

Indian Gaming Special Distribution Fund

Local Governments Continue to Have Difficulty
Justifying Distribution Fund Grants

February 2011 Report 2010-036



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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 second review of the allocation and expenditure of grants from the distribution fund, concludes that Indian Gaming Local Community Benefit Committees (benefit committees) continue to have difficulty complying with grant requirements and related laws. Our review of a sample of 20 grants totaling \$5.7 million revealed that in 10 instances the grant recipient either could not provide evidence of, or could not quantify, the impact of the casino. As a result, they were unable to prove that the funding was in proportion to the impact of a casino, as required by law. In three other cases, benefit committees awarded grants that were unrelated or disproportionally related to casino impacts, and the Yolo County benefit committee awarded the entirety of its nearly \$336,000 allocation to an ineligible entity. Further, in three of the counties we reviewed, benefit committees did not award some cities and counties the minimum amounts the law set aside for them.

In our review of the allocation of funds to counties by the State Controller's Office, we found that the formula established in law does not take into account the possibility of a change during the course of a year in the number of devices operated by a tribe. Had the law taken into account changes due to compact amendments that took effect during fiscal year 2007-08, approximately \$2 million would have been distributed differently, providing some counties with more money and others with less. We also found that many tribes with compact amendments are negotiating agreements with local governments to directly fund mitigation projects, as required by their most recent compact terms. Finally, changes in contribution requirements due to amended compacts, as well as changes in the number of licenses, have altered the revenue streams of both the distribution fund and the Indian Gaming Revenue Sharing Trust Fund.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

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Summary

Results in Brief

In this review, our second examination of the allocation and expenditure of grants from the Indian Gaming Special Distribution Fund (distribution fund), we found that the Indian Gaming Local Community Benefit Committees (benefit committees) responsible for distributing these funds within the counties continue to have difficulty in complying with distribution fund grant requirements and with related laws. The distribution fund uses money contributed by some tribal casinos, required under agreements known as gaming compacts between the tribe and the State, to mitigate the impact of tribal gaming on local governments in the State. As of September 2010 California had compacts with 67 of California's federally recognized tribes, 57 of which operated a total of 58 tribal casinos in 26 counties.

In fiscal year 2008–09, the Legislature appropriated \$30 million from the distribution fund to local governments for mitigation projects. This amount was divided among 25 counties, which issued 185 grants. Our review of a sample of 20 of these grants awarded to local governments in seven counties revealed that for 10 of the grants, which together totaled \$3.2 million, the local government either could not provide evidence of, or could not quantify, the impact of a local casino. As a result, for projects that both mitigated an adverse impact of a casino and provided other local benefits, neither we nor the county could determine whether the share provided from the distribution fund grants was proportional to the casino's impact, as required by state law.

These grants may have been approved because some county benefit committees obtained the tribes' sponsorship for the proposals before selecting them for funding. Requiring the benefit committee to select projects for grant funding before obtaining tribal sponsorship would have several inherent benefits. Not only does the consideration of each grant application by the benefit committee in a public meeting allow for discussion and public comment on each application's relative merits, but it also presents the opportunity for an applicant to provide additional information and clarification on the application.

In three of the counties we reviewed, five local governments did not receive as much grant money as was set aside for them in law by the nexus test—a test of geographical proximity that defines the minimum grant amounts certain local governments should receive. In total, more than \$1.2 million set aside for these local governments went instead to other cities and counties. The county representatives described several reasons for this situation. Santa Barbara County misinterpreted the law, leading it to miscalculate the nexus amounts,

Audit Highlights . . .

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

- » *The Legislature allocated \$30 million from the distribution fund to local governments for mitigation projects in fiscal year 2008–09, which was divided among 25 counties that issued 185 grants.*
- » *We reviewed 20 grants and found that for 10, the local government either could not provide evidence of, or could not quantify, the impact of a local casino.*
- » *In three of the counties we reviewed, five local governments did not receive as much grant money—\$1.2 million—as was set aside for them in law.*
- » *Members of the Indian Gaming Local Community Benefit Committees do not always make the required financial disclosures.*
- » *Amended compacts have resulted in less revenue for the distribution fund yet have increased the revenue available to the State's General Fund. In addition, they have resulted in agreements for tribes to mitigate casino impacts on local governments.*
- » *Due to newly amended compacts, some tribes ceased making contributions to the distribution fund partway through the 2007–08 fiscal year, a situation unanticipated by the law that affected how almost \$2 million was distributed.*

and the benefit committee decided to further reduce the amount. In Riverside County, one city that was eligible for grant funds did not apply for a grant, and the tribes did not fully sponsor other grants. Finally, Amador County was unable to explain why it awarded the amounts it chose. Only Riverside County informed local governments of the amounts set aside for them based on the nexus test. We also found that a poor understanding of the law's requirements resulted in one grant benefiting an ineligible entity. The benefit committee in Yolo County provided roughly \$336,000 to a school district, which is an ineligible entity under state law.

