

# **Stand Up For California!**

**"Citizens making a difference"**

standupca.org

P.O. Box 366  
Penryn, CA 95663

May 16, 2006

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

**RE: Non Compact Tribal Payments and  
Request for Certification of Indian Lands for Gaming**

Dear Ms. Hoch:

First, my sincere thanks for the many opportunities you have afforded me to express the concerns of citizen and elected officials affected by the off reservation impacts of tribal gaming expansion and proliferation. I am sure you will agree tribal gaming is an issue like no other. The very nature of the issue is multi-jurisdictional requiring many different parties to work cooperatively on solutions and agree. Enforcement of the regulatory framework of the 1999 Compacts is a complex and difficult task at best often offering only thorny choices. I for one appreciate the time and attention you have already devoted to this issue.

I write today regarding the "Methodology of the California Gambling Control Commission for Determining a Non-Compact Tribe".<sup>1</sup> Basically, the CGCC is relying on information provided by the Bureau of Indian Affairs and the Department of the Interior and a legal opinion received from the State Attorney General's Office. I cannot comment on the informal Attorney General opinion as it is client privileged. However, in recent months the Governor's office has taken an active role in validating California Indian lands to ensure they qualify for gaming. The Colorado River Indian Tribe (CRIT) presents a timely opportunity to compare findings with the BIA.<sup>2</sup>

The land dispute of CRIT in the past has presented significant but isolated personal harm to the West Bank Homeowner Association and other surrounding homeowners. However, the land dispute now affects the improper diversion of State money in the Indian Gaming Special Distribution Fund (SDF).

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<sup>1</sup> CGCC January 26, 2006 – Memo – Revenue Sharing Trust Fund Report  
[www.cgcc.ca.gov/rstfi/2006/RSTF%20Distrib%2017th\\_CommStaffReport.pdf](http://www.cgcc.ca.gov/rstfi/2006/RSTF%20Distrib%2017th_CommStaffReport.pdf)

<sup>2</sup> Colorado River West Bank Dispute – Memo – Document attached.

CRIT since the initial signing of the 1999 compact may not in 2006 be eligible to continue to receive disbursements from the Indian Gaming Revenue Sharing Trust Fund (RSTF) due to (1) CRIT is over the limit of 350 slot machines mandated in the 1999 Compact, and/or (2) the Tribe is not a California Tribe because of the Tribe's lack of a Reservation in California. Enforcement of the Compact in this area may provide State savings of 1.1+ million dollars annually that would remain in the RSTF, thereby commensurately reducing the amount of money 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)).

### **CRIT Does Not Meet the Non Compact Definition**

Currently, CRIT benefits from the RSTF as a Non Compact Tribe receiving 1.1 million dollars annually. However there appears from a plain reading of the 1999 Tribal State Compact to be some discrepancies in whether or not CRIT in 2006 meets the 1999 Compact definition for a Non Compact Tribe.

### **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**, regarding the States 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.

### **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. CRIT boast 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. 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. [www.bluewaterfun.com](http://www.bluewaterfun.com)

Foregoing the question of whether or not CRIT has Reservation lands or Indian lands in California it would appear that CRIT is over the slot machine limit for a non Compact tribe. Moreover that CRIT may not have accurately filled out the Tribal State Compact Gaming Device Certification Form (Cgcc-C2005.02). ***CRIT does not appear to meet criteria of the 1999 Compact in order to continue in 2006 to participate in the RSTF at this current time.***

- Stand Up For California suggests that a 'Formal Attorney General Opinion' be developed to clarify for the CGCC and Non Compact tribes the qualifying criteria for non gaming funds particularly for Tribes domiciled in Arizona operating casinos with more than 350 gaming devices but claiming land in California.
- CRIT reported no gaming devices on the Gaming Device Certification Form, this issue should be investigated immediately. We further recommend an immediate end to the disbursement of the RSTF to CRIT.

### **Request for Certification of CRIT Land in California**

CRIT is now asking for a California Compact in order to establish a gaming facility on California land. The Governor of California is only obligated to negotiate in good faith with federally recognized tribes that have land in trust in California. It is a reasonable request by the State that CRIT certify and provide details of '*how and when*' California lands became a CRIT Reservation or Indian lands.

Asking CRIT to provide this explanation saves scarce taxpayer dollars. The State should not expend time and money on a compact negotiation with a tribe that may not have legitimate land status for a casino in California. This request is consistent with the recommendations found in the recent Inspector General Report<sup>3</sup> providing direction to the National Indian Gaming Commission to certify all land upon which tribal casinos are operating to ensure compliance with IGRA.

The Inspector General recommends that the Chairman of the NIGC:

*... establish regulations which require that tribes certify that for all trust lands acquired since October 17, 1988 gaming is not being conducted or that gaming on those lands was established and approved in accordance with IGRA and other applicable authority.*

NIGC agreed to pursue this matter with the tribes.

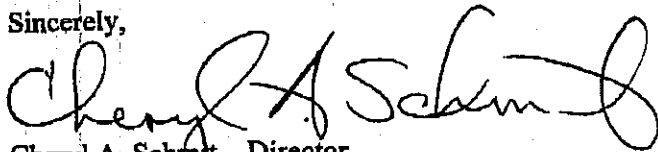
- Stand Up for California urges the State to seek a certification of CRIT Indian Lands in California. It is a reasonable request to certify and require details of '*how and when*' California lands became a CRIT Reservation or Indian lands.

Stand Up For California has obtained land records from the Bureau of Land Management that document the land status of CRIT which we are pleased to share with the State.

<sup>3</sup> U. S. Department of the Interior, Office of Inspector General, Evaluation Report, Process used to assess Applications to Take Land into Trust for Gaming Purposes.- page 10, Recommendations to the NIGC 4,5, and 6

Thank you once again for the opportunity to express our concerns over the regulatory framework of the 1999 Tribal State Compact. Do not hesitate to call upon us should you need additional information regarding, Arizona Compact requirements, the number of CRIT gaming devices and CRIT land dispute.

Sincerely,



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CC: Attorney Tim Moore  
Roger French- President West Bank Homeowners Association  
Dan Kolkey, Tribal Gaming Negotiator, Office of the Governor  
Stephanie Shimazu, Deputy Legal Affairs Secretary  
Robert Mukai, Senior Assistant Attorney General, Office of the Attorney General  
Sara Drake, Deputy Attorney General, Office of the Attorney General

Attachment: Colorado River West Bank Dispute - Memo footnote  
Other Tribes over their 349 Limit Receiving RSTF Payments

<b>Other Tribes Over their 349 Limit Receiving RSTF Payments</b>
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**Quechan**

Paradise Casino (Tribe has casinos in both AZ. and CA), 800 plus machines under the AZ compact, Tribe is limited to 475 slots, plus rights to 370 more slots if they can get from other non-gaming tribes. Tribe has recently installed 349 new slots. Total 824 slots  
[www.paradise-casinos.com](http://www.paradise-casinos.com)

**Fort Mojave**

Spirit Mountain Casino 1,500 slots  
[www.spiritmountain.com](http://www.spiritmountain.com)

**Costly Discrepancies Adding Up to Potentially 3.3+ million State Dollars**

**California Gambling Control Commission Records indicate:**

Fort Mojave - 0 (no casino)

Quechan - 349

CRIT (Colorado Indian Tribes) 0 (not compacted)