

Stand Up For California!

“Citizens making a difference”

www.standupca.org

P.O. Box 355
Penryn, CA 95663

September 12, 2008

Chairman Phillip Hogen
National Indian Gaming Commission
1441 L. Street, NW
Washington Dc 20005
Faxed 202-632-7066

RE: Sycuan – Potential Non-Compliance with Gaming Ordinance

Dear Chairman Hogen:

In the last three years you personally have worked hard to establish a federal regulation for the National Indian Gaming Commission to clarify once and for all the proverbial bright-line between class II and class III gaming equipment. Please know that there are many in the State of California that sincerely appreciate and fully support your effort and determination to accomplish this task.

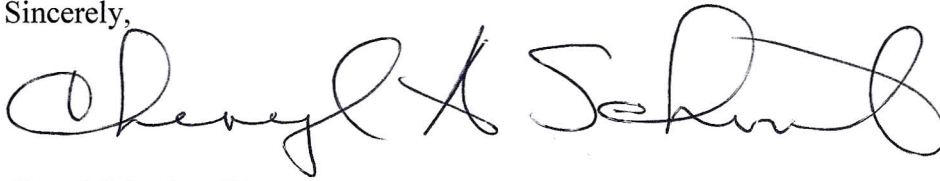
Stand Up For California! writes today to bring to your attention a situation with “one touch bingo machines” in operation at the Sycuan Band of the Kumeyaay Nation Reservation in San Diego, California. In June of 2008, it was noted that the Sycuan Band was found to be over the allotted number of 2000 slot machines of its 1999 Tribal State Compact. The 217+ additional machines were identified as one touch bingo machines.¹

The letter authored on June 4, 2008, by you to the Mayor Karl S. Cook Jr. of the Metlakatla Indian Community made a clear and indisputable determination that the “one touch machines” were indeed a class III game. One of the several final agency actions of the National Indian Gaming Commission is approval of a gaming ordinance. It would appear that the Sycuan Band of Kumeyaay Nation are in non-compliance with its gaming ordinance by the action of installing machines described and asserted to be class II that the NIGC has clearly determined are class III.

Stand Up For California! respectfully requests that appropriate remedial and enforcement actions be promptly implemented by the National Indian Gaming Commission. If your office determines a basis upon which the continued operation of these machines is lawful under the Indian Gaming Regulatory Act, we would appreciate a response advising us of the basis for that conclusion. Thank you in advance for your assistance. That said I want to personally commend the work you are doing to draw the bright-line distinction.

¹ Onell R. Soto, September 6, 2008, San Diego Union Tribune, *Gambling panel plans to review Sycuan game*

Sincerely,

A handwritten signature in black ink, appearing to read "Cheryl Schmit". The signature is fluid and cursive, with the first name "Cheryl" written in a larger, more prominent script than the last name "Schmit".

Cheryl Schmit – Director

916-663-3207

cherylschmit@att.net ----- please note I have a new e-mail address

www.standupca.org

Attachments: Letters by Community groups and Supervisor Dianne Jacob of San Diego, requesting the CGCC to send a letter to the Governor sighting the Sycuan Band in breach of their Tribal State Compact.



DIANNE JACOB

SUPERVISOR, SECOND DISTRICT
SAN DIEGO COUNTY BOARD OF SUPERVISORS

September 10, 2008

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Dean Shelton
Chairman
State of California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231

Dear Chairman Shelton:

As a member of the San Diego County Board of Supervisors with eleven Indian reservations in my Supervisorial District, I am writing regarding item #12 on the State of California Gambling Control Commission's September 10, 2008 agenda, which pertains to the operation of gaming devices in excess of the Class III gaming devices authorized by the Tribal-State Gaming Compacts.

I want to express concerns about the impact that this decision may have in my district, especially in the communities immediately surrounding Indian reservations. It is important that a clear distinction be made between what constitutes a Class II and Class III gaming device and that Tribal Governments be held to this distinction when seeking authorization of new gaming devices on their reservation.

Since compacts between Tribal Governments and the State of California are intended to address impacts associated with Class III gaming devices, the significance of these agreements could be potentially minimized if a Casino can utilize an unlimited number of Class II devices that are virtually indistinguishable from Class III devices. Therefore, once again, I request that a clear distinction is sought and enforced regarding Class II and Class III gaming devices.

