

Indian Gaming Special Distribution Fund

Counties' Benefit Committees Did Not Always Comply
With State Laws for Distribution Fund Grants

Report 2013-036

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March 6, 2014

2013-036

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As required by Chapter 858, Statutes of 2003, the California State Auditor presents this audit report concerning the allocation and use of moneys from the Indian Gaming Special Distribution Fund (distribution fund).

This report, our third review of the allocation and expenditure of grants from the distribution fund, concludes that the Indian gaming local community benefit committees (benefit committees) did not always comply with state laws for distribution fund grants they awarded. Specifically, our review of 12 grants at four counties—Butte, Lake, Riverside, and San Diego—found that the benefit committees awarded seven grants totaling nearly \$1.7 million in fiscal years 2010–11 through 2012–13 without sufficient documentation to demonstrate that the grant applicant’s project mitigated the effect of Indian gaming, or the requested funding did not represent the proportionate share of costs attributable to casino impacts. Additionally, the benefit committee in Butte County incorrectly awarded the county \$57,500 that it should have awarded to the city of Oroville under law, according to the nexus criteria, a test of geographic proximity that defines the minimum grant amounts that qualified local governments are entitled to receive. We also found that the benefit committees in Butte and Lake counties do not have a process to verify that grant recipients appropriately used interest earned on grant funds to mitigate casino impacts. Further, Butte County’s benefit committee has not yet established a conflict-of-interest code, even though it was advised by the Fair Political Practices Commission in 2007 that it was required to do so. Moreover, we noted that members of benefit committees or other designated filers in the four counties failed to file 19 statements of economic interests, and filed another 11 statements that were late or incomplete.

Similar to our previous two reports, we noted that the balance of the distribution fund continues to decline. Specifically, the expenditures and transfers out of the distribution fund exceed the revenues into the fund annually and as a result the fund may be nearly depleted by the end of fiscal year 2014–15. Finally, we noted that there is no state agency responsible for providing oversight or technical assistance to the benefit committees who administer the distribution fund grant program. However, designating a state agency, such as the California Gambling Control Commission or the Department of Justice to provide oversight could improve benefit committees’ compliance with state laws for administering the mitigation grant program.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

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Summary

Results in Brief

In this review of four counties, our third examination of the allocation and expenditure of grants from the Indian Gaming Special Distribution Fund (distribution fund), we found, as we have in our two previous reports on this subject, that the Indian gaming local community benefit committees (benefit committees) responsible for distributing these funds did not always comply with state laws for the distribution fund grants they awarded. The distribution fund uses money that some tribal casinos contribute under agreements known as *gaming compacts* between the tribes and the State to mitigate the impact of tribal gaming on local governments. As of January 2014 California had 70 compacts with 109 of the State's federally recognized tribes, 59 of which operate a total of 60 tribal casinos in 26 counties.¹

The Legislature appropriated \$30 million in fiscal year 2010–11 and \$9.1 million in both fiscal year 2011–12 and fiscal year 2012–13 from the distribution fund for grant awards to local governments for projects to mitigate the impact of the casinos (mitigation grants). State law requires that the benefit committees award mitigation grant funds for priorities such as law enforcement and fire protection, public health, and roads. In addition, it requires that if a project provides other benefits to the local jurisdiction, the mitigation grant funds pay only for the proportionate share of the project that mitigates the casino's impact on that local jurisdiction. However, our review of 12 grants that four counties—Butte, Lake, Riverside, and San Diego—awarded in fiscal years 2010–11 through 2012–13 found that benefit committees awarded nearly \$1.7 million in funds for seven of these grants without sufficient documentation from the grant applicants. Specifically, either the applicants did not sufficiently demonstrate that their project mitigated the effect of Indian gaming or the requested funding did not represent a proportionate share of the costs attributable to casino impacts. For example, Butte County's benefit committee awarded \$221,000 to increase staffing at a local fire department without obtaining documentation to support how this amount was a proportionate share of the impact of the casinos on that jurisdiction.

Benefit committees also did not follow other state laws for mitigation grants. In one of the counties, a local government did not receive as much grant funding as it should have by law according

Audit Highlights . . .

Our audit of the Indian Gaming Special Distribution Fund (distribution fund) revealed the following:

- » *The Legislature allocated \$30 million in fiscal year 2010–11 and \$9.1 million in both fiscal years 2011–12 and 2012–13 from the distribution fund to local governments for mitigation grants.*
- » *We reviewed 12 grants and found that for seven, the Indian gaming local community benefit committees (benefit committees) awarded \$1.7 million in funds without sufficient documentation.*
- » *Butte County's benefit committee underfunded the city of Oroville \$57,500 over a period of three years and provided that amount to the county instead.*
- » *Butte and Lake counties do not have a process in place to verify that grant recipients comply with requirements for the interest earned on mitigation grant funds.*
- » *Butte County's benefit committee has not established a conflict-of-interest code and some designated individuals in each of the four counties we reviewed failed to meet filing requirements.*
- » *Expenditures and transfers from the distribution fund exceed revenues annually, continuing a decline in the fund balance that may be nearly depleted by the end of fiscal year 2014–15.*
- » *State oversight could improve compliance with state laws for administering the mitigation grant program.*

¹ In February 2013 the Rincon Band began operating under Secretarial Procedures, which are the result of mediation between the tribe and the State and are a full substitute for a gaming compact. Because the tribe had a previous compact and now operates under different terms, for ease of discussion we refer to it as having an amended compact.

to the nexus criteria, a test of geographic proximity that defines the minimum grant amounts that qualified local governments are entitled to receive. Specifically, for the three fiscal years ending 2012–13, Butte County’s benefit committee incorrectly awarded the county \$57,500 in nexus funds that should have been awarded to the city of Oroville instead.² Additionally, the benefit committees in Butte and Lake counties do not have processes to verify that their grant recipients comply with requirements for interest earned on mitigation grant funds; as a result, they did not verify that grant recipients had used such interest only to mitigate casino impacts, as required by state law. Further, San Diego County’s benefit committee directed the California State Controller’s Office (Controller) to disburse funds directly to the county, which then disbursed the amounts to grant recipients. San Diego’s benefit committee believes this process improves its ability to manage its grant program. However, the process is not in compliance with state law, which requires the Controller to disburse the funds directly to the local government jurisdictions that are to receive the grants.

Our review also revealed that Butte County’s benefit committee does not comply with state law requiring it to have a conflict-of-interest code (conflict code). Although the county was informed by the Fair Political Practices Commission in 2007 that its benefit committee was required to adopt a conflict code, the benefit committee has not done so. Additionally, we noted that members of the benefit committees and other designated individuals in all four of the counties we reviewed did not always make the financial disclosures state law requires. The law requires each designated individual to file a statement of economic interests that helps to identify conflicts of interest that he or she might have, yet designated individuals in the four counties failed to file 19 required statements, and another 11 statements were either late or incomplete.

As with our previous audits of the mitigation grants from the distribution fund, we noted that the balance of the distribution fund continues to decline. Expenditures and transfers from the distribution fund exceeded revenues by a total of \$95.6 million for fiscal years 2010–11 through 2012–13, continuing a decline in fund balance that may result in near depletion of the distribution fund by the end of fiscal year 2014–15. Amendments to Indian gaming compacts during fiscal years 2003–04 through 2008–09 that did not include an obligation to contribute to the distribution fund may have accelerated the fund balance decline. New or amended

² Nexus funds are allocated based on cities’ and counties’ geographic proximity to Indian casinos and the Indian land upon which those casinos are built.

compacts entered into since fiscal year 2008–09 may generate additional revenue for the distribution fund, but they are unlikely to contribute enough to halt the fund’s decline.

Finally, state oversight and technical assistance from an agency such as the California Gambling Control Commission (gambling commission) or the Department of Justice (Justice) could improve benefit committees’ compliance with state laws for administering the mitigation grant program. State law does not identify any agency responsible for conducting oversight of or providing technical assistance to the benefit committees. Instead, state law places responsibility for selecting grants with the benefit committees, and makes the counties responsible for administering grants. However, the benefit committees and counties lack definitive guidance and technical assistance, especially on issues where state law is silent. Our report highlights instances of noncompliance for which state oversight could likely have improved compliance with state laws. For example, state oversight might have identified Butte County’s error in determining funding for one of its cities earlier and prevented the error. In addition, some of the concerns we discuss in this report are the same as or similar to concerns we discussed in our past two audits. As a result, we believe state oversight could improve compliance with state laws for this program.

Recommendations

To comply with state law, benefit committees should ensure that they obtain sufficient documentation from grant applicants to demonstrate that proposed projects mitigate casino impacts. If applicable, that documentation should demonstrate that the requested funding represents a correct proportion of the costs attributable to casino impacts.

To comply with state law requiring it to reserve specific amounts of mitigation grant funds for local government jurisdictions based on the nexus criteria, Butte County’s benefit committee should correct its determinations of nexus eligibility for the city of Oroville and Butte County by April 1, 2014. Further, it should ensure that it awards the minimum funding to each local government jurisdiction consistent with its corrected nexus determinations.

To ensure that grant recipients comply with state law concerning interest earned on mitigation grant funds, by June 2014, the Butte County and Lake County benefit committees should establish policies and procedures to verify that grant recipients use interest earned on grant funds to mitigate casino impacts as required by state law.

If San Diego County's benefit committee believes that its process for distributing grant funds improves its ability to manage its grant program, it should seek legislative authority to change its process. Otherwise, San Diego County's benefit committee should instruct the Controller to release funds directly to the grant recipients as state law requires.

Unless the Legislature amends current state law, the Controller should implement its plan to modify its distribution process beginning with fiscal year 2013–14 grant awards to ensure that it releases funds directly to approved grant recipients.

To comply with state law, by June 2014, Butte County's benefit committee should adopt a conflict code.

To improve compliance with state laws and provide technical assistance in administering the mitigation grant program, the Legislature should consider designating an agency such as the gambling commission or Justice to provide oversight and technical assistance to the benefit committees.

Agency Comments

Butte County concurred with the audit findings and accepts the recommendations. Lake County is taking steps to address the recommendations but expressed frustration at the challenge counties face in complying with certain aspects of the law. Riverside County indicated that it is taking or will take steps to address the recommendations. San Diego County indicated it will take steps to address the recommendations. Finally, the Controller stated that it has revised its processes to address our recommendation.

Introduction

Background

Since the passage of Proposition 1A in March 2000 and the signing of the initial tribal-state gaming compacts in 1999—legal agreements that authorize gaming on tribal lands within California—Indian gaming has experienced extensive growth. During this time, additional compacts have been signed, existing compacts have been amended, and several court decisions have changed the landscape of Indian gaming. According to the California Gambling Control Commission (gambling commission), as of June 2013, Indian tribes were operating almost 65,000 class III gaming devices, including slot machines. According to the National Indian Gaming Commission, revenues from Indian gaming in California and northern Nevada grew from \$2.9 billion in federal fiscal year 2000 to \$7 billion in federal fiscal year 2011.

Federal Indian Gaming Regulatory Act

Unless authorized by an act of Congress, the jurisdiction of state governments and the application of state laws do not extend to Indian lands. Therefore, the provisions of the compacts that the 1988 federal Indian Gaming Regulatory Act (IGRA) authorized generally regulate the relationships between the State and tribal casinos. Congress enacted the IGRA to provide “a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments” and “to shield [tribal gaming] from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation.”

The IGRA establishes three classes of gaming activity, as described in the text box. Each class is subject to differing levels of jurisdiction from three parties: the tribe, the State, and the federal government. The tribes have exclusive jurisdiction over class I gaming, which is not subject to IGRA regulation. Tribes also have jurisdiction over class II gaming, but this activity is subject to the IGRA. Finally, under the IGRA, a tribe may conduct class III gaming on Indian lands only in a state that permits such gaming. State law directs the California State Auditor (state auditor) to review grant funds generated from class III gaming devices.

Classes of Gaming

- **Class I:** Social games played solely for prizes of minimal value or traditional gaming connected to tribal ceremonies or celebrations.
- **Class II:** Bingo and card games that meet certain criteria.
- **Class III:** All other forms of gaming, such as lotteries, certain card games, and slot machines that classes I and II do not include.

Source: United States Code, Title 25, Section 2703.

Moreover, the tribe must negotiate a compact with the state governing the conduct of gaming activities, the U.S. Department of the Interior (Interior) must approve the compact,

and the tribe must adopt an ordinance or resolution approving the compact, which the chair of the National Indian Gaming Commission must then approve. The compact will then take effect only when notice of the approval by Interior has been published in the *Federal Register*. The IGRA permits the compacts to include provisions regarding the assessment of fees by the State in amounts necessary to defray the costs of regulating gaming activities.

Tribal-State Gaming Compacts in California

In the State's March 2000 primary election, voters approved Proposition 1A, which amended the California Constitution to authorize the governor to negotiate and enter into compacts with Indian tribes, subject to ratification by the Legislature. The proposition also gave federally recognized Indian tribes the authority—consistent with the IGRA—to operate slot machines, lottery games, and certain types of card games on Indian lands in California.

In 1999, anticipating approval of Proposition 1A, the governor negotiated and the Legislature approved legislation ratifying compacts with many tribes. The state law ratifying these compacts, which are identical in most respects, affirms that any future contract the State enters into that is identical to the original compact in all material respects is ratified unless the Legislature objects within 30 days from the date the governor submits the compact to it. The State eventually entered into 61 of these tribal-state gaming compacts (known as *1999-model compacts*). The 1999-model compacts later received final federal approval as the IGRA requires, and they are effective until December 31, 2020. In consideration for the State's willingness to enter into these compacts, the tribes agreed to provide a portion of their revenues from the gaming devices to the State in the form of license and operation fees. These fees provide money for two funds: the Indian Gaming Revenue Sharing Trust Fund (trust fund), which distributes money to tribes that do not have compacts or that have compacts and operate fewer than 350 gaming devices, and the Indian Gaming Special Distribution Fund (distribution fund), which finances various state and local government activities.

The 1999-model compacts included requirements for tribal casinos to pay between 7 percent and 13 percent of the average net win from the number of their gaming devices over 200 to the distribution fund. Generally, the *net win* of a device is its gross revenue—the amount players pay into the device—less the amount paid out to winners. During fiscal years 2003–04 through 2008–09, the governor negotiated and the Legislature ratified six additional compacts and amendments to 12 of the original compacts (post-1999-model compacts). Although the 1999-model compacts are in full force until December 31, 2020, the governor and some Indian tribes

renegotiated and amended these compacts for various reasons, such as to increase the number of gaming devices allowed. For example, the 1999 compact for the Morongo Band of Mission Indians was limited to 2,000 gaming devices but the amended compact increased that limit to 7,500 devices. The post-1999-model compacts ratified during fiscal years 2003–04 through 2008–09 do not require those tribes to pay any funds to the distribution fund; instead they require other forms of revenue sharing to mitigate the impacts of gaming, such as direct payments to the State’s General Fund or direct payments for counties and cities. More recently, as shown in Table 1, the five post-1999-model compacts in fiscal years 2010–11 through 2012–13 require the tribes to pay a percentage of the average gaming devices’ net win to the distribution fund. The percentage paid is generally dependent on the number of gaming devices in operation. Three of these five compacts have higher maximum payments than the 1999-model compacts.

Table 1
New and Amended Compacts, Fiscal Years 2010–11 Through 2012–13

TRIBE	RATIFIED	TERMS SPECIFIC TO THE INDIAN GAMING SPECIAL DISTRIBUTION FUND
Habematolel Pomo of Upper Lake	June 2011 (New compact)	The tribe shall pay between 0 percent and 15 percent of the average gaming device net win to the Indian Gaming Special Distribution Fund (distribution fund) depending on the number of devices operated.
Pinoleville Pomo Nation	October 2011 (New compact)	The tribe shall pay between 0 percent and 15 percent of the average gaming device net win to the distribution fund, depending on the number of devices operated.
Federated Indians of Graton Rancheria	May 2012 (New compact)	The tribe shall pay to the distribution fund \$350,000 per quarter for the first 28 quarters in which gaming activities occur and then, beginning with the 29 th quarter, 3 percent of the net win from gaming devices operated.
Coyote Valley Band of Pomo Indians	September 2012 (Amended compact)	The tribe shall pay between 0 percent and 15 percent of the average gaming device net win to the distribution fund, depending on the number of devices operated.
Rincon Band of Luiseno Mission Indians of the Rincon Reservation (Rincon Band)*	February 2013 (Amended compact)	The tribe shall pay between 0 percent and 13 percent of the average gaming device net win to the distribution fund, depending on the number of devices operated.

