government asserted that this land was in the CRIT reservation. The State of California did not agree. The document recited that:

“The State of California disagrees, and expressly reserves the right to challenge the validity, correctness, and propriety of the 1969 Secretarial Order.”

The United States Supreme Court has also refused to accept the unauthorized Secretarial Order as controlling authority and made clear that it would be a conflict of interest for the Secretary of the Interior to independently make the determination of the Western Boundary of the CRIT Reservation. Such a determination of the Western Boundary must according to the United States Supreme Court Justices be made by a judicial ruling or an Act of Congress. Neither has occurred.

Further, the lands along the West Bank of the Colorado River were withdrawn by Public Land Order at 10 a.m. on July 7, 1997 under the authority of Section 3 of the Act of 1902 by the Bureau of Reclamations. The West Bank of the river is federal fee land.⁴ In 1904, Congress with purpose *diminished* the CRIT Reservation to protect and control the resource of the Colorado River.

⁴ Federal Register Vol.62, No.107/Wednesday, June 4, 1997/ page 30614: “Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination IN LOCAL COURTS.” [Emphasis added]


There is a Memorandum of Understanding between Reclamations and the Bureau of Land Management to manage the surface of the land along the River. There is nothing in the 1983 MOU that acquiesces to the CRIT. Indeed see footnote below, conflicts are to be resolved in local courts, i.e. State of California District Court. **The CRIT ‘claim to land’ within the State of California is undeniably in federal dispute.** In conclusion, the CGCC cannot acquiesce solely to the 1994 “List Act” as positively identifying tribes as having land in California.

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. There is no language that states there must be jurisdiction over the gaming devices. **It is a request for a number, a verifiable number.** CRIT has 475 gaming devices; Fort Mojave has 1,100 gaming devices, verifiable in the Tribes’ Arizona Tribal State Compact or through the Arizona Department of Gaming.

CRIT nor Fort Mojave 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.

I hope that you will give reconsideration to this serious and costly issue.

Sincerely,



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