Again, thank you in advance for your consideration in this matter. If I can be of further assistance, please feel free to contact me at (619) 531-5522.

Sincerely,

DIANNE JACOB
Vice Chairwoman

DJ:rs

JAC
JAMULIANS AGAINST THE CASINO
P.O. BOX 1317, JAMUL, CA 91935
JACJAMUL.COM

California Gambling Control Commission
2399 Gateway Oaks, Suite 220
Sacramento, CA 95833

**RE: Agenda Item #12-Sycuan Gaming Devices in excess of Class III Gaming
Devices Authorized by the Tribal-State Gaming Compact (Pursuant to Tribal-
State Gaming Compact Section 4.3.2.2)
Commission Meeting Wednesday September 10, 2008**

Dear Commissioners,

Jamulians Against the Casino was formed over 15 years ago to stop the inappropriate placement of a Class III casino in our rural community. In 2002, an overwhelming 97% of the voters were opposed to building a casino. Many environmental and safety issues have continued to galvanize the opposition to this day. To date the Jamul Indian Village has not built a casino. The tribe is now vacillating between a Class II and Class III operation.

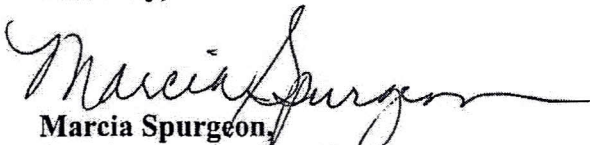
Our organization opposes Sycuan's challenge to the State over the use of their large number of "one touch Class II machines", that by the NIGC definition, are Class III and must fall under the Compact rules. It is important that Compacts be adhered to by the Tribes and the State. Enforcement of the agreements is critical in protecting the citizens of California from Tribal interpretations that are in reality circumventing the agreements.

To ignore Sycuan's open use of these "one touch Class II machines", which are in reality slot machines, will lead to a proliferation of use and challenges by other gaming tribes in California. The "Me Too" use of these machines by all the Tribes would negate the State's ability to negotiate compacts or mitigate their impacts. There are no provisions in place for oversight or regulations.

Such impacts can be readily seen, as our close neighbors in Dehesa, deal daily with traffic, crime, pollution and thousands of people entering and leaving their rural community. It is unconceivable to think of what our State's rural areas transformation would be if this is allowed.

We urge you to reject any approval of Sycuan's "one touch" machines, as a violation of their compact with the State of California and in compliance with the NIGC findings.

Sincerely,


Marcia Spurgeon,
JAC Secretary, Coordinator

Residents Against Gaming Expansion
844 Singing Heights Drive El Cajon, CA 92019
619-579-5540

California Gambling Control Commission
2399 Gateway Oaks, Suite 220
Sacramento, CA 95833

**Re: Agenda Item #12- Sycuan gaming devices in excess of Class III
Commission meeting- 9/10/2008**

To the commission:

Our organization represents hundreds of homeowners who live in the vicinity of the Sycuan band's casino in the Dehesa Valley.

We strenuously object to Sycuan adding any additional gaming devices, particularly those which are not expressly approved in its governing compact. We are concerned that permitting the use of "one-touch Class II" machines will ultimately lead to circumvention of the state-tribe compact negotiation process, and subject Californians to unlimited and uncontrolled growth of casino gambling.

Our local neighborhoods have suffered from the growth of the Sycuan casino over the last 8 years. We have endured mushrooming traffic, rising crime, increased pollution, and a general degradation of our way of life. It seems grossly unfair that the tribe could further impose on our community by expanding its operations in an illegal manner.

It should be recalled that Sycuan has elected not to ratify its 2006 amended compact with the state, which would have permitted the tribe to legitimately add 3,000 Class III machines to its casino. Of course, adding such machines would require them to make substantial payments to the state, which they might avoid by adding the "one-touch" machines. If that is their motive, it is a particularly heinous one.

We respectfully ask you to reject approval of Sycuan's "one-touch" machines, as being in violation of their compact with the state of California.