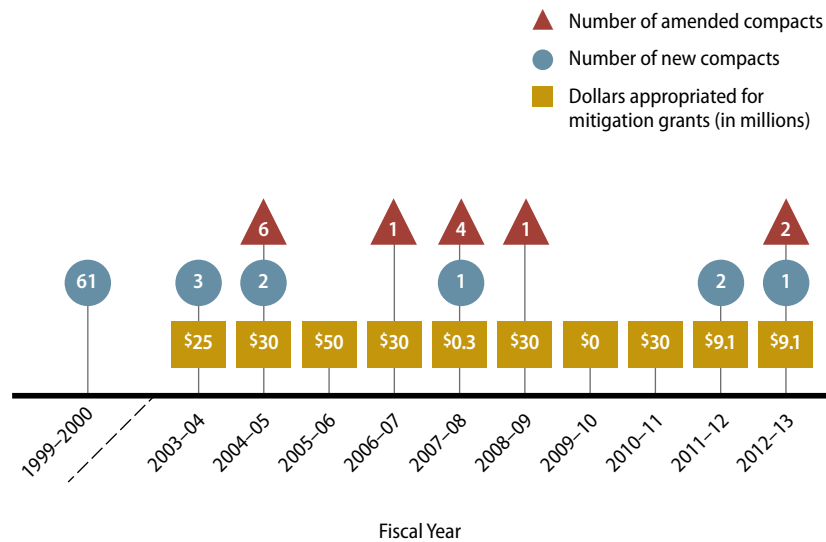
Sources: Indian gaming compacts, *Federal Register*, and California Gambling Control Commission’s Web site.

Note: This table includes those compacts ratified by the Legislature between July 2010 and June 2013 and published in the *Federal Register*, allowing them to take effect. We also included the Secretarial Procedures for the Rincon Band, as they went into effect in February 2013.

* In February 2013 the Rincon Band began operating under Secretarial Procedures, which are the result of mediation between the tribe and the State and are a full substitute for a gaming compact. Because the tribe had a previous compact and now operates under different terms, for ease of discussion we refer to it as having an amended compact.

In October 2013 the governor stated that he has made a concerted effort to negotiate compacts to address the structural imbalance of the distribution fund. However, the balance of the distribution fund continues to decline because the annual revenues going into the distribution fund do not cover the amounts the State is spending and transferring from the distribution fund each year. For example, in fiscal year 2012–13, the State spent and transferred \$73 million from the distribution fund, including \$9.1 million for grants to local government jurisdictions, to mitigate the impacts of the casinos—referred to as *mitigation grants*. However, the distribution fund received revenues of only \$42.9 million in that year. As of January 2014 California had compacts with 70 of the 109 federally recognized tribes in the State. Of the 70 tribes, 59 were operating a total of 60 tribal casinos. Figure 1 shows a history of the number of new and amended compacts and the annual appropriations to the distribution fund for mitigation grants. We discuss the declining fund balance of the distribution fund further in the Audit Results.

Figure 1
Appropriations for Mitigation Grants and New or Amended Compacts by Fiscal Year Related to the Indian Gaming Special Distribution Fund



Sources: California Gambling Control Commission's Web site, tribal-state gaming compacts, governor's budgets for fiscal years 2005–06 through 2014–15.

Note: In February 2013 the Rincon Band of Luiseno Mission Indians of the Rincon Reservation began operating under Secretarial Procedures, which are the result of mediation between the tribe and the State and are a full substitute for a gaming compact. Because the tribe had a previous compact and now operates under different terms, for ease of discussion we refer to it as having an amended compact.

Gambling Commission and the Department of Justice

California's 1997 Gambling Control Act created the gambling commission to serve as the State's primary regulatory body over gambling activities, including Indian gaming. This commission has jurisdiction over the operation, concentration, and supervision of gambling establishments in the State. Five commissioners appointed by the governor oversee and set policy for the gambling commission. The gambling commission collects trust fund deposits based on quarterly license fees, and it acts as the trustee of the trust fund. It also collects and accounts for contributions under provisions of the gaming compacts for deposit into the distribution fund. The governor's 2012 reorganization plan consolidated the gambling commission's support, investigations, audit, and compliance functions and transferred these duties to the Department of Justice (Justice). Justice also has law enforcement and investigatory powers pertaining to gambling facilities, and its authority includes monitoring the conduct of licensees, among other duties. However, none of the transferred functions affect the gambling commission's role in collecting and accounting for contributions in the distribution fund.

Distribution Fund

The 1999-model compacts call for each tribe that operates more than 200 grandfathered devices—those in operation as of September 1, 1999, before the compacts were ratified—to deposit a percentage of its average net win into the distribution fund. The percentage paid to the distribution fund of the average net win for these grandfathered devices ranges from 7 percent to 13 percent, depending on the number of devices the tribe operated on September 1, 1999. Tribes under 1999-model compacts with 200 or fewer devices in operation on September 1, 1999, do not pay into the distribution fund regardless of the number of devices they now operate.

State law provides for the Legislature to appropriate money deposited into the distribution fund to address four needs, prioritized as shown in Table 2 on the following page. When funds are appropriated for the fourth priority—supporting local governments affected by tribal gambling—the California State Controller's Office (Controller), in consultation with the gambling commission, divides the funds for local government grants among counties with tribal casinos to use for projects to mitigate the impact of those casinos.

Table 2
Funding Priorities for the Indian Gaming Special Distribution Fund and
Fiscal Year 2012–13 Expenditures

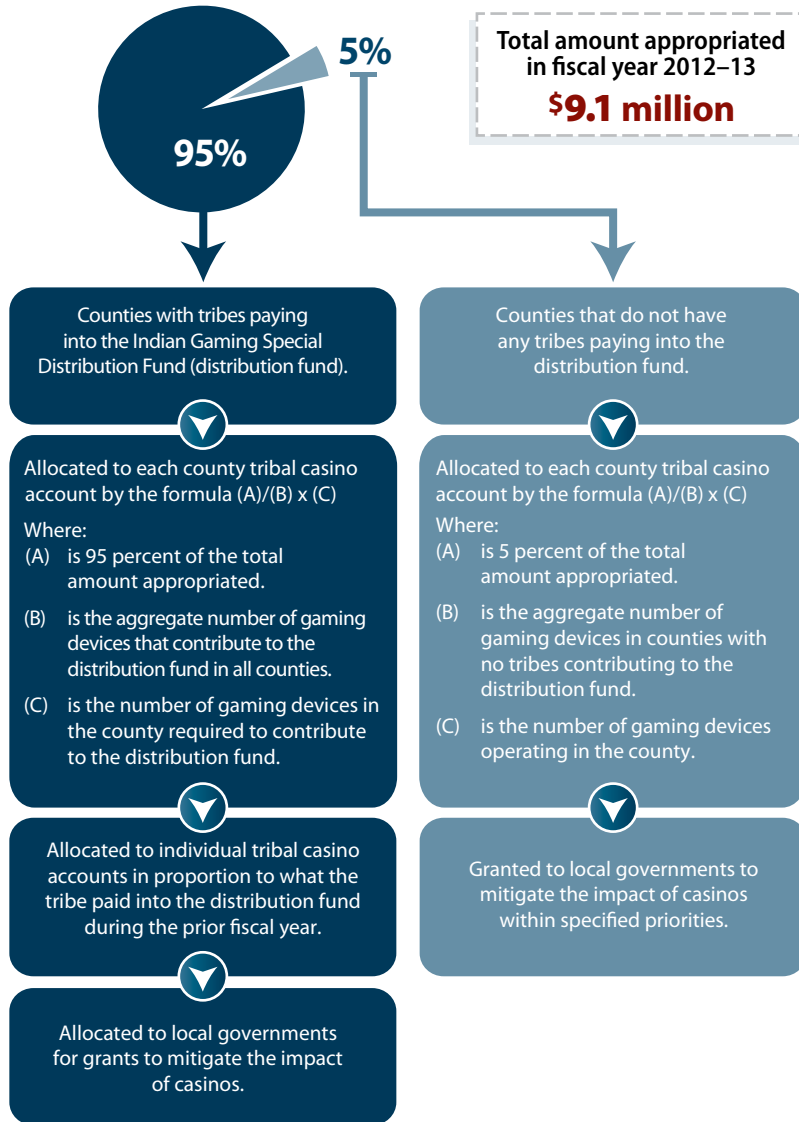
PRIORITY	FISCAL YEAR 2012–13 EXPENDITURES
Funding to the Indian Gaming Revenue Sharing Trust Fund to ensure that it can distribute \$1.1 million annually to each tribe that does not have a compact or that has a compact and operates fewer than 350 devices.	\$33.5 million
Funding problem-gambling prevention programs managed by the Department of Alcohol and Drug Programs.	\$8.3 million (\$4.3 million for state operations) (\$4 million for local assistance)
Funding the Indian gaming regulatory functions of the California Gambling Control Commission and the Department of Justice.	\$22.1 million
Funding the support of local governments impacted by tribal gaming.	\$9.1 million

Sources: California Government Code, sections 12012.85 and 12012.90, and governor's budget for fiscal year 2014–15.

As Figure 2 shows, state law defines the method for dividing these funds between counties with tribes that contribute to the distribution fund and counties whose tribes are not obligated by their compacts to contribute to the distribution fund. The State allocated \$9.1 million to local governments in fiscal year 2012–13.

State law also describes how funds are to be allocated to the county tribal casino account for each eligible county. For counties in which tribes pay into the distribution fund, the money is divided among the counties based on the aggregate number of gaming devices in the county subject to an obligation to make contributions to the distribution fund; this money is placed into an individual tribal casino account. The more eligible devices the tribe has, the more the county is eligible to receive. The State's allocation to local governments in fiscal year 2012–13 was divided among 26 counties and 214 grants. Figure 3 on page 12 shows the counties that received allocations in fiscal years 2010–11 through 2012–13. The amounts allocated to counties vary considerably. For example, Modoc County received the smallest allocation of \$3,186, representing less than 1 percent of the \$9.1 million allocation in fiscal year 2012–13. Riverside County received the largest allocation of nearly \$2.5 million, or 27 percent of the fiscal year 2012–13 allocation, because its tribes operate many more gaming devices that are required to contribute to the distribution fund.

Figure 2
 Allocation of Funding From the Indian Gaming Special Distribution Fund
 to Local Governments



Sources: California Government Code, sections 12714 and 12715, and Chapter 704, Statutes of 2012.

Figure 3
Allocations to County Tribal Casino Accounts
Fiscal Years 2010–11 Through 2012–13



Source: California State Controller's Office allocations.

State Controller

When the Legislature allocates funding for grants to local jurisdictions to mitigate the impacts of tribal casinos (mitigation grants), the Controller is responsible for calculating the allocations, in consultation with the gambling commission, for each of the county tribal casino accounts. State law requires the Controller to release grant funds directly to the entities receiving approved grants.

Indian Gaming Local Community Benefit Committees

In each county in which Indian gaming occurs, state law creates an Indian gaming local community benefit committee (benefit committee) that awards mitigation grants from the distribution fund. Generally, each county's board of supervisors selects two county representatives as well as three elected city representatives from cities located within four miles of the tribal casino; in addition, two tribal representatives are selected by a majority of the county's tribes paying into the distribution fund. In counties in which only one city is located within four miles of the casino and the casino is located entirely within the unincorporated part of the county, only one elected representative from that city sits on the benefit committee. In counties that do not have a city within four miles of a tribal casino, the county board of supervisors and the tribes in the county mutually select three additional members of the benefit committee in lieu of city members. Statute has created a special composition for San Diego County's benefit committee: two county representatives, one city representative, three tribal representatives, and the sheriff of San Diego County.

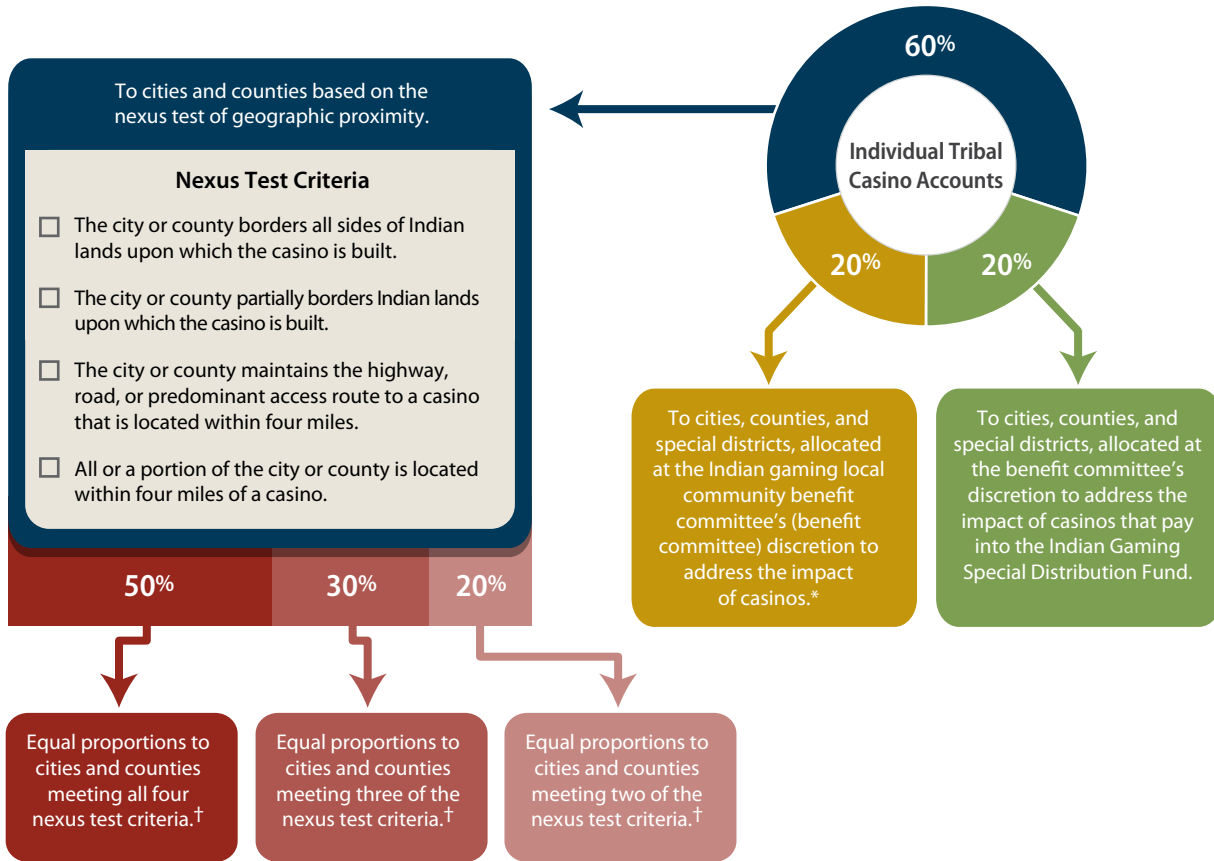
As the text box delineates, each benefit committee is responsible for establishing procedures for local governments within the county to apply for grants and for selecting eligible applications to receive funds. To allocate funds correctly to local governments in counties that have a tribe paying into the distribution fund, benefit committees must determine the geographic proximity of cities and the county to an Indian casino and the Indian land upon which that casino is built, using a set of criteria known as the *nexus test*, as state law establishes. As shown in Figure 4 on the following page, 60 percent of the funds are available to cities and counties that meet two or more of the nexus criteria and the remainder are awarded as discretionary grants; that is, the benefit committees can choose which qualifying local governments receive the money. These criteria are intended to provide a fair and proportionate system for awarding grants to local governments affected by tribal gaming.

Responsibilities of Indian gaming local community benefit committees:

- Ensuring that funds are allocated according to priorities established by law.
- Establishing all grant application policies and procedures.
- Assessing the eligibility of grant applications.
- Awarding grants.
- Determining the amount of reimbursement to the county for administering the grant program (not to exceed 2 percent of the total county allocation).

Source: California Government Code, Section 12715.

Figure 4
Allocation of Funds From Individual Tribal Casino Accounts



Source: California Government Code, Section 12715.

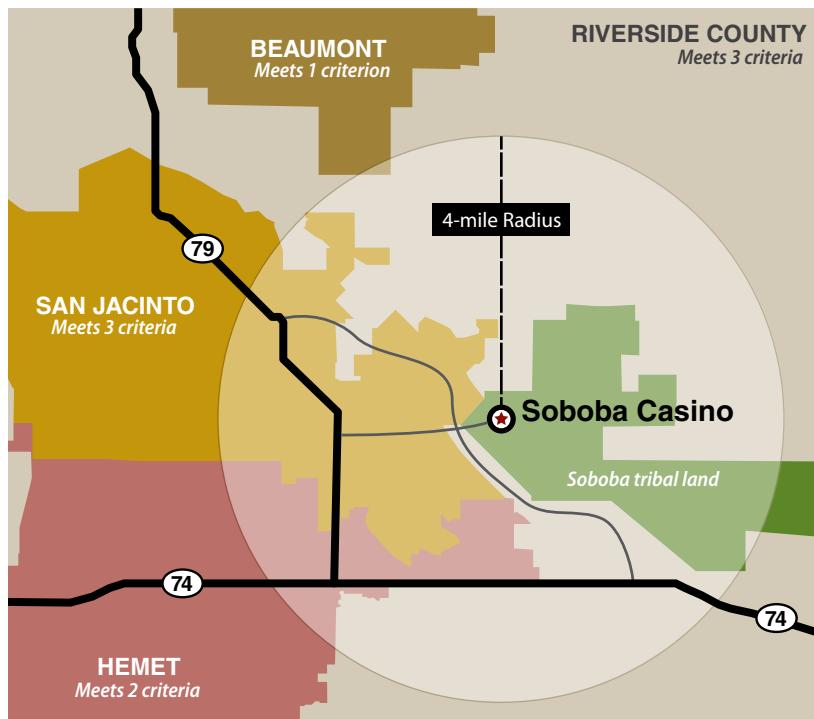
* These grants are generally limited to service-oriented and one-time large capital projects, but in some instances may be awarded for other projects.

† These funds must be made available in equal proportions to cities and counties meeting a different number of nexus test criteria if no local governments meet the required number of criteria.

Figure 5 illustrates how the nexus criteria are applied to local jurisdictions in Riverside County. Specifically, the county and the cities of Beaumont, San Jacinto, and Hemet are all within a four-mile radius of the Soboba Casino. Although Beaumont is within four miles of the casino, because it does not border tribal land or maintain an access road to the casino, it meets only one of the nexus criteria and therefore is not eligible to receive nexus funding. The City of Hemet is within four miles of the casino and maintains an access road but does not border tribal land. Because it meets two of the nexus criteria, it is eligible to receive 20 percent of the nexus funds. Because Riverside County and the city of San Jacinto are each within four miles, partially border tribal land,

and maintain access roads to the casino, they each meet three nexus criteria and are eligible to receive equal proportions of 30 percent of nexus funds. Because in this example no jurisdiction meets all four nexus criteria, state law requires that the benefit committee divide the 50 percent of funds reserved for jurisdictions that meet all four nexus criteria evenly between the 30 percent and 20 percent categories.

Figure 5
 Nexus Calculation Example for the Soboba Band of Mission Indians



Source: Indian gaming local benefit committee for Riverside County.

Each grant the benefit committee awards must also receive affirmative sponsorship from the tribe whose individual tribal casino account houses the funds to be distributed. Affirmative sponsorship typically occurs via a letter from the tribe to the benefit committee endorsing the grant project. After both the benefit committee awards the grant and the grant receives affirmative sponsorship from the tribe, the benefit committee submits a list of its approved grant projects to the Controller, which must release the funds directly to the local government entities receiving the grants. Although multiyear grants are allowed, any money that benefit committees do not award by the end of the fiscal year reverts to the distribution fund. Each county

that administers grants may use up to 2 percent of the funds allocated to it for that year to reimburse its demonstrated administrative expenses.

Priority uses of Indian Gaming Special Distribution Fund grants:

- Law enforcement
- Fire services
- Emergency medical services
- Environmental impacts
- Water supplies
- Waste disposal
- Behavioral health
- Planning and adjacent land uses
- Public health
- Roads
- Recreation and youth programs
- Child care programs

Source: California Government Code, Section 12715.

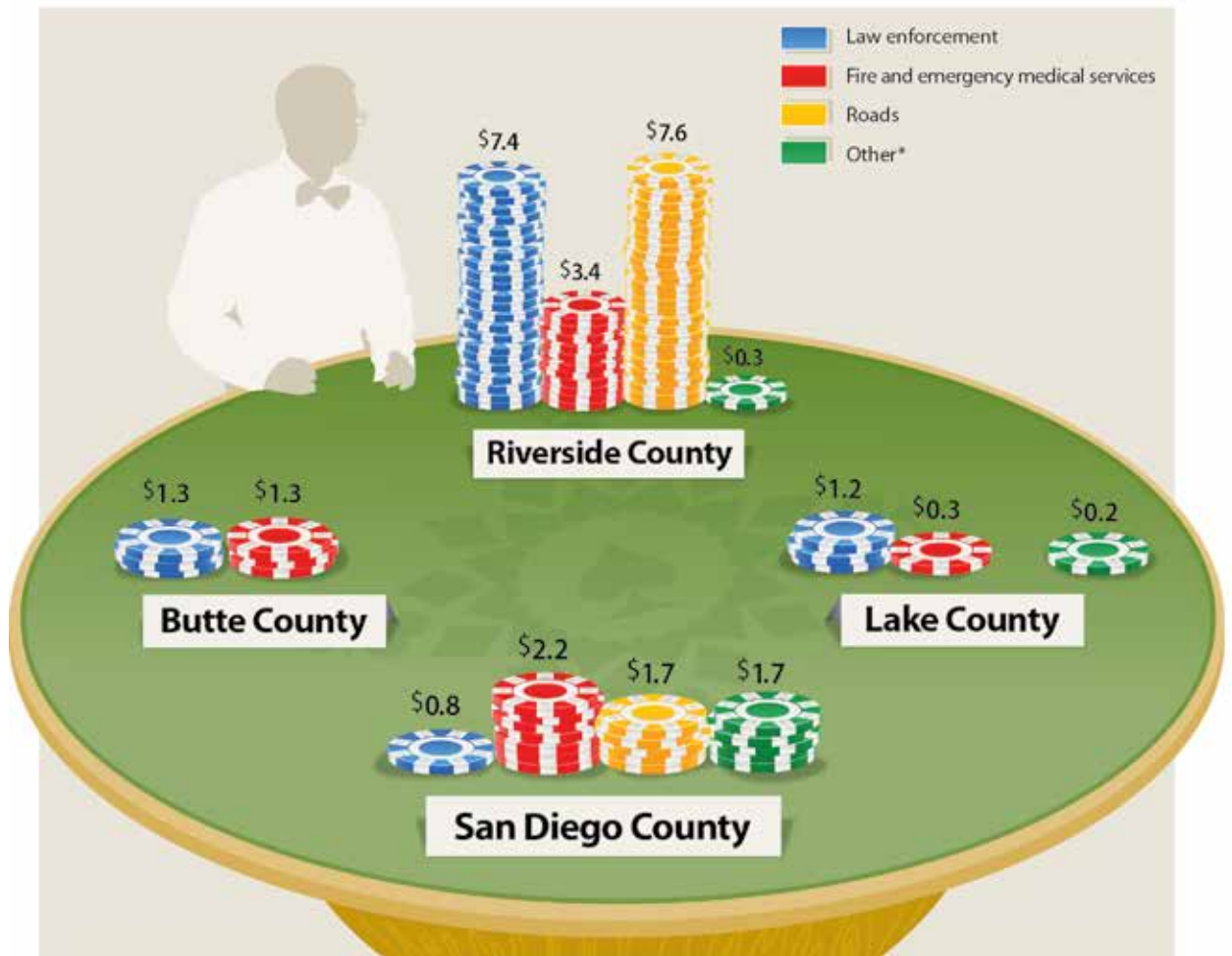
State law requires grant recipients to demonstrate that the requested funds are for use to mitigate the impact of a tribal casino on a local government jurisdiction. The amount each grant recipient can receive must be proportionate to the casino's impact. For example, a police department might apply for a grant to cover 20 percent of its budget if it can demonstrate that 20 percent of its calls are for incidents related to the casino. State law identifies 12 priorities for the award of grants, as shown in the text box. As an example, grant funds can be used to help pay for maintaining roads in proportion to an increase in traffic from casino patrons or for the proportion of staffing costs related to the additional workload firefighters and law enforcement experience because they must respond to emergencies at the casinos. As shown in Figure 6, for the four counties we reviewed—Butte, Lake, Riverside, and San Diego—the benefit committees' funding priorities varied. For example, the benefit committee in Lake County awarded almost all its funds for law enforcement,

while the benefit committee in San Diego County divided most of its grants between roads, fire and emergency medical services, and other projects such as public health projects.

Recent Legislative Action

Our prior report, *Indian Gaming Special Distribution Fund: Local Governments Continue to Have Difficulty Justifying Distribution Fund Grants* (Report 2010-036, February 2011), prompted several legislative actions. Chapter 704, Statutes of 2012, required benefit committees to include a requirement in their grant application materials that grant recipients clearly show how the grant will mitigate the impact of the casino. More recently, Chapter 746, Statutes of 2013, required the California Department of Finance to provide specific recommendations during the budget process regarding the revenues in the distribution fund available for mitigation grants.

Figure 6
 Total Mitigation Expenditures From the Indian Gaming Special Distribution Fund by Category for the Counties of Butte, Lake, Riverside, and San Diego
 Fiscal Years 2010–11 Through 2012–13
 (In Millions)



Sources: Indian Gaming Special Distribution Fund annual reports and California State Controller’s Office *Authorization to Release Funds* forms for fiscal years 2010–11 through 2012–13 for the four counties we reviewed.

* *Other* includes projects relating to environmental impacts, water supplies, waste disposal, behavioral health, planning and adjacent land uses, public health, recreation and youth programs, or child care programs.

Scope and Methodology

State law requires the state auditor to conduct an audit every three years regarding the allocation and use of money from the distribution fund by the grant recipients. Table 3 on the following page lists the objectives we developed to perform the audit and the methods we used to address those objectives.

Table 3
Audit Objectives and the Methods Used to Address Them

AUDIT OBJECTIVE	METHOD
1 Review and evaluate the laws, rules, and regulations significant to the audit objectives.	Reviewed relevant laws, regulations, and other background materials applicable to the Indian Gaming Special Distribution Fund (distribution fund).
2 Determine how tribal compacts controlling the collection of funds have changed since the prior audit.	Reviewed existing compacts and all compacts entered into or amended since the prior audit.
3 Determine whether the California State Controller's Office (Controller) correctly allocated funds available to counties for the distribution fund's mitigation grant program in accordance with state law.	Reviewed the Controller's allocations for fiscal years 2010–11 through 2012–13.
4 Determine whether the Controller released mitigation grant funds in accordance with state law.	<ul style="list-style-type: none"> • Examined the Controller's procedures and controls for reviewing and approving Indian gaming local community benefit committee (benefit committee) requests to release funds to grantees. • Reviewed the Controller's distributions to grant recipients from fiscal years 2010–11 through 2012–13 for the four counties we reviewed.
5 Determine the extent to which the distribution fund is able to fund the programs that depend on it.	<ul style="list-style-type: none"> • Assessed distribution fund revenues and expenditures, including both actual and estimated amounts for fiscal years 2010–11 through 2014–15. • Reviewed the California Department of Finance's analysis of the distribution fund's structural imbalance.
6 Determine what effect the governor's reorganization plan had on the roles and responsibilities of state agencies involved with the distribution fund.	Reviewed the governor's 2012 reorganization plan and found that the changes made did not affect the roles and responsibilities of state agencies related to mitigation grants from the distribution fund.
7 Determine if the benefit committees submit required reports.	Documented the annual reports submitted by all benefit committees for fiscal years 2009–10 through 2012–13 to determine whether the reports were submitted on time.
8 Determine if the benefit committees' formation complied with law. <ul style="list-style-type: none"> a. Determine if the composition of the benefit committee membership for fiscal years 2010–11 through 2012–13 met requirements in state law. b. Determine if the benefit committees adhere to conflict-of-interest code requirements. 	<p>For the four counties we reviewed:</p> <ul style="list-style-type: none"> • Obtained benefit committee membership rosters and meeting minutes for fiscal years 2010–11 through 2012–13. • Verified committee member organization affiliation and whether benefit committee appointments made in the fiscal years reviewed were in compliance with statute. <p>Reviewed the conflict-of-interest codes and statements of economic interests to determine if they properly disclosed required information.</p>
9 Determine if the benefit committees granted awards appropriately. <ul style="list-style-type: none"> a. Determine if the benefit committees' policies and procedures for awarding grants in fiscal years 2010–11 through 2012–13 complied with state law. b. Determine if the benefit committees awarded grants in fiscal years 2010–11 through 2012–13 according to funding requirements. 	<p>For the four counties we reviewed:</p> <p>Reviewed benefit committee policies and procedures for awarding grants during fiscal years 2010–11 through 2012–13 to determine compliance with state laws.</p> <ul style="list-style-type: none"> • Reviewed the benefit committees' determination of nexus fund eligibility for local government jurisdictions. • Reviewed awards made by benefit committees for fiscal years 2010–11 through 2012–13 to ensure that local government jurisdictions received the minimum amount required by statute.

AUDIT OBJECTIVE	METHOD
c. Determine if the benefit committees awarded grants in fiscal years 2010–11 through 2012–13 for appropriate projects.	<ul style="list-style-type: none"> • Reviewed application materials for selected projects. • Interviewed benefit committee staff and requested additional information regarding any deficiencies we identified in the documentation. • Reviewed documentation to verify whether grantees spent grant funds for stated purposes.
10 Determine if grantees ensured that awarded funds in fiscal years 2010–11 through 2012–13 were deposited in an interest-bearing account.	<ul style="list-style-type: none"> • Reviewed whether grantees placed grant funds in interest-bearing accounts for selected projects. • Reviewed benefit committee policies and procedures designed to ensure that grantees complied with interest requirements.

Sources: California State Auditor’s analysis of California Government Code, Section 12717, and information and documentation identified in the table column titled *Method*.

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Audit Results

Benefit Committees Awarded Mitigation Grants Without Ensuring Compliance With State Laws

The four Indian gaming local community benefit committees (benefit committees) we reviewed—in Butte, Lake, Riverside, and San Diego counties—did not always comply with state laws regarding grants they awarded to local jurisdictions that applied for funds to mitigate the impact of casinos in their areas (mitigation grants). Specifically, for seven of the 12 mitigation grants we reviewed, the benefit committees awarded a total of nearly \$1.7 million in grant funds without obtaining sufficient documentation demonstrating either that the project to be funded mitigated impacts of Indian gaming or that the requested funding represented the proportionate share of the costs attributable to casino impacts. Further, Butte County’s benefit committee did not correctly determine the amount of funding it should make available to local jurisdictions; as a result, for the three fiscal years 2010–11 through 2012–13, that benefit committee underfunded the city of Oroville \$57,500 by incorrectly providing that amount to the county instead. In addition, the benefit committees for Butte and Lake counties do not have a process in place to verify that grant recipients appropriately comply with requirements for the interest earned on mitigation grant funds. Moreover, San Diego County’s benefit committee directed the California State Controller’s Office (Controller) to distribute grant funds to it rather than directly to the grant recipients as state law requires. Although San Diego’s benefit committee believes this process improves its ability to manage its grant program, state law does not give benefit committees authority to direct the Controller to release grant funds to an entity other than the grant recipient. Finally, Butte County’s benefit committee has not established a conflict-of-interest code (conflict code), and some designated individuals in each of the four counties we reviewed failed to meet requirements for the filing of disclosure forms.

Benefit Committees Awarded Grants Without Ensuring That Grantees Sufficiently Demonstrated How Their Funding Requests Were Tied to Casino Impacts

Benefit committees did not always ensure that grant applicants provided sufficient documentation demonstrating how their projects would mitigate casino impacts and how the requested funding represented the proportionate share of costs attributable to those impacts. Although the benefit committees’ application instructions and other written guidance require this information, for seven of the 12 grants we reviewed, the four benefit committees awarded grant funds without sufficient information.