Sincerely,

William P. Bengen
Chairman

***A coalition of local residents opposing expanded casino gaming in
East County, San Diego, CA***



September 8, 2008

Dean Shelton Chairman
Sheryl Schmidt, Commissioner
Stephanie Shimazu, Commissioner
Alexa Vuksick, Commissioner
California Gambling Control Commission (CGCC)
2399 Gateway Oaks Drive, Suite 100
Sacramento, CA. 95833-4231
FAX: 916-263-0499

**RE: ONE-TOUCH MACHINES AT SYCUAN
September 10, 2008 – Agenda Item #12**

Chairman Shelton and Honorable Commission Members:

Dehesa Community Counsel, Inc. dedicated to protecting the quality of life in Dehesa Valley is writing to address item number 12 on the September 10, 2008 agenda. In our view, the Sycuan Band of Mission Indians (Tribe) is in breach of the 1999 Tribal State Compact.

In accordance with the Indian Gaming Regulatory Act (IGRA), the National Indian Gaming Commission (NIGC) has authority over class II gaming equipment on Indian lands. On June 4, 2008, Chairman Phil Hogen of the NIGC sent a letter to the Metlakatla Indian Community in Alaska. This well written and extensively documented 11 page letter details why the one-touch bingo machines are considered to be a class III gaming device by federal law. While an appeal was submitted on this letter it was later dropped by the Metlakatla. This letter establishes the bright line between class II and class III gaming.

As you know, Federal law supersedes state law, so any lenience on the part of the CGCC creates significant and far reaching legal and political impacts. The CGCC has an obligation to the California public to ensure that illegal gaming devices do not present legal and financial problems to the State of California.

The 1999 Tribal State Compact limits each tribe to a maximum of 2000 machines. The Tribe with the introduction of the one-touch machines has exceeded its maximum. The Tribe while negotiating a 2006 agreement with Governor Schwarzenegger did not bind the tribal government to the agreement, thus the Tribe is operating under the 1999 Tribal State Compact.

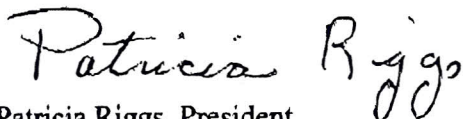
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While the CGCC discusses and debates a determination to send a letter to the Governor over the breach of Compact, our community requests that you include some additional concerns. While the Tribe makes generous charitable and political contributions, it has not mitigated the impacts of casino traffic, pollution; light, air and noise or the additional costs of law enforcement and emergency services that burden the local taxpayers of our county. Currently the Tribe is seeking a liquor license which will further impact traffic and life-safety on our rural two lane road.

Any letter of recommendation to the Governor to resolve the dispute of the one-touch machines we respectfully request to include the requirement of a local mitigation agreement for the impacts the tribe has already created due to their casino development. Moreover, to include mitigation for the parking structure that its principle purpose is to serve the casino resort, developed on after-acquired land that was stated by the tribe to be for tribal housing.

Your compliance with the NIGC position in this matter is sincerely appreciated.

Very truly yours,

A handwritten signature in cursive script that reads "Patricia Riggs". The signature is written in dark ink and is positioned above the typed name and title.

Patricia Riggs, President
protectdehesa@aol.com

CC: Supervisor Dianne Jacob
Chairman Hogen, National Indian Gaming Commission

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P.O. Box 355
Penryn, CA 95663

September 8, 2008

Dean Shelton Chairman
Sheryl Schmidt, Commissioner
Stephanie Shimazu, Commissioner
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California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 100
Sacramento, CA. 95833-4231
FAX: 916-263-0499

RE: 9-10-08 Agenda # 12 -Potential Tribal State Compact Violation

Chairman Shelton and Honorable Commission Members:

On September 10, 2008, Commissioners of the California Gambling Control Commission have many decisions to make. But one decision stands out as it potentially will have national ramifications affecting the rights of states, host communities of tribal gaming operations and a far reaching impact on California's general fund. Stand Up For California writes today regarding item number 12, "Operation of Gaming Devices in Excess of the Class III Gaming Devices Authorized by the Tribal-State Gaming Compact (Pursuant to Tribal-State Gaming Compact Section 4.3.2.2) Sycuan Band of the Kumeyaay Nation".

As you know, the Indian Gaming Regulatory Act (IGRA) places class II gaming under the purview of the National Indian Gaming Commission (NIGC). Chairman Phil Hogen of the NIGC has been working on federal regulations that will draw a bright-line between class II and class III games. The importance of drawing a bright-line cannot be overstated. Clearly, IGRA established the tribal state compacting process in part, to provide tribes with the resources to become financially independent, while at the same time protecting the state from the impacts of Indian gaming.

In November of 2006, the Office of Governor Schwarzenegger submitted comments to the proposed class II regulations. Recommendations that further imposed..."a bright-line distinction between class II and class III gaming. Legal Affairs Secretary Andrea Hoch wrote, "We are concerned however, that some of the proposed rules may undermine these efforts and in that regard, offer the following comments." Ms. Hoch's comments specially addressed the requirement of player participation.

“One of the key skills in bingo or bingo-like games is recognition of the place on the card where the drawn number is to go. If machines perform this function for a player, in the words of the preamble, the machine is playing the game not the player.”¹

In a more recent letter (June 4, 2008) by Chairman Phillip N. Hogen of the National Indian Gaming Commission to Mayor Karl S. Cook Jr. of the Metlakatla Indian Community, at page 4 the Chairman makes clear IGRA’s requirement of player participation.

“Bingo requires participation of some degree. Merely hitting a start button and having numbers covered would not comply with the degree of participation that the statutory language- “the first persons to cover” (24 USC section 2703 (7)(A)(i)) – implies. Likewise an automatic daub, in which the player need not have any response to the numbers that are called, would not be acceptable.”²

The NIGC letter to the Metlakatla establishes the bright-line between class II and class III machines. The bright-line that Governor Schwarzenegger’s letter of comment was seeking to strengthen in the proposed regulations in 2006 is reflective of the definitions of class II machines in the NIGC June 2008 letter. Commissioners must recognize that a dispute exists if the Sycuan Band of the Kumeyaay Nation is operating a one touch bingo machine or any machine that fails the test of the NIGC Metlakatla letter of June 2008.

Therefore, informing the Governor to require the Sycuan Band of the Kumeyaay Nation to “meet and confer” with representatives of the State pursuant to the compact section 9.1 is a necessary regulatory action by the decision makers of this Commission.

Stand Up For California further requests Commissioners to act on Section 6.4.5 of the Tribal State Compact and deny, suspend or take any other authorized remedial regulatory action against the Gaming Resource Supplier of these machines. These devices not only violate California laws but the devices violate federal law.

- Determine if there has been a violation of federal law, in particular Section 1957 of Title 18 of the United States code, by entities offering these gaming devices.
- Determine if manufactures have complied with Title 15 USC 1171-1178 or Title 28 CFR 3.1 – 3.6

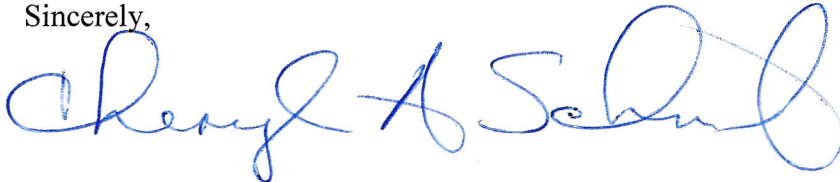
Gambling Devices when shipped or transported must be plainly and clearly labeled or marked so that the name and address of the shipper and the consignee and the nature of the article or the contents of the package may be readily ascertained on an inspection of the outside of the article. This applies to all shipments of gambling devices interstate.

¹ Letter dated November 9, 2006 from the Office of the Governor to Ms. Penny Coleman, General Counsel National Indian Gaming Commission.

² Letter from Chairman Phillip Hogen of the National Indian Gaming Commission dated June 4, 2008 to Mayor Karl S. Cook Jr. of the Metlakatla Indian Community disapproving an amendment to the Communities gaming ordinance.

Stand Up For California supports and encourages a determination of the CGCC to advise the Governor of the necessary action to require the Sycuan Band of the Kumeyaay Nation, to enter into a meet and confer. Further, to take appropriate remedial action on the suppliers of these illegal devices.

Sincerely,



Cheryl Schmit – Director
916-663-3207
cherylschmit@att.net
www.standupca.org