State law requires benefit committees to assess the eligibility of applications for mitigation grant funds. As part of establishing eligibility, benefit committees must determine that the applicants' projects mitigate impacts from local tribal casinos and that the grant amounts awarded represent the proportionate share of costs attributable to those impacts. Specifically, if a local jurisdiction approves an expenditure that mitigates impacts from a casino on a local jurisdiction that also provides other benefits to the jurisdiction, the grant funds may finance only the proportionate share of the expenditure that mitigates casino impacts. For example, a fire department may use grant funds to pay only for the proportion of emergency calls it responds to that are tied to casino activity; therefore, the benefit committee needs to obtain sufficient information from the fire department to ensure that it awards grant funding only for the portion of the fire department's efforts that relate to the casino. Further, in September 2012, the governor signed legislation requiring that each grant application clearly show how the grant will mitigate the impact of the casino. Each of the benefit committees we reviewed used a standard application form during our audit period that required the applicants to describe the impact of the casino and how the grant would mitigate that impact. As Table 4 shows, in fiscal years 2010–11 through 2012–13, the benefit committees in these counties awarded grants from the Indian Gaming Special Distribution Fund (distribution fund) totaling \$29 million.

Table 4
Grants Awarded by the Four Indian Gaming Local Community Benefit Committees Reviewed
Fiscal Years 2010–11 Through 2012–13

COUNTY	NUMBER OF GRANTS AWARDED	TOTAL GRANT AWARDS
Butte	16	\$2,606,000
Lake	31	1,723,000
Riverside	118	18,703,000
San Diego	49	6,366,000
Totals	214	\$29,398,000

Sources: Indian Gaming Special Distribution Fund annual reports and the California State Controller's Office *Authorization to Release Funds* forms.

Further, as shown in Table 5 on the following pages, for the 12 grants we reviewed, which totaled \$2.5 million, we noted that the benefit committees awarded seven grants totaling nearly \$1.7 million without sufficient documentation to demonstrate that the funding represented the proportionate share of the costs attributable to casino impacts. Further, one benefit committee approved one of these grants for \$152,000 without sufficient documentation to demonstrate that the grant would mitigate casino impacts. Moreover, two benefit committees awarded grants that exceeded the applicants' stated proportionate share of the casinos' impacts by a total of more than \$259,000.

Specifically, the Lake County benefit committee awarded \$152,000 to the Lake County Public Services Department Parks Division (parks division) although the grant applicant failed to demonstrate any casino impact relevant to its application. Although the parks division stated in its application that it had not measured casino impacts because the parks are "open" at no charge, it included an estimate that casino impacts accounted for 21 percent of the parks division's operating budget. It based the estimate on data provided by the Robinson Rancheria casino in response to a benefit committee survey of county casinos that sought data, such as the place of residence for casino patrons and employees, that might be helpful in determining casino impact on county agencies. The parks division application estimated casino impacts on the parks by calculating the ratio of casino patrons and employees living in the unincorporated areas of the county to the population of the unincorporated county area. However, the parks division did not establish a link between the county residents that use the casinos and county residents that use the parks, nor did it demonstrate that the presence of the casinos had increased the county's overall population and any effect that such an increase might have had on park attendance. In fact, we found no correlation between any data used by the parks division to support its estimate of the casino impact on the county parks system. According to Lake County benefit committee staff, the benefit committee had done the best job it could to identify public services impacted by the county's casinos and quantify those impacts through the use of the survey. Additionally, staff noted that because parks and recreation is listed as a priority in the law, the benefit committee felt the application was acceptable. However, given the lack of demonstrated casino impact, the benefit committee should not have awarded funding for this project.

For seven of the 12 grants we reviewed, the benefit committees awarded nearly \$1.7 million without sufficient documentation to demonstrate that the funding represented the proportionate share of the costs attributable to casino impacts.

Table 5
Review of Selected Grants Awarded by Indian Gaming Local Community Benefit Committees
Fiscal Years 2010–11 Through 2012–13

COUNTY	GRANT AMOUNT	GRANT CATEGORY	DESCRIPTION OF PROJECT	GRANT APPLICATION DEMONSTRATES GRANT WILL MITIGATE CASINO IMPACTS	DOCUMENTATION ADEQUATELY DEMONSTRATES PROPORTIONAL SHARE OF COSTS ATTRIBUTABLE TO CASINO IMPACTS	GRANT AMOUNT AWARDED IS WITHIN PROPORTION OF STATED IMPACT	EXPLANATION, IF APPLICABLE
Butte	\$221,000	Fire services	Staff funding	YES	NO (\$221,000)	NO (\$50,000)	Indian gaming local community benefit committee (benefit committee) awarded the grant despite the application's failure to demonstrate how the grant recipient's annual operating budget was tied to mitigating the proportionate share of casino impacts. Also, it mistakenly awarded \$50,000 more than the stated proportional impact.
	37,000	Fire services	Urban search and rescue-related equipment and training	YES	NO (\$37,000)	YES	Benefit committee awarded grant funds despite the application's failure to provide documentation to support why 100 percent of the project cost is attributable to casino impacts.
	298,000	Law enforcement	Staff funding	YES	YES	YES	
Butte Totals	\$556,000				\$258,000	\$50,000	
Lake	\$152,000	Recreation and youth programs	Parks department services	NO (\$152,000)	NO (\$152,000)	YES	Benefit committee awarded the grant despite the application's failure to demonstrate any casino impact. Although grant recipient claimed 21 percent of its annual operating budget was linked to casino impact, it did not provide a reasonable link to the population data used in its estimate. Additionally, the grant recipient acknowledged that it had not measured park attendance.
	128,000	Law enforcement	Staff funding	YES	YES	YES	
	40,000	Fire/public health/emergency services	Fire district services	YES	YES	YES	
Lake Totals	\$320,000			\$152,000	\$152,000		
Riverside	\$134,000	Recreation and youth programs	Recreation league equipment	YES	YES	YES	
	298,000	Fire services	Fire engine	YES	NO (\$298,000)	NO (\$209,500)	Benefit committee awarded the grant despite application's failure to support its claim of a proportional casino impact of 30 percent of its costs. Also, it mistakenly awarded \$209,500 more than the stated proportional impact.*
	230,000†	Law enforcement	Staff funding	YES	YES	YES	
Riverside Totals	\$662,000				\$298,000	\$209,500	

COUNTY	GRANT AMOUNT	GRANT CATEGORY	DESCRIPTION OF PROJECT	GRANT APPLICATION DEMONSTRATES GRANT WILL MITIGATE CASINO IMPACTS	DOCUMENTATION		GRANT AMOUNT AWARDED IS WITHIN PROPORTION OF STATED IMPACT	EXPLANATION, IF APPLICABLE
					ADEQUATELY DEMONSTRATES PROPORTIONAL SHARE OF COSTS ATTRIBUTABLE TO CASINO IMPACTS	NO		
San Diego	\$500,000	Emergency medical services	Cardiac catheterization lab	YES	NO (\$500,000)	YES	Benefit committee awarded the grant despite the application's failure to demonstrate that \$500,000 of the \$4.1 million project was the proportionate share of casino impacts to be mitigated with grant funds.	
	400,000	Environmental impact/public health/roads	Rubberized asphalt added	YES	NO (400,000)	YES	Benefit committee awarded the grant despite the application's failure to demonstrate that the portion of road identified in its application was 100 percent the result of impacts of the casino and should be paid for from the Indian Gaming Special Distribution Fund (distribution fund).	
	74,000	Law enforcement	Tribal lands law enforcement training	YES	NO (74,000)	YES	Benefit committee awarded the grant despite the application's failure to quantify the proportional share of casino impacts. Application indicates that the training provided a benefit beyond Indian gaming.	
San Diego Totals	\$974,000				\$974,000			
Four County Totals	\$2,512,000			\$152,000	\$1,682,000	\$259,500		
Number of Exceptions				1	7	2		

\$974,000

\$974,000

\$2,512,000

\$259,500

Number of Exceptions

1

7

2

Sources: Distribution fund annual reports, benefit committee grant applications, and supplemental application materials.

* Application stated that the total cost of the project was \$295,000 and that 30 percent, or \$88,500, would mitigate impacts of tribal gaming. The benefit committee awarded the applicant \$298,000, which was \$209,500 more than it should have.

† We categorized five grant applications and grant awards that we reviewed as one grant because the application materials submitted for each were substantially identical.

Butte County's benefit committee awarded a grant for nearly \$221,000 to the fire district, which was \$50,000 more than the 25 percent share of the annual operating budget noted as the estimate of impact in the grant application.

For seven of the 12 applications we reviewed, the benefit committees awarded grant funds without sufficient documentation that the requested funds represented the proportionate share of costs attributable to casino impacts. For example, Butte County's benefit committee awarded a grant to provide increased staffing to a fire protection district (fire district) servicing an area that includes the county's two casinos. The grant application described impacts on the fire district's services associated with the casinos, such as the need to respond to traffic accidents, medical emergencies, and other incidents that involve casino patrons or employees. Although the application indicated that the costs to mitigate casino impacts amounted to 25 percent of the fire district's annual operating budget, the grantee did not provide documentation that the presence of the casinos had increased its workload by 25 percent. In this case, we expected the benefit committee to have obtained documentation such as an analysis of the fire district's call logs to support the 25 percent estimate before awarding grant funds. According to the benefit committee staff, the fire district has challenges in quantifying impacts on its services because it does not track the incidents that it responds to that are tied to traffic going to and from the casinos. Therefore, the benefit committee relied on the applicant's "expertise" to estimate impacts, and it awarded the full grant request. However, this approach is inconsistent with the requirements of the grant application, which require the applicant to demonstrate that it is requesting only those funds that mitigate Indian gaming impacts. We also noted that the fire district requested and the benefit committee awarded nearly \$221,000 for this grant—\$50,000 more than the 25 percent share of the annual operating budget noted as the estimate of impact in the grant application. The benefit committee staff stated that they should have caught the discrepancy and worked with the fire district to correct the mistake before the benefit committee made the award, but they did not.

Butte County's Benefit Committee Did Not Ensure That Its Local Jurisdictions Received the Correct Amount of Grant Funds

Butte County's benefit committee improperly awarded some funding to one of its local government jurisdictions and failed to award that same funding to another based on its determination of whether they met certain criteria, such as being located within a certain proximity to its tribal casinos or the tribal land upon which they are built. Specifically, for fiscal years 2010–11 through 2012–13, Butte's benefit committee should have awarded the city of Oroville \$604,800 in nexus funding but only awarded \$547,300—a shortage of \$57,500. Additionally, Butte County received \$57,500 more of the nexus funds than it was entitled to receive.

State law requires benefit committees to reserve funds for local government jurisdictions that meet specific criteria—referred to as *nexus criteria*. As shown in Figure 4 on page 14, a local government jurisdiction that meets at least two of the four nexus criteria is eligible for nexus funding. When a benefit committee incorrectly determines whether a local government jurisdiction meets the nexus criteria, that jurisdiction may not have access to funds reserved for it in law.

Butte County's benefit committee erred when determining the amounts of nexus funding due to local government jurisdictions near one of the two casinos located in the county. Although Butte County's benefit committee correctly applied the number of nexus criteria for the local jurisdictions near the Mooretown Rancheria's tribal casino, it incorrectly applied the number of nexus criteria met for two of the local government jurisdictions near the Berry Creek Rancheria's tribal casino. Specifically, the benefit committee considered Butte County to have met all four nexus criteria. However, our review showed that Butte County does not border the casino tribal land on all four sides of the rancheria property, and thus meets only three of the nexus criteria. Because the benefit committee considered Butte County to have met more nexus requirements than it actually did, it allocated more nexus funds to Butte County than it should have and conversely allocated less funds to the city of Oroville than it should have. As a result of its incorrect determinations, for fiscal years 2010–11 through 2012–13, the benefit committee incorrectly awarded \$57,500 less in nexus funding than it should have to the city of Oroville and instead awarded those funds to Butte County.

As we describe in the Introduction, benefit committees include representatives of cities that have tribal casinos within the benefit committee's county. Therefore, it is surprising that the city of Oroville's representative on the benefit committee did not raise concerns about its share of nexus funding. While the city representative indicated that, because of reductions in mitigation grant funding, the benefit committee allocates funds according to its priority—which is public safety—we expected that he would have first ensured that the city received the minimum amount it was due, as required by law.

A Butte County benefit committee staff member reported that he found nothing in the files that captured the discussions at the time the nexus determination was made. He also stated that as far as he could tell, the benefit committee made the determination in 2004 and has not revisited the issue since. Although it is possible that Butte County's benefit committee may have underfunded the city of Oroville for a number of years based on its incorrect nexus determination, because city borders and tribal lands may

For fiscal years 2010–11 through 2012–13, Butte County's benefit committee incorrectly awarded \$57,500 less in nexus funding than it should have to the city of Oroville and instead awarded those funds to Butte County.

The legislation establishing the mitigation grant program does not designate a state agency to provide oversight of and technical assistance to the benefit committees.

change over time, we discuss the shortage only for the three years we reviewed. The legislation establishing the mitigation grant program does not designate a state agency to provide oversight of and technical assistance to the benefit committees. Doing so could improve program compliance with state laws and might have identified the incorrect nexus determination made by the Butte County benefit committee.

In addition, contrary to state law, Butte County's benefit committee also underfunded the city of Oroville by a total of nearly \$135,000 in fiscal years 2011–12 and 2012–13, based on allocation decisions it made. Specifically, according to its nexus determination, the benefit committee should have reserved \$137,000 to award to eligible grant applications from the city of Oroville in fiscal year 2011–12. However, despite receiving applications from city departments totaling more than \$370,000, the benefit committee awarded the city only \$74,700. Similarly, the benefit committee should have reserved \$137,000 for the city of Oroville in fiscal year 2012–13 and, although it received applications totaling more than \$200,000 from city departments, the benefit committee awarded the city only \$64,600. When we asked about this underfunding, the benefit committee staff stated that the benefit committee generally prioritized public safety when awarding grants. Within that framework, it awards grants to those agencies that are most impacted before allocating funds to other agencies. As a result, Butte County's benefit committee decided to fund more than 90 percent of the applications from the Butte County Sheriff's Office and Butte County Fire Department in fiscal year 2011–12 and fully funded all the applications received from those two entities in fiscal year 2012–13, while underfunding the city of Oroville during both of these years.

Under the law, the benefit committee does not have discretion to underfund local jurisdictions that have met the nexus criteria and submit eligible applications. Because the amounts reserved for local government jurisdictions are the result of a formula specified in law, and assuming that the borders for those jurisdictions do not change, the percentages reserved for local government jurisdictions should not change from year to year. Again, an oversight entity could easily review a county's grant awards to ensure that its local government jurisdictions receive the correct amount reserved for them in state law.

As described in a later section, Butte County's benefit committee also has not adopted a conflict code and this omission increases our concerns with its incorrect nexus determinations and the discretion it has exercised in making nexus funding decisions. Although the Fair Political Practices Commission (FPPC) informed Butte County in 2007 that its benefit committee is required to adopt a

conflict code, it has not done so. Because the benefit committee is not ensuring that it has designated and required the appropriate individuals to file statements of economic interests, it heightens the risk that improper actions relating to the awarding of mitigation grant funds could occur. Additionally, the public is unaware of any potential conflicts of interest that benefit committee members might have.

Some Benefit Committees Did Not Verify That Grant Recipients Complied With Interest Requirements for Mitigation Grant Funds

Two of the four benefit committees we reviewed do not have a process to ensure that grant recipients are complying with state law requiring that they place Indian gaming grant funds in interest-bearing accounts and use the interest earned on these funds to mitigate casino impacts. Beginning in 2008 state law requires interest earned to be used only in mitigating casino impacts. However, unlike the benefit committees in Riverside and San Diego counties, which have policies and procedures in place to verify that grant recipients comply with interest requirements, the benefit committees in Butte and Lake counties have no such processes. The benefit committees in these two counties do require grantees to certify that they will place grant funds in interest-bearing accounts and that accrued interest will be used only to mitigate casino impacts. However, neither county has an established process to verify that grant recipients comply with these requirements. For one of the three grants we reviewed that Butte County's benefit committee awarded, we found that the grant recipient—the city of Oroville—had not established a process to track the interest on unspent grant funds and ensure that it was using the interest to mitigate casino impacts. In response to our inquiry about this, the city of Oroville's finance director identified interest earned of more than \$6,100 from unspent mitigation grant awards received since 2008, and she allocated this interest to the city's Indian gaming grant accounts for use in mitigating future casino impacts. According to its staff, the benefit committee has not established a process to ensure that grant recipients comply with interest requirements because it had not considered this control and staff had not thought to recommend that the committee implement such a control to ensure compliance. The benefit committee staff member stated that he plans to recommend to the benefit committee that it establish controls to monitor grant recipients' compliance with interest requirements and will target completion by June 2014.

Similarly, Lake County's benefit committee has not established a process to verify that its grant recipients capture interest earned on grant funds and spend that interest to mitigate casino impacts. We requested documentation demonstrating grant recipients'

Butte and Lake counties' benefit committees have not established a process to verify that their grant recipients capture interest earned on grant funds and spend that accrued interest to mitigate casino impacts.

compliance with requirements for interest on any unspent grant funds for three grants we reviewed. Lake County's benefit committee staff member at the time responded that, because the benefit committee awarded amounts that were less than the proportion of casino impacts identified on the application for two of the grants, no interest had accrued, or the amount of the grant and accrued interest were below that of the identified casino impact. For the third grant, the recipient determined that it had earned interest of \$131 on unspent funds. Although the amount of interest in this instance is small, it demonstrates that Lake County's benefit committee lacks a process to verify that its grant recipients are tracking interest earned on unspent funds and spending it in compliance with state law. According to the benefit committee staff member at the time, the benefit committee thought it was doing everything state law requires by informing grant recipients of the interest requirements and that the benefit committee had not considered implementing additional processes to ensure that grant recipients are complying with interest requirements. Further, the staff member indicated that without a state regulatory authority to provide guidance, the benefit committee has no resource to consult when it has questions on administering the grant programs, such as the treatment of interest earned on mitigation grant funds.

One Benefit Committee Does Not Comply With State Law Regarding Disbursement of Funds to Its Grant Recipients

San Diego's benefit committee does not request the Controller to release funds directly to its grant recipients in accordance with state law.

San Diego's benefit committee does not request the Controller to release funds directly to its grant recipients in accordance with state law, though its practice of disbursing the funds itself seems to show some benefits. State law requires benefit committees to provide the Controller with a list of approved projects for funding; upon receipt, as we discuss in a later section of this report, the Controller is to release funds directly to the grant recipients identified in these lists. However, San Diego's benefit committee instructs the Controller to release funds directly to San Diego County, and the county then disburses the funds once it has executed a grant agreement with the grant recipients. Additionally, we noted that San Diego's benefit committee imposes limits on the amount of time grant recipients may hold the funds before they must either be spent or returned to the county, even though state law does not expressly give the benefit committee this authority.

According to the benefit committee's legal counsel, to comply with state laws requiring the county to administer the grants and to submit reports on the committee's grant activities, the county requires a mechanism by which it can enforce requirements on grant recipients. The mechanism that it uses is a formal grant agreement between the county and the grant recipient.

Legal counsel further stated that the grant agreement needs to be accompanied by grant funds to be enforceable. Therefore, the county has structured the distribution funds grant program to directly fund grants through these enforceable agreements with the grant recipients.

Although San Diego's process may allow it to better manage its grants and ensure compliance by the grant recipients, state law does not authorize the benefit committee to direct the Controller to disburse funds directly to the county rather than to the grant recipient, nor does it expressly give the benefit committee legal authority to place limits on the period of time those awards are available for grant recipients' use. If San Diego County's benefit committee believes its practice for administering grants improves its ability to manage its grants, it should seek legislative authority to use such practices. Otherwise, it should comply with the requirements already set in law.

One Benefit Committee Has Not Established a Conflict Code, and Some Benefit Committee Members Failed to Meet Disclosure Requirements

One of the four benefit committees we reviewed has not adopted a conflict code as required both by state law and by a 2007 advice letter from the FPPC. Also, two of the benefit committees have not identified their staff as designated positions required to file. Further, we found instances in each of the four counties where benefit committee members or other designated individuals failed to file timely or complete statements of economic interests, as state law requires. Specifically, for 2010 through 2012, we found that designated filers failed to file 19 required statements of economic interests and another 11 statements were either filed late or were incomplete.

The Political Reform Act of 1974 (reform act) requires that each local government agency, such as the benefit committees, adopt a conflict code. The reform act was a voter-passed initiative that seeks to bar public officials from using their positions to influence government actions in which they may have a financial interest, and it establishes several requirements related to conflicts of interest. For example, it requires those holding positions designated in the adopted conflict code to file a statement of economic interests disclosing their reportable economic interests annually, and within 30 days of assuming or leaving office. When benefit committee members do not file statements of economic interests, or they fail to file complete and timely statements, the public has no assurance that such potential conflicts are identified and that benefit committee members are not making or influencing decisions that could benefit them financially. In addition, when

We found that designated filers of the benefit committees failed to file 19 required statements of economic interests and another 11 statements were either filed late or were incomplete for 2010 through 2012.

Until the Butte County benefit committee develops a conflict code, its members and other designated individuals may be unaware of their responsibilities to identify and disclose potential conflicts of interest.

benefit committee members do not disclose their financial interests, they increase the risk that their decisions and awards may be subsequently questioned or criticized.

Although state law requires and the FPPC confirmed in an advice letter to Butte County in 2007 that its benefit committee is a local agency subject to the reform act and therefore is required to adopt a conflict code, its benefit committee has not done so. When we asked why the benefit committee had not established a conflict code, the benefit committee staff member stated that the requirement in the committee's bylaws to file a conflict-of-interest form became an issue with some of the committee members and resulted in the benefit committee seeking advice from the FPPC, prompting the 2007 advice letter. He stated that as staff turned over, including the chief administrative officer, the background of this issue lost continuity and was not revisited. However, he also stated that it has become obvious that it needs to be resolved, and staff plan to present the issue of the needed conflict code to the benefit committee when the benefit committee meets in March 2014. Until the benefit committee develops a conflict code, its members and other designated individuals may be unaware of their responsibilities to identify and disclose potential conflicts of interest.

State law also requires each conflict code to identify, or designate, positions that make decisions or participate in the making of decisions that may have a material effect on the financial interests of the persons holding these positions and, for each such position so designated, to specify the types of investments, business positions, interests in real property, and sources of income that are reportable. Although Riverside and San Diego counties' benefit committees have specified designated positions—benefit committee members and their alternates—that are required to file statements, these committees do not designate any benefit committee staff positions as being required to file. However, we found that committee staff are responsible for activities that have them participating in decisions, such as conducting initial application reviews and preparing spreadsheets and other documents to aid benefit committee members in their grant selection process. In contrast, we noted that Lake County's benefit committee requires its staff to file statements of economic interests.

We also found that some committee members and designated staff in the four counties did not always file their statements of economic interests in compliance with state laws. As shown in Table 6, each of the four counties had benefit committee members or other designated individuals that failed to file such statements. For example, in Butte County, one of the five benefit committee members failed to file statements for each of the three years

we reviewed. Although the Butte County benefit committee has not adopted a conflict code, according to its bylaws, benefit committee members and alternates are required to file statements of economic interests. Therefore, benefit committee staff stated that staff send an e-mail to members requesting them to submit a statement of economic interests. However, because Butte County’s benefit committee has not established a conflict code, it has not designated a filing officer who would be responsible to develop a functional process to notify members and staff about the need to comply with filing requirements, maintain records, track compliance, and follow up on missing statements.

Table 6
Review of the Indian Gaming Benefit Committees’ Statements of Economic Interests for the Counties We Reviewed 2010 Through 2012

	BUTTE			LAKE			RIVERSIDE			SAN DIEGO			TOTALS
	2010	2011	2012	2010	2011	2012	2010	2011	2012	2010	2011	2012	
Number of individuals that served as benefit committee members, alternates, and staff required to file*	5	5	5	6	7	10	10	9	10	10	9	10	
STATEMENTS WITH EXCEPTIONS[†]													
Statements not filed	1	1	2	2	5	1	–	–	1	3	2	1	19
Statements filed late [‡]	–	–	–	–	4	–	–	1	1	–	–	3	9
Statements incomplete [§]	–	–	–	–	–	1	–	1	–	–	–	–	2

Sources: Indian gaming local community benefit committee (benefit committee), statements of economic interests, conflict-of-interest codes (conflict code), and bylaws.

* Benefit committees’ conflict codes identify designated filers, which may include committee members, alternates, and committee staff, depending on the county. For Butte County we referred to the committee bylaws that stated that committee members and alternates are required to file statements of economic interests as Butte County’s benefit committee has not adopted a conflict code.

† The number of statements may include annual, assuming office, or leaving office statements as applicable.

‡ We counted a statement as being late if it was 30 days past the deadline set in statute.

§ We considered a statement incomplete if the statement did not indicate that it applied to the benefit committee, did not indicate which disclosure schedules were attached, or did not provide relevant attachments.

In Lake County, designated individuals failed to file eight statements and filed five statements that were either late or incomplete. Although the Lake County benefit committee distributes forms to its members at the first benefit committee meeting each year, according to the former committee staff member, there is not a formal process to follow up with members to ensure that they submit their statements. The Lake County benefit committee’s conflict code designates the benefit committee chair as the filing officer, and benefit committee staff perform these duties on behalf

of the chair. However, according to the former committee staff member, turnover of staff in the last three years has resulted in a loss of office knowledge about filing requirements.

In San Diego County, we identified six instances in which designated individuals did not file their statements and three additional instances in which they filed their statements late. Finally, in Riverside County, one designated individual failed to file a statement, another filed an incomplete statement, and in two other instances designated individuals filed their statements late.

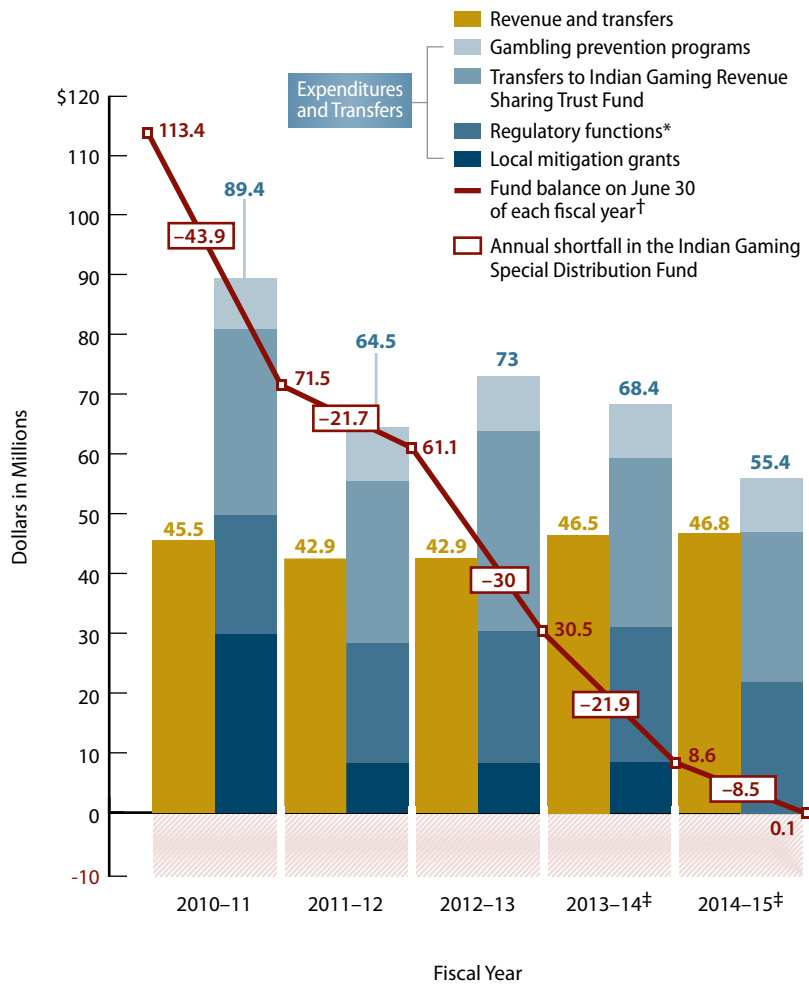
The Balance of the Distribution Fund Continues to Decline

Expenditures from the distribution fund exceeded revenues by a total of \$95.6 million for fiscal years 2010–11 through 2012–13, thus continuing a declining trend in the fund balance that may result in the near depletion of the fund by the end of fiscal year 2014–15. Indian gaming compacts amended during fiscal years 2003–04 through 2008–09 did not include an obligation to contribute to the distribution fund, which may have accelerated the fund balance decline. Although the new and amended compacts since fiscal year 2008–09 have once again included provisions requiring some tribes to make contributions to the distribution fund, their impact on the fund's sustainability remains to be seen.

As shown in Figure 7, annual expenditures and transfers out of the distribution fund in fiscal years 2010–11 through 2012–13 ranged from \$89.4 million to \$64.5 million. However, annual revenues for those years were much lower, ranging from \$45.5 million to about \$42.9 million. In May 2013 the California Department of Finance (Finance) projected a possible negative fund balance as early as fiscal year 2015–16, recommended maintaining a prudent reserve of \$6.7 million, and proposed no further appropriations of funds for mitigation grants beginning in fiscal year 2013–14. However, in October 2013, the Legislature appropriated \$13 million for mitigation grants for fiscal year 2013–14 and did not include a reserve. The governor subsequently reduced the appropriation to \$9.1 million. Figure 7 shows that even with this recent change to the new and amended compacts, the distribution fund may be nearly depleted by the end of fiscal year 2014–15.

Indian gaming compacts amended during fiscal years 2003–04 through 2008–09 did not include an obligation to contribute to the distribution fund, which may have accelerated the fund balance decline.

Figure 7
Indian Gaming Special Distribution Fund Revenues, Expenditures, Transfers
and Fund Balance
Fiscal Years 2010–11 Through 2014–15



Sources: Governor’s budgets for fiscal years 2011–12 through 2014–15.

* Regulatory functions include expenditures for the Department of Justice, California Gambling Control Commission, California State Controller’s Office, California Department of Human Resources, and the Financial Information System for California.

† In fiscal years 2010–11, 2011–12, and 2012–13, the fund balance also reflects prior-period adjustments.

‡ Amounts for fiscal years 2013–14 and 2014–15 are estimates based on the January 2014 proposed governor’s budget.

Amended and new compacts with Indian tribes during a six-year period may have exacerbated the decline in the fund balance of the distribution fund. Specifically, during fiscal years 2003–04 through 2008–09, the State and some tribes amended 12 compacts and entered into six new compacts that did not include requirements for the tribes to pay directly into the distribution fund. Instead, these

compacts required other mitigation measures, such as direct payments to the State's General Fund and separate agreements between the tribes and counties for the mitigation of casino impacts. Certain of the amended compacts were with some of the largest contributing tribes in the State, resulting in a significant decline in payments to the distribution fund. In particular, four tribes that together made 60 percent of the contributions to the distribution fund in fiscal year 2007–08 amended their compacts, which the Legislature ratified in fiscal year 2007–08, and no longer have an obligation to pay into the distribution fund. According to the National Indian Gaming Commission, Indian gaming revenues for California and northern Nevada have climbed in recent years, from \$2.9 billion in fiscal year 2000–01 to \$7 billion in fiscal year 2011–12. However, for fiscal years 2008–09 through 2012–13, annual gaming revenues to the distribution fund remained relatively flat at between \$38 million and \$44 million.

New and amended compacts since fiscal year 2008–09 may generate additional revenue for the distribution fund, but those revenues are unlikely to halt the fund's decline.

New and amended compacts since fiscal year 2008–09 may generate additional revenue for the distribution fund, but those revenues are unlikely to halt the fund's decline. Unlike the compacts entered into during fiscal years 2003–04 through 2008–09, the most recent new and amended compacts once again require contributions directly to the distribution fund. However, two of the five tribes with new or amended compacts have casinos that do not operate enough devices under their compacts to require payment into the distribution fund. In the event that these tribes increase the number of devices they operate to more than 350, they would be required to contribute to the distribution fund. A third tribe has yet to open a casino but plans to operate fewer than 350 gaming devices. The fourth tribe opened its casino in November 2013 with a reported 3,000 gaming devices. However, compared to the 1999-model compacts, which required quarterly contributions of 13 percent for 3,000 devices, this compact requires a contribution of only 3 percent of the tribe's net win (total revenue minus payouts to players) after an initial period of 28 quarters with a set quarterly contribution to the distribution fund. Thus, while the tribe will contribute directly to the distribution fund under this new compact, it will contribute a much lower percentage than specified in most of the other compacts. Finally, the fifth tribe is operating under Secretarial Procedures—the result of mediation between the tribe and the State—and the tribe's requirement to pay into the distribution fund is identical to the 1999-model compacts.

While the tribes' payments into the distribution fund in fiscal year 2012–13 were \$42.6 million, expenditures and transfers from the distribution fund in that same year amounted to \$73 million, exceeding revenues by more than \$30 million. Given the extent of the annual decline in the distribution fund, additional contributions from these newer compacts will not likely be sufficient to avoid the depletion of the distribution fund.

We initially raised concerns about the solvency of the distribution fund in our July 2007 report, *Indian Gaming Special Distribution Fund: Local Governments Do Not Always Use It to Mitigate the Impacts of Casinos, and Its Viability Will Be Adversely Affected by Compact Amendments* (Report 2006-036). In our February 2011 report, *Indian Gaming Special Distribution Fund: Local Governments Continue to Have Difficulty Justifying Distribution Fund Grants* (Report 2010-036), we again expressed concerns over the solvency of the distribution fund and its possible depletion as early as fiscal year 2012–13. In fiscal year 2011–12, the Legislature slowed the fund’s decline by reducing the amount of funds it allocated from the distribution fund for mitigation grants from \$30 million to \$9.1 million. The Legislature again allocated \$9.1 million for this purpose in fiscal year 2012–13. In fiscal year 2013–14, the Legislature appropriated \$13 million for mitigation grants, based on expectations of increased revenues to the distribution fund from the newer compacts. However, the governor reduced the allocation amount to \$9.1 million, indicating in his signing statement that he did so because of concerns about the long-term solvency of the distribution fund and the need to address its structural imbalance.

The Controller Correctly Allocated Funds to the Counties but Incorrectly Released Them for One County

For fiscal years 2010–11 through 2012–13, the Controller accurately calculated grant allocations to each county based on the annual appropriation and information received from the California Gambling Control Commission (gambling commission). To distribute grant funds in a fair and efficient manner while giving priority for funding to local governments that are affected by casinos paying into the distribution fund, state law requires the Controller to use the allocation methodology described in the Introduction to determine the money each county should receive. Once each benefit committee has awarded county allocations to grant recipients, state law requires the Controller to disburse those awards directly to the grant recipients.

Although the Controller correctly allocated funds to each county, it improperly disbursed funds for San Diego County’s grant recipients. As we discussed previously, in each of the three fiscal years we reviewed, San Diego County requested that the grant funds be released to it rather than directly to each of the grant recipients. However, state law specifically requires the Controller to disburse funds to the grant recipient. In response to our discussions, the manager of the Controller’s local apportionments section (manager) stated that the Controller recently determined that payment of funds should be made to individual grantees directly. As a result, the manager stated that the Controller is in the process of revising the grant request form to specify that payments must be directed to the individual grantee and will add the specific legal requirements to the form effective with the fiscal year 2013–14 grant request form.

The Controller accurately calculated grant allocations to each county based on the annual appropriation and information received from the gambling commission, but improperly disbursed funds for San Diego County’s grant recipients.

Further, he stated that the Controller will deny grant request forms that do not comply. Finally, the manager stated that the Controller will notify San Diego in writing that the Controller can no longer accept grant forms that direct payments to entities other than the grant recipients.

State Oversight Could Improve Compliance With State Laws for Administering the Mitigation Grant Program

State law does not designate any agency to conduct oversight of, or provide technical assistance to, the benefit committees and counties administering the mitigation grant program. Instead, state law places responsibility for selecting grants with the benefit committees and makes the counties responsible for administering the grants. However, this leaves benefit committees and counties without definitive guidance and technical assistance, especially on issues where state law is silent or for decisions such as determining what nexus criteria apply to a local jurisdiction. State law limits the gambling commission's responsibility for the mitigation grant program to receiving the annual reports regarding mitigation grants from the benefit committees, consulting with Finance on the amount of funds available in the distribution fund, and consulting with the Controller in the allocation of amounts for mitigation grants to the participating counties. By statute the Controller is required to determine a county's allocation amount for mitigation grants and to disburse grant funds to the grant recipients. However, no state entity is tasked with providing oversight and technical assistance to the participating counties.

During our review we identified instances in which oversight and technical assistance might have improved the benefit committees' compliance with state laws related to the mitigation grant program and allowed them to seek guidance in areas where they lack expertise.

During our review we identified some instances in which oversight and technical assistance might have improved the benefit committees' compliance with state laws related to the mitigation grant program and allowed them to seek guidance in areas where they lack expertise. For example, oversight might have revealed Butte County's incorrect nexus determination for the city of Oroville. Also, Lake County's benefit committee staff pointed to staff turnover resulting in a loss of knowledge about filing requirements for conflict-of-interest forms, which technical assistance could help them overcome. Further, San Diego's benefit committee has established some processes that it believes allow it to comply with state laws in its administration of the grants and reporting on the benefit committee's grant activities. However, one of the processes is inconsistent with state law, and the other is not expressly authorized by state law. A state agency responsible for oversight and technical assistance could weigh in on those processes and assist the county in deciding whether to change its practices or to seek a legislative change.

Finally, Table 7 shows that during this audit and our previous two audits of the distribution fund's mitigation grant program, we have identified several recurring concerns. Although we did not

visit all of the same counties for each audit, we have noted similar problems over time, which indicates that they are systemic in nature. For example, each of our reports has found that benefit committees awarded grant funds to local government jurisdictions even though the applicants did not quantify the casino impacts or did not demonstrate the proportionate share of the casino impacts.

Table 7
Summary of Key Findings for Indian Gaming Local Benefit Committees

	AUDIT REPORT NUMBER (ISSUE DATE)		
	2006-036 (JULY 2007)	2010-036 (FEBRUARY 2011)	2013-036 (MARCH 2014)
Number of counties reviewed	6	7	4
CONCERN:			
Grants awarded for projects without grantee demonstrating or quantifying casino impact or demonstrating proportional share of casino impact.	Placer Fresno Riverside San Bernardino San Diego Sonoma	Amador Humboldt Riverside San Diego Santa Barbara Shasta	Butte Lake Riverside San Diego
Requirements for interest earned on grant funds not met.	Placer Riverside San Bernardino San Diego	No findings	Butte Lake
Procedures for reviewing grant applications should be improved.	Not audited*	Amador Humboldt Riverside Santa Barbara Yolo	Not audited*
Some cities and counties did not receive the amounts set aside for them under the law.	Riverside	Amador Santa Barbara Riverside	Butte
Grant awarded to ineligible entity.	Fresno Riverside	Yolo	No findings
Financial disclosure requirements not met.	Placer Fresno Riverside San Bernardino San Diego Sonoma	Amador Humboldt Riverside Santa Barbara Shasta Yolo	Butte Lake Riverside San Diego
Annual reports incomplete or not submitted.	Riverside	Not audited*	No findings [†]

Sources: California State Auditor reports titled as follows: *Indian Gaming Special Distribution Fund: Local Governments Do Not Always Use It to Mitigate the Impacts of Casinos, and its Viability Will Be Adversely Affected by Compact Amendments* (Report 2006-036); *Indian Gaming Special Distribution Fund: Local Governments Continue to Have Difficulty Justifying Distribution Fund Grants* (Report 2010-036); *Indian Gaming Special Distribution Fund: Counties' Benefit Committees Did Not Always Comply With State Laws for Distribution Fund Grants* (Report 2013-036).

* We did not test this aspect in that year.

† We reviewed only whether annual reports were submitted; we did not evaluate the completeness of the reports.

When we asked for the gambling commission's perspective on becoming an oversight entity, it indicated that it would not be the appropriate entity to perform these oversight and technical assistance functions for the benefit committees. It stated that, as a result of the governor's reorganization plan of 2012, its support, investigatory, auditing, and compliance functions were shifted to the Department of Justice (Justice). The gambling commission stated that it has only 35 positions and no longer has the infrastructure to provide such oversight and technical assistance to the benefit committees. It indicated that the Controller would be a more appropriate fit for these duties. However, we believe the gambling commission would be a better fit than the Controller because of its experience with the distribution fund, tribal gaming compacts, and tribal gaming law.

Recommendations

To comply with state law, benefit committees should ensure that they obtain sufficient documentation from grant applicants to demonstrate that proposed projects mitigate casino impacts. If applicable, that documentation should demonstrate that the requested funding represents a correct proportionate share of the costs attributable to casino impacts.

To comply with state law requiring it to reserve specific amounts of mitigation grant funds for local government jurisdictions based on the nexus criteria, Butte County's benefit committee should correct its determinations of nexus eligibility for the city of Oroville and Butte County by April 1, 2014. Further, it should ensure that it awards the minimum funding to each local government jurisdiction consistent with its corrected nexus determinations.

To ensure that grant recipients comply with state law concerning interest earned on mitigation grant funds, by June 2014, the Butte County and Lake County benefit committees should establish policies and procedures to verify that grant recipients have placed grant awards in interest-bearing accounts, and that the interest is spent only on activities that mitigate the effect of tribal gaming on local jurisdictions.

If San Diego County's benefit committee believes that its processes for distributing grant funds are vital to its effective management of distribution fund grants, it should seek legislative authority to change its process. Otherwise, San Diego County's benefit committee should instruct the Controller to release funds directly to the grant recipients. It should also refrain from placing limits on the time available for grant recipients to spend the grant funds.

Unless the Legislature amends current state law, the Controller should implement its plan to modify its distribution process beginning with fiscal year 2013–14 grant awards to ensure that it only releases funds directly to approved grant recipients.

To comply with the reform act, Butte County’s benefit committee should adopt a conflict code and appoint a filing officer by June 2014. In addition, the benefit committees for San Diego County, Riverside County, and Butte County once it adopts its conflict code, should each review staff responsibilities to ensure that their respective conflict code requires all individuals participating in or making governmental decisions to disclose reportable interests.

To ensure that the benefit committee members and other designated individuals comply with reform act requirements for filing statements of economic interests, the Lake, Riverside, and San Diego benefit committees’ filing officers should attend FPPC training so that they are aware of and meet the responsibilities under the reform act. Each of these benefit committees should also establish a formal process for ensuring that all required individuals file statements of economic interests. For example, each benefit committee’s filing officer should notify designated individuals of their responsibility to submit statements of economic interests and follow up with those who fail to file. After Butte County’s benefit committee has appointed a filing officer, the filing officer should also attend FPPC training and notify designated individuals of their responsibility to submit statements of economic interests and follow up with those who fail to file.

To improve compliance with state laws and provide technical assistance in administering the mitigation grant program, the Legislature should consider designating an agency, such as the gambling commission or Justice, to provide oversight and technical assistance to the benefit committees. The oversight entity could, at a minimum, ensure that local government jurisdictions receive the amount reserved for them in state law.

We conducted this audit under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the scope section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

Date: March 6, 2014

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For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

Appendix

INDIAN TRIBES IN CALIFORNIA WITH TRIBAL-STATE GAMING COMPACTS

In 1999 the governor negotiated and the Legislature approved legislation ratifying a number of tribal-state gaming compacts (1999-model compacts) between the State and federally recognized Indian tribes. Eventually, the State entered into 61 of these compacts. During fiscal years 2003–04 through 2012–13, the Legislature ratified nine new tribal-state compacts and made amendments to 13 existing compacts (post-1999-model compacts), which the U.S. Department of the Interior’s assistant secretary for Indian Affairs approved. Additionally, in February 2013 the Rincon Band of Luiseno Mission Indians of the Rincon Reservation began operating under Secretarial Procedures, which are the result of mediation between the tribe and the State and are a full substitute for a gaming compact. As of June 2013 the California Gambling Control Commission (gambling commission) reported that the total number of class III gaming devices operated by California Indian tribes numbered more than 64,000.

The 1999 model compacts require tribes to obtain licenses for gaming devices that they plan to operate in excess of either their first 350 entitlement gaming devices or the gaming devices already operating on September 1, 1999 (grandfathered gaming devices). The 1999-model compacts also specify 2,000 as the maximum number of gaming devices that each tribe can operate. However, compacts ratified during fiscal years 2003–04 through 2012–13 contain different provisions regarding the maximum number of gaming devices allowed. In accordance with audit standards, we are disclosing the existence of information that we have not published because of its confidential nature. In the prior audit, the gambling commission requested that we not provide information on the number of devices operated at each casino, as pursuant to Section 7.4.3(c) of the compacts and Section 19821 of the Business and Professions Code, such information should not be publicly disclosed. The gambling commission also noted that the precise scope of the confidentiality provisions in the compacts was not clear and that courts have held in favor of the tribes in instances where compact terms were ambiguous. In addition, the gambling commission noted that in the course of obtaining the tribes’ confirmation of the device counts, it has asserted that such counts would be kept confidential.

Although we find it puzzling that information that could be obtained by a member of the general public walking through each casino and counting the devices is considered confidential, to avoid inhibiting the ability of the gambling commission to fulfill its functions or subjecting the State to the possibility of liability, we agreed not to provide specific device counts. To provide a minimum level of disclosure, in the previous audit, the commission agreed that classifying casinos by size according to ranges of devices would not violate the confidentiality requirements to which the commission is subject. As a result, in Table A, we present casinos by size according to several ranges of devices as well as the maximum number of gaming devices each compact allows and the year that the Legislature voted to ratify the new or amended compact.

Table A
Indian Tribes in California with Tribal-State Gaming Compacts

COUNTY	TRIBE	YEAR COMPACT OR MOST RECENT COMPACT AMENDMENT WAS RATIFIED	CASINO*	ACTUAL NUMBER OF GAMING DEVICES IN OPERATION	MAXIMUM NUMBER OF GAMING DEVICES ALLOWED
Amador	Buena Vista Rancheria of MeWuk Indians	2004	No	0	Unlimited [†]
	Jackson Rancheria of MeWuk Indians	1999	Yes	1,001–2,000	2,000
Butte	Berry Creek Rancheria of Maidu Indians	1999	Yes	351–1,000	2,000
	Mooretown Rancheria of Maidu Indians	1999	Yes	351–1,000	2,000
Colusa	Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria	1999	Yes	1,001–2,000	2,000
Del Norte	Elk Valley Rancheria	1999	Yes	1–350	2,000
	Resighini Rancheria	1999	No	0	2,000
	Smith River Rancheria	1999	Yes	1–350	2,000
	Yurok Tribe	2007	No	0	99
El Dorado	Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria	2008	Yes	2,001+	5,000
Fresno	Big Sandy Rancheria of Western Mono Indians	1999	Yes	1–350	2,000
	Table Mountain Rancheria	1999	Yes	1,001–2,000	2,000
Humboldt	Bear River Band of Rohnerville Rancheria	1999	Yes	1–350	2,000
	Blue Lake Rancheria	1999	Yes	351–1,000	2,000
	Cher-Ae Heights Indian Community of the Trinidad Reservation	1999	Yes	1–350	2,000
	Hoopa Valley Tribe	1999	Yes	1–350	2,000

COUNTY	TRIBE	YEAR COMPACT OR MOST RECENT COMPACT AMENDMENT WAS RATIFIED	CASINO*	ACTUAL NUMBER OF GAMING DEVICES IN OPERATION	MAXIMUM NUMBER OF GAMING DEVICES ALLOWED
Imperial	Quechan Tribe of the Fort Yuma Indian Reservation	2006	Yes	351–1,000	1,100
	TorresMartinez Desert Cahuilla Indians	2003	Yes	1–350	2,000
Inyo	Bishop Paiute Tribe	1999	Yes	1–350	2,000
Kings	Santa Rosa Indian Community of the Santa Rosa Rancheria	1999	Yes	1,001–2,000	2,000
Lake	Big Valley Band of Pomo Indians of the Big Valley Rancheria	1999	Yes	1–350	2,000
	Habematolel Pomo of Upper Lake	2011	Yes	1–350	750
	Middletown Rancheria of Pomo Indians	1999	Yes	351–1,000	2,000
	Elem Indian Colony of Pomo Indians	2000 [‡]	No	0	2,000
	Robinson Rancheria of Pomo Indians	1999	Yes	351–1,000	2,000
Lassen	Susanville Indian Rancheria	1999	Yes	1–350	2,000
Madera	Picayune Rancheria of Chukchansi Indians	1999	Yes	1,001–2,000	2,000
Mendocino	Cahto Tribe	1999	Yes	1–350	2,000
	Coyote Valley Reservation	2012	Yes	1–350	1,250
	Hopland Band of Pomo Indians	1999	Yes	1–350	2,000
	Manchester Band of Pomo Indians of the Manchester Rancheria	2000 [‡]	Yes	1–350	2,000
	Pinoleville Pomo Nation	2011	No	0	900
	Sherwood Valley Rancheria of Pomo Indians	1999	Yes	1–350	2,000
Modoc	Alturas Indian Rancheria	1999	Yes	1–350	2,000
Placer	United Auburn Indian Community of the Auburn Rancheria	2004	Yes	2,001+	Unlimited [†]
Riverside	Agua Caliente Band of Cahuilla Indians	2007	Yes	1,001–2,000	5,000 [§]
	Augustine Band of Cahuilla Indians	2000 [‡]	Yes	351–1,000	2,000
	Cabazon Band of Mission Indians	1999	Yes	1,001–2,000	2,000
	Cahuilla Band of Mission Indians of the Cahuilla Reservation	1999	Yes	1–350	2,000
	Morongo Band of Mission Indians	2007	Yes	2,001+	7,500
	Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation	2007	Yes	2,001+	7,500
	Soboba Band of Luiseno Indians	1999	Yes	1,001–2,000	2,000
	Twenty-nine Palms Band of Mission Indians	1999	Yes	1,001–2,000	2,000
San Bernardino	Chemehuevi Indian Tribe of the Chemehuevi Reservation	1999	Yes	1–350	2,000
	Fort Mojave Indian Tribe	2004	No	0	1,500
	San Manuel Band of Mission Indians	2007	Yes	2,001+	7,500

COUNTY	TRIBE	YEAR COMPACT OR MOST RECENT COMPACT AMENDMENT WAS RATIFIED	CASINO*	ACTUAL NUMBER OF GAMING DEVICES IN OPERATION	MAXIMUM NUMBER OF GAMING DEVICES ALLOWED
San Diego	Barona Group of Capitan Grande Band of Mission Indians	1999	Yes	1,001–2,000	2,000
	Campo Band of Diegueno Mission Indians of the Campo Indian Reservation	1999	Yes	351–1,000	2,000
	Ewiiapaayp Band of Kumeyaay Indians	1999	No	0	2,000
	Jamul Indian Village of California	1999	No	0	2,000
	La Jolla Band of Luiseno Mission Indians	1999	No	0	2,000
	La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation	2003	No	0	350
	Manzanita Band of Diegueno Mission Indians	1999	No	0	2,000
	Pala Band of Luiseno Mission Indians of the Pala Reservation	2004	Yes	1,001–2,000	Unlimited [†]
	Pauma Band of Luiseno Mission Indians of the Pauma and Yuma Reservation	2004	Yes	1,001–2,000	Unlimited [†]
	Rincon Band of Luiseno Mission Indians of the Rincon Reservation	2013	Yes	1,001–2,000	2,250
	San Pasqual Band of Diegueno Mission Indians	1999	Yes	1,001–2,000	2,000
	Sycuan Band of the Kumeyaay Nation	1999	Yes	1,001–2,000	2,000
	lipay Nation of Santa Ysabel	2003	Yes	1–350	350
	Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation	2004	Yes	1,001–2,000	Unlimited [†]
	Santa Barbara	Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation	1999	Yes	1,001–2,000
Shasta	Pit River Tribe	2000 [‡]	Yes	1–350	2,000
	Redding Rancheria	1999	Yes	351–1,000	2,000
Sonoma	Dry Creek Rancheria Band of Pomo Indians	1999	Yes	1,001–2,000	2,000
	Federated Indians of Graton Rancheria	2012	Yes	2,001+ [#]	3,000
Tehama	Paskenta Band of Nomlaki Indians	1999	Yes	351–1,000	2,000
Tulare	Tule River Indian Tribe of the Tule River Rancheria	1999	Yes	1,001–2,000	2,000
Tuolumne	Chicken Ranch Rancheria of Me-Wuk Indians	1999	Yes	1–350	2,000
	Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria	1999	Yes	1,001–2,000	2,000
Yolo	Yocha Dehe Wintun Nation	2004	Yes	2,001+	Unlimited [†]

Sources: California Gambling Control Commission (gambling commission) Web site, gambling commission, tribal-state compacts.

* Although under compacts the tribes have the authority to operate a casino, some do not currently operate a casino.

[†] These tribes may operate an unlimited number of devices as long as they pay additional fees per gaming device.

[‡] These tribal-state compacts were executed after September 10, 1999, but they were ratified according to state law, which ratifies automatically any compacts that are identical in all material respects to compacts in that law and that neither house of the Legislature rejects within 30 days of the governor's submission of the compacts to the Legislature.

[§] This tribe may operate up to 2,000 devices in each of its two existing gaming facilities. The tribe may open a third gaming facility, but that facility is limited to 1,000 devices.

^{||} The Rincon Band of Luiseno Mission Indians of the Rincon Reservation operates under Secretarial Procedures, which are the result of mediation between the tribe and the State and are a full substitute for a gaming compact.

[#] The Federated Indians of Graton Rancheria (Graton Rancheria) opened its casino November 5, 2013, and the official number of gaming devices in operation is not yet available. The number presented is based on promotional material from the Graton Rancheria Web site and from media reports.



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January 29, 2014

Elaine M. Howle, State Auditor
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

Attn: Tanya Elkins

RE: Indian Gaming Special Distribution Fund – Report 2013-036 Agency Draft

Dear Ms. Howle:

On behalf of the Butte County Local Community Benefits Committee, I would like to acknowledge the efforts of the California State Auditor in examining the Butte County Special Distribution Fund grant program and highlighting areas where we can improve.

Our Local Community Benefits Committee has always made decisions that they judge to be best for the community. That having been said, our responsibility is to run the program and award grant funds in compliance with statutory guidelines.

The Committee concurs with the audit findings and accepts the recommendations.

Very truly yours,

Andy Pickett
Deputy Chief Administrative Officer
Staff to the Indian Gaming Local Community Benefits Committee

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COUNTY OF LAKE
Board of Supervisors
Courthouse - 255 North Forbes Street
Lakeport, California 95453
Telephone (707) 263-2368
Fax (707) 263-2207

Rob Brown
District 5 Supervisor

Elaine M. Howle*
State Auditor
California State Auditor's Office
621 Capitol Mall, Suite 1200
Sacramento, CA 94514

Dear Ms. Howle:

We appreciate this opportunity to respond to your draft report no. 2013-036, entitled "Counties' Benefit Committees Did Not Always Comply with State Laws for Distribution Fund Grants."

Before responding to specific findings and recommendations, we would like to offer an overall observation that the report (except perhaps in Tables 5 and 7) does not acknowledge any compliance with the many administrative and procedural requirements or compliance with the standards developed by your office in applying the proportionate share of cost requirement in awarding most of the grants. In your review of our procedures, we trust that your staff found that the Committee and its staff not only complied with all of the other requirements, but performed our functions to the full extent of our understanding of the law. Moreover, the Committee has worked well with the tribes in obtaining sponsorship letters to fund programs and projects that meet both local government needs and tribal priorities.

①

②

We are concerned that when members of the public, the Governor, the Legislature, and other state officials read your report they will not see that not only did we comply with nearly all of the procedural requirements, but more importantly, the grants mitigated casino impacts by funding essential public services, such as law enforcement and fire and emergency medical services.

①

We suggest your summary acknowledge the nearly complete compliance with procedural requirements and of the important benefits provided by this program as was done in previous audits.

①

Specific Audit Findings

In regards to Lake County, we read that your audit report includes findings and recommendations in three areas: 1) filing of Statements of Economic Interest; 2) ensuring that grant recipients spend interest earnings on casino mitigation projects; and 3) questioning the validity of the grant awarded to the Parks Division in 2011. Our response to each of these matters is provided below.

* California State Auditor's comments begin on page 53.

Statements of Economic Interest

Recommendation: Filing officers of the Lake County Benefit Committee obtain training from the Fair Political Practices Commission in filing Statements of Economic Interest.

Response: Staff for the Benefit Committee has met with the Lake County Clerk and asked that she become the filing officer for the Statements of Economic Interest. The County Clerk is the filing officer for many other public bodies in Lake County and her staff already has the training and experience in fulfilling this function. At the meeting of the Local Benefit Committee held on January 31, 2014 the Committee amended its Conflict of Interest Code to appoint the County Clerk as the filing officer.

Interest Verification

Recommendation: The Lake County Benefit Committee establish policies and procedures to verify that grant recipients use interest to mitigate casino impacts.

Response: At the meeting of the Lake County Local Community Benefit Committee held on January 31, 2014 the Committee approved several recommendations from staff to address this issue. The letter sent to agencies notifies them that they will now be required to present verification that funds are deposited in an interest bearing account and supply verification that any interest earnings be spent on the project. This will be accomplished through the annual expenditure report submitted by grant recipients each September so that it includes a specific line to report interest earnings and the additional requirement to provide documentation that the interest has been spent or will be spent on the approved project mitigating casino impacts.

Parks Application

Recommendation: The Benefit Committee obtain sufficient documentation to ensure that the grant mitigates a proportionate share of cost of the casino impact.

- ③ Response: As we have previously explained, the Benefit Committee, acting in its best judgment, and with tribal sponsorship, approved this application. State law seems to grant the authority to the Local Benefit Committee to make a determination on the sufficiency of the application and it provides no clear direction or defined methodology to determine whether the proportionate share of cost standard is met. The Local Benefit Committee felt that the subject application provided an acceptable level of documentation and the tribal representatives specifically wanted to support this application.
- ④

Tribal representatives on the Benefit Committee specifically requested that this written response express their frustration regarding the apparent inability to fund applications for parks and recreational projects. The local tribes list parks and recreational opportunities' and environmental priorities of great interest and want the discretion to consider these types of projects through the benefit committee process.

Now that we have a better understanding of the methodology and standard relating to this requirement as applied by your office, the Committee will do our best to ensure that future applications meet that standard as they are considered for approval.

②

Change Proportionate Share Requirement

Since the proportionate share of cost requirement became part of the law, it has become challenging to fund some projects important to tribal representatives and the Committee. The fact that so many applications in various counties (as shown in the past three state-wide audits) are having difficulty meeting this standard should indicate that not all projects that mitigate casino impacts and are sponsored by the tribes can be presented in a way to clearly show that the proportionate share of cost requirement, as determined by your office, is met.

⑤

Rather than continuing to apply a standard that is difficult to meet, there is another solution. As you are aware, the State Auditor report no. 2010-036, dated February 2011, suggested that the "... Legislature could emphasize local priorities by amending the law to allow benefit committees to approve any applications that are submitted to them for public debate and committee approval before tribal sponsorship, *regardless of the proportionality of casino impact.*" (See page 3 of Audit report no. 2010-036.) The Lake County Local Benefit Committee and tribal representatives strongly support this recommendation.

⑥

Purpose of Audit

We appreciate that the report did not include any recommendations that were punitive in nature, and trust this was due to your staff understanding that the Benefit Committee was working hard to comply with the law and provide funding for priority projects. We consider this as your intent to make the audit serve an educational purpose rather than a disciplinary purpose. We appreciate this, and as explained above, we have already implemented practices in response to your recommendations.

⑦

In closing, we acknowledge the huge undertaking it must be to perform this audit involving various counties throughout the state. We appreciate the professionalism of your staff and their efforts in ensuring that they obtained all relevant documentation and clearly stated their findings.

Sincerely,



Rob Brown
Chairman of Lake County Indian Gaming
Local Community Benefit Committee

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Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM LAKE COUNTY

To provide clarity and perspective, we are commenting on the response to our audit from Lake County. The numbers below correspond to the numbers we have placed in the margins of the county's response.

We believe our report provides adequate context about the scope of the mitigation grant program and the public service benefits it provides to local jurisdictions impacted by Indian casinos, such as funding for law enforcement and fire and emergency medical services. In particular, Figure 6 on page 17 summarizes the total dollar amount of grants categorized by type of mitigation expenditures for each of the Indian gaming local community benefit committees (benefit committees) we reviewed.

①

Contrary to Lake County's assertion, we did not evaluate its benefit committee's compliance with standards developed by our office. Rather, we measured the benefit committee's performance of activities against criteria established in state law. We describe the specific areas we reviewed and the methods of our review in Table 3 beginning on page 18.

②

As we state on page 22, state law requires benefit committees to assess the eligibility of applications for mitigation grant funds. As part of establishing eligibility, benefit committees must determine that the applicants' projects mitigate impacts from local tribal casinos and that the grant amounts awarded represent the proportionate share of costs attributable to those impacts. Specifically, if a local jurisdiction approves an expenditure that mitigates impacts from a casino on a local jurisdiction that also provides other benefits to the jurisdiction, the grant funds may finance only the proportionate share of the expenditure that mitigates casino impacts. For example, a fire department may use grant funds to pay only for the proportion of emergency calls it responds to that are tied to casino activity; therefore, the benefit committee needs to obtain sufficient information from the fire department to ensure that it awards grant funding only for the portion of the fire department's efforts that relate to the casino.

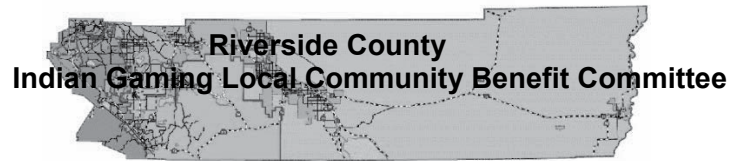
③

We question how the benefit committee believes the Lake County Public Services Department Parks Division's (parks department) application provided an acceptable level of documentation when, as we describe on page 23, the applicant stated it had not measured casino impacts, and based its estimate of impacts on a survey that failed to establish a link between the tribal casino and

④

park attendance. Notwithstanding tribal willingness to support the application, projects must still meet the mitigation and proportionality requirements set in law, and the parks department project did not.

- ⑤ We disagree with Lake County's suggestion that not all projects can be presented in a way to clearly show that the proportionate share of cost requirement has been met. As we state on page 22, state law requires benefit committees to establish eligibility and, as part of that eligibility, benefit committees must determine that the applicants' projects mitigate impacts from local tribal casinos and that the grant amounts awarded represent the proportionate share of costs to mitigate impacts. To the extent that applicants cannot comply with these legal requirements, the benefit committee should not approve their applications.
- ⑥ Lake County takes statements from our previous audit out of context. The full recommendation from our previous report (pp. 34-35 of Report 2010-036) was intended to ensure that benefit committees approve projects that mitigate casino impacts and that are proportionate to those casino impacts. Specifically, the recommendation begins, "The Legislature should consider amending the law to prohibit projects that are unrelated to casino impacts or are not proportionally related to casino impacts." The text referred to by Lake County was included as an alternate recommendation to the Legislature in order to emphasize local priorities by amending state law to allow benefit committees to approve any applications submitted to them for public debate and committee approval before tribal sponsorship, regardless of proportionality of a casino's impact. However, the law has not been amended and therefore benefit committees should continue to approve those projects that mitigate casino impacts and ensure the amount funded is for a proportionate share of impacts.
- ⑦ We are puzzled by Lake County's characterization of our recommendations as punitive or disciplinary. Our recommendations are intended to promote improvements in government operations.



Committee Members

John J. Benoit, Chairman
4th District Supervisor

Russell "Butch" Murphy
Council Member,
Pechanga Band
of Luiseno Indians

Steve Pougnet
Mayor, Palm Springs

Jeff Stone
3rd District Supervisor

Scott Cozart
Soboba Band
of Luiseno Indians

Ron Roberts
Council Member, Temecula

Michael Wilson
Mayor, Indio

Alternates

Gerald Clarke, Jr.
Vice Chairman,
Cahuilla Band of Indians

Marion Ashley
5th District Supervisor

Vacant
City Representative

February 3, 2014

Elaine M. Howle*
California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

Dear Ms. Howle,

In accordance with your letter of January 28, 2014, attached is Riverside County's response to the redacted draft of your report titled "Indian Gaming Special Distribution Fund: Counties' Benefit Committees Did Not Always Comply With State Laws for Distribution Fund Grants."

Over the years, we have mentioned that this program has made significant improvements to communities surrounding casinos. If you would like to include a list in your report, I would be pleased to provide it.

Sincerely,

(Original signed by: Jennifer L. Sargent)

Jennifer L. Sargent
Principal Management Analyst
Riverside County Executive Office
(Staff to the Community Benefit Committee)

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly

* California State Auditor's comment appears on page 59.

County of Riverside's Response to the California State Auditor's Report,
"Indian Gaming Special Distribution Fund: Counties' Benefit Committees Did
Not Always Comply with State Laws for Distribution Fund Grants"

On March 7, 2000 California voters approved Proposition 1A, which legalized slot machine and banking card games on Tribal lands and put into effect 61 Tribal-State gaming compacts; most compacts were signed on September 10, 1999.

Through the Tribal-State compacts, Tribes operating more than 200 gaming machines on September 1, 1999 were assessed a percentage of their average "net win" to be paid into the Special Distribution Fund (SDF). These quarterly payments were based on the number of gaming devices in operation. Funds from the SDF were designated for the following: grants to address gambling addiction, grants to mitigate Tribal gaming/casino impacts, State regulatory costs, backfill of the Revenue Sharing Trust Fund (to benefit non-gaming tribes), and other purposes specified by the Legislature.

On October 11, 2003, Governor Davis approved Senate Bill 621 (Battin and Burton), which established a method for distributing Indian Gaming Special Distribution Funds (SDF) to local government agencies impacted by Tribal gaming/casinos. The basis for SB 621 was developed by the Tribal Alliance of Sovereign Indian Nations—Local Government Committee, in a landmark model of government-to-government cooperation. Subsequent bills, SB 288 (Battin and Ducheny), AB 158 (Torrico), SB 856 (Committee on Budget and Fiscal Review) and AB2515 (Hall) clarified, modified and extended Sections 12712, 12715, 12716 and 12718 of the Government Code.

Initially, Riverside County had approximately 44.8 percent of the statewide "grandfathered" machines and received approximately 43 percent of the statewide allocation of Special Distribution Funds. However, as a result of Riverside County's three largest Tribal governments entering into amended compacts with the State, Riverside County now has 28.6 percent of the statewide machines and receives approximately the same percentage in Special Distribution Funds.

Riverside County was the first to implement SB 621 and provided assistance / interpretation to the other California counties frustrated by the lack of state response, when asked for guidance in implementation. Riverside County is proud of the success of its Indian gaming mitigation grant program. Over the past eight program years, \$92 million was allocated to 438 worthy projects. On average, more than 90 percent of the annual countywide allocation funds public safety and road projects.

On September 16, 2013, representatives from the State Auditor's office conducted an entrance conference in the Riverside County Executive Office; the exit conference was conducted on January 16, 2014 via conference call. The audit covered three fiscal years: 2010/11, 2011/12 and 2012/13.

In response to the draft audit report titled "Indian Gaming Special Distribution Fund: Counties' Benefit Committees Did Not Always Comply with State Laws for Distribution Fund Grants," following is a summary of the State Auditor's comments, findings and recommendations and Riverside County's response.

County of Riverside's Response to the California State Auditor's Report,
"Indian Gaming Special Distribution Fund: Counties' Benefit Committees Did
Not Always Comply with State Laws for Distribution Fund Grants"

State Auditor Comment/Recommendation:

State law requires that benefit committees award mitigation grant funds for priorities such as police/fire protection, public health and roads. In addition, it requires that if a project provides other benefits to the local jurisdiction, the mitigation grant funds pay only for the proportionate share of the project that mitigates the casino's impact on that local jurisdiction. Our review of grants awarded by Riverside County found that the benefit committee awarded grant funds without sufficient documentation from the applicant. To comply with state law, benefit committees should ensure that they obtain sufficient documentation from grant applicants to demonstrate that proposed projects mitigate casino impacts and, if applicable that documentation should demonstrate that the requested funding represents a correct proportion of the costs attributable to casino impacts.

Riverside County Response:

The City of Hemet Fire Department erred on an application for a vehicle and noted the proportionate share of the project was 30 percent. The benefit committee awarded funds in an amount they believed to be 30 percent of the cost, but was actually 100 percent. The mistake was discovered through the County's regular program oversight and the County was working with the City to resolve the issue prior to the State audit. In the future, benefit committee staff will verify percentages and validate costs prior to award of funds.

State Auditor Comment:

We found that some committee members and designated staff did not always file their statements of economic interests in compliance with state laws. In Riverside County, one designated individual failed to file a statement, another filed an incomplete statement and in two instances, designated individuals filed their statements late.

Riverside County Response:

During previous audits, the state did not require an assuming office statement for individuals serving in public office and already required to complete annual statements of economic interests. In the future, benefit committee staff will obtain assuming office statements for all newly appointed committee members and alternates, regardless of existing filing requirements. Benefit committee members and alternates will be encouraged to attend Fair Political Practices Commission training to ensure filings are complete. Finally, the two individuals filing late statements provided revised statements at the direction of the FPPC; however, the initial submission to the benefit committee was not maintained with the revised statement, so evidence of timely submission could not be provided to the auditors. In the future, all statements will be maintained, even if superseded by a subsequent submission. ^①

County of Riverside's Response to the California State Auditor's Report,
"Indian Gaming Special Distribution Fund: Counties' Benefit Committees Did
Not Always Comply with State Laws for Distribution Fund Grants"

State Auditor Finding:

State law also requires each conflict code to identify or designate positions that make decisions or participate in the making of decisions that may have a material effect on the persons holding these positions' financial interests, and for each such position so designated, to specify the types of investments, business positions, interests in real property and sources of income that are reportable. Riverside County did not designate any benefit committee staff positions as required to file. However, based on our review, committee staff were responsible for activities that have them participating in decisions, such as conducting initial application reviews and preparing spreadsheets and other documents to aid benefit committee members in their grant selection process. To comply with the reform act, Riverside County's benefit committee should review staff responsibilities to ensure that all individuals participating in or making governmental decisions are required to disclose reportable interests in their conflict codes.

Riverside County Response:

The Riverside County benefit committee's conflict code will be revised to include staff and Counsel providing assistance and information to the committee. In addition, benefit committee staff and Counsel will file statements of economic interest consistent with the revised conflict code.

Comment

CALIFORNIA STATE AUDITOR'S COMMENT ON THE RESPONSE FROM RIVERSIDE COUNTY

To provide clarity and perspective, we are commenting on the response to our audit from Riverside County. The number below corresponds to the number we have placed in the margin of the county's response.

The scope for this audit, as described in Table 3 beginning on page 18, is not identical to that of the previous audits of the Indian Gaming Special Distribution Fund. Based on information we gathered during the planning phase of this audit, we undertook a more comprehensive review of the Indian gaming local community benefit committees' (benefit committees) adherence to the filing requirements for statements of economic interests in effect during fiscal years 2010–11 through 2012–13. Regardless of the scope of this audit, benefit committee members must follow state law, which includes a requirement for them to file an assuming office statement for each position held.

①

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March 2014



County of San Diego

LAND USE AND ENVIRONMENT GROUP

SARAH E. AGHASSI
DEPUTY CHIEF ADMINISTRATIVE OFFICER

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February 10, 2014

Ms. Elaine M. Howle, State Auditor*
California State Auditor
621 Capitol Mall, Ste 1200
Sacramento, CA 95814

Dear Ms. Howle,

RESPONSE TO RECOMMENDATIONS IN THE FEBRUARY 2014 AUDIT

Thank you for the letter, dated February 3, 2014 that includes redacted draft copies of the draft audit report titled, "Indian Gaming Special Distribution Fund: Counties' Benefit Committees Did Not Always Comply with State Laws for Distribution Fund Grants". This response is prepared on behalf of the San Diego County Indian Gaming Local Community Benefit Committee (IGLCBC) by the County of San Diego Grant Administrators. IGLCBC staff has worked with the State Auditor since the Fall of 2013 and appreciates the time the State Auditor took during the process to review information provided.

This constitutes the first response from the IGLCBC on these issues, who will review and provide additional responses once the report is finalized and published, as required by the State Auditor. The Committee also would like to comment that the entire committee has not had time to review the whole draft audit report, due to the compressed timeline for review. The draft audit report includes three recommendations applicable to the IGLCBC and those are discussed individually below. ①

- 1) *Recommendation 1: To comply with state law, benefit committees should ensure that they obtain sufficient documentation from grant applications to demonstrate that proposed projects mitigate casino impacts, and if applicable, that documentation should demonstrate that the requested funding represents a correct proportion of the costs attributable to casino impacts.*

County Response: The draft audit report includes a discussion of the three grants reviewed by the State Auditor. The draft audit report highlights that the grant applications included demonstrate the grant will mitigate casino impacts, but finds inadequate demonstration of the proportional share of the costs attributable to casino impacts. The IGLCBC has increased the amount of documentation requested from grant applications over the past three grant cycles, and will continue to require documentation that demonstrates proportional share of the costs attributable to casino impacts. A change in state law, signed in September 2012 and effective January 1, 2013, amended Government Code section

* California State Auditor's comments appear on page 65.

Ms. Elaine M. Howle, State Auditor
February 10, 2014
Page 2

12715(b)(1)(a), requiring "Each grant application shall clearly show how the grant will mitigate the impact of the casino on the grant applicant", was enacted partway through the audit period and provided additional guidance. The IGLCBC will continue to request additional information and include a process to have applicants document the grants to meet this requirement. As was explained to the State Auditor, IGLCBC staff provides training for grant applicants, a review of applications before they are shared with the IGLCBC by IGLCBC Staff and Counsel, an oral presentation process for applicants, and for the past two grant cycles the IGLCBC has also asked for additional information to supplement the record as the IGLCBC makes final grant determinations. The IGLCBC will continue to consider this under advisement and will review applications for consistency with the law and documentation of how they mitigate proportional impacts from gaming facilities.

- 2) **Recommendation 2:** *If San Diego County's benefit committee believes that its process for distributing grant funds improves its ability to manage its grant program, it should seek legislative authority to change its process. Otherwise, San Diego County's benefit committee should instruct the Controller to release funds directly to the grant recipients as state law requires. It should also refrain from placing time limits on the time available for grant recipients to spend the grant funds.*

County response: The IGLCBC had a process in place since its establishment that requires agreements between the IGLCBC and the entities that were awarded grants, and appreciates that the draft audit report writes that the practice, "shows some benefits". The IGLCBC has required these agreements to meet the requirements in State Law, Subdivisions (c), (d), and (e) of Government Code Section 12715 provide that the IGLCBC will administer the various grants, and subdivision (h) provides that the grants shall terminate if a local jurisdiction uses a grant for an unrelated purpose. Section 12716 also requires the IGLCBC staff to submit reports on the Committee's grant activities. To comply with these code sections, the IGLCBC implements these requirements through a grant agreement between the IGLCBC and the various grant recipients. For this reason, the IGLCBC grant program was structured to fund grants through these enforceable agreements with the local jurisdiction recipients.

- ② The audit states that the County has "directed" the California State Controller to disperse the funds in this manner; however the *Authorization Form to Release Funds* was submitted with the resolution approved by the IGLCBC each year, which included the name of Cities and Special Districts that were awarded grants. The State Controller had not questioned this process. On January 23, 2014, a letter from the California State Controller to the County of San Diego Grant Administrator states that the Controller's office will no longer be making the entire distribution to the County of San Diego. For the upcoming grant year and with this additional guidance, the County will be requesting grant agreements for all recipients are submitted in advance of the IGLCBC's distribution request for individual checks for each grant not awarded to the County. The IGLCBC will still require statements and interest payments returned to the Committee for distribution for additional grants.

- ③ Additionally, the audit finding that the IGLCBC should not place time limits on the time available for the grant funds. We believe the auditor has given an unreasonably narrow interpretation of the statute. Our practice has been to incorporate the grant agreement term the period of time requested by the grantee in the original application. This was not

Ms. Elaine M. Howle, State Auditor
February 10, 2014
Page 3

intended to require an unreasonable time limit for grant recipients, but merely an institutional control on the performance under the grant agreement. However, the IGLCBC can revise the term section in the grant agreements to specify that the term of the agreement may be extended upon request.

- 3) **Recommendation 3:** *To comply with the reform act...the benefit committees for San Diego County...should each review staff responsibilities to ensure that all individuals participating in or making governmental decisions are required to disclose reportable interest in their conflict codes. To ensure that the benefit committee members and other designated individuals comply with reform act requirements for filing statements of economic interests...San Diego benefit committees filing officers should attend FPPC training so that they are aware of and meet the responsibilities under the reform act. Each of these benefit committees should also establish a formal process for ensuring that all required individuals file statements of economic interests. For example, each benefit committee's filing officer should notify designated individuals of their responsibility to submit statements of economic interests and follow up with those who fail to file.*

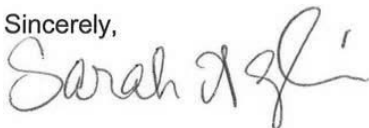
County response: The audit finding is directed at members of the IGLCBC who are no longer members of the Committee and either did not file a Form 700 or did not file on time. The IGLCBC members are informed of the legal requirements and the IGLCBC has a process in place that requires staff and the filing officers to attend applicable training. The IGLCBC can formalize these procedures into the bylaws for the IGLCBC through the development of a procedure that can be presented and ultimately adopted by the IGLCBC. The Clerk of the Board of Supervisors and IGLCBC staff will also attend additional training on the reform act and continue to follow up with all individuals who do not file. ④

As requested, the County provides the below contact information for the individual responsible for implementation of the recommendations. Please contact Eric Lardy for additional questions or information on this program.

Eric Lardy, Staff to the SD IGLCBC
County of San Diego
1600 Pacific Highway, Room 212
San Diego, CA 92101
Phone: 619-531-6257
Fax: 619-531-5476
Eric.Lardy@sdcounty.ca.gov

If you have questions, please call Eric Lardy at 619-531-6257.

Sincerely,



SARAH E. AGHASSI
Deputy Chief Administrative Officer

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Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM SAN DIEGO COUNTY

To provide clarity and perspective, we are commenting on the response to our audit from San Diego County. The numbers below correspond to the numbers we have placed in the margins of the county's response.

The additional responses San Diego County refers to are the 60-day, six-month, and one-year updates on the status of implementing the recommendations. ①

The California State Controller's Office (Controller) *Authorization to Release Funds* form included an item titled "Name of Jurisdiction/Payee." For each payment in the three years we reviewed, the Indian gaming local community benefit committee (benefit committee) for San Diego County stated on that line "County of San Diego," indicating that the Controller should disburse funds to the county rather than the actual grantee. ②

As we state on page 30, state law does not expressly give the benefit committee legal authority to place limits on the period of time those awards are available for grant recipients' use. If San Diego County's benefit committee believes its practice for administering grants improves its ability to manage its grants, it should seek legislative authority to use such practices; otherwise, it should comply with the requirements already set in law. ③

Contrary to the county's statement, several of the individuals we identified as not filing or filing late still appear on the January 2014 member roster for San Diego County's benefit committee. Further, our recommendation is intended to ensure that San Diego County's benefit committee develops procedures to ensure that all benefit committee members file statements as required by state law. ④

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JOHN CHIANG
California State Controller

February 3, 2014

Elaine M Howle, CPA, State Auditor
California State Auditor
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Re: Response to CSA Audit

Dear Ms. Howle:

Thank you for the opportunity to respond to the redacted draft copy of your audit report entitled, *Indian Gaming Special Distribution Fund*. The response is on the attached CD you provided with your January 28, 2014 letter, reference number: 2013-036.

If you have any questions regarding this matter, please call me by phone at (916) 552-8080.

Sincerely,

A handwritten signature in black ink, appearing to read "George Lolos", with a long horizontal flourish extending to the right.

GEORGE LOLAS
Chief Operating Officer

Attachment

State Controller's Office Response
Indian Gaming Special Distribution Fund Draft Report
January 28, 2014

Page 40: Recommendation

“Unless the Legislature amends current state law, the Controller should implement its plan to modify its distribution process beginning with the 2013-14 grant awards to ensure that it releases funds directly to the approved grant recipients.”

Response:

The State Controller's Office has completed a revision to our distribution processes and has revised the *Authorization Form to Release Funds from the County Tribal Casino Account* to ensure that the local Indian Gaming Local Benefit Committees provide the information for each local government entity for which a grant has been approved so that funds are released directly to the approved grant recipients.

In addition, the Controller's Office notified San Diego County, in writing, on January 23, 2014, that our office will deny and no longer process release of funds forms that direct payment to the county unless the county is the specific grant recipient.

cc: Members of the Legislature
Office of the Lieutenant Governor
Little Hoover Commission
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press