Our review also revealed that members of benefit committees do not always make the financial disclosures required by state law. Although each member is required to file a statement of economic interests that helps to identify conflicts of interest that he or she might have, our review found that 12 of the 49 committee members in four of the seven counties whose grants we reviewed failed to file their statements. Further, two members filed statements more than a year late. Several factors contributed to these omissions, including the failure of some benefit committees to establish conflict-of-interest codes that include each of the elements required by state law as well as the failure of filing officers who collect such forms to follow guidelines for administering the process.

During our review, we calculated the current balances of the distribution fund and the Indian Gaming Revenue Sharing Trust Fund (trust fund), from which the California Gambling Control Commission distributes funds to tribes that operate few gaming devices or that do not have gaming compacts with the State. We also summarized the revenue and expenditures of each of these funds. Changes in contribution requirements due to amended compacts, as well as changes in the number of licenses, have altered the revenue streams of both funds.

Although the amended compacts have resulted in less revenue for the distribution fund, they have increased the revenue available to the State's General Fund, which the Legislature might need to consider as an alternative source for funding grants and services related to casino impacts in the future. Additionally, the new or amended compacts allow tribes to work directly with local governments to address casino impacts. Eight of the tribes with new or amended compacts that we contacted have entered into written agreements with local cities and counties, and these tribes have agreed to contribute to mitigation projects and to reimburse the local governments for services provided to the casinos.

We also reviewed the fiscal year 2008–09 allocation by the State Controller's Office (Controller) from the distribution fund to counties. We found that the Controller used the formula established

in law but that, due to newly amended compacts, some tribes ceased making contributions to the distribution fund partway through fiscal year 2007–08—a situation that the law did not anticipate. Had the allocation taken into account the fact that these tribes did not contribute throughout the year, approximately \$2 million would have been distributed differently, providing some counties with more money and others with less.

Recommendations

The Legislature should consider amending the law to require that counties forfeit equivalent amounts of future money from the distribution fund if their benefit committees approve grant applications that fail to provide evidence that projects are funded in proportion to casinos' impacts. To make certain that the projects' eligibility, merit, and relevance are discussed in a public forum during the projects' selection, the Legislature should also clarify that benefit committees should meet to consider applications before submitting them for tribal sponsorship.

Alternatively, 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 a casino impact.

To provide an incentive for benefit committees to award cities and counties the amounts that the Legislature has appropriated to them for mitigating casino impacts, the Legislature should require that grant funds allocated for each city and county according to the nexus test revert to the distribution fund if they are not awarded to that city or county.

The Legislature should amend the law for allocating distribution funds to counties to include provisions for prorating a county's distribution fund allocation based on the percentage of the year that each gaming device in the county is required to contribute to the fund. Such an amendment would ensure a more proportionate distribution when the number of contributing gaming devices changes during the course of the year.

To help ensure that they meet the grant requirements established in the law, counties should take the following actions:

- Ensure that eligible cities and counties receive the proportional share of funding they are set aside according to the nexus test by making the governments aware of available distribution fund grants and of the minimum grant amounts that are set aside for them under the nexus test.

- Require benefit committee filing officers to avail themselves of the free training provided by the Fair Political Practices Commission (FPPC) so that they are aware of and follow their responsibilities under the Political Reform Act of 1974. Counties should also adhere to FPPC guidelines for notifying committee members of the need to submit statements of economic interests.
- Ensure that benefit committees' conflict-of-interest codes comply with state law.
- Require that the county auditor review each grant application to ensure a rigorous analysis of a casino's impact and of the proportion of funding for the project provided by the grant. Benefit committees should consider a grant application only when the county auditor certifies that the applicant has quantified the impact of the casino and verifies that the grant funds requested will be proportional to the casino's impact.
- Review the law for changes that may affect applicants' eligibility for distribution fund grants before awarding the grants so that ineligible entities do not receive grants.
- Encourage eligible local governments to submit multiple applications so that the benefit committees can choose appropriate projects while ensuring that local governments are awarded the amount defined in law.

Agency Comments

Two of the seven counties we visited—Riverside and Amador—disagreed with various determinations we made regarding the relationship of casino impacts to the grants their benefit committees awarded. Two of the counties—Humboldt and San Diego—either objected to, or indicated a concern with, involving the county auditor in the process of reviewing applications. Three of the seven counties—Shasta, Humboldt, and Santa Barbara—indicated that they had altered, or were planning to alter, their practices to implement our recommendations related to conflict-of-interest codes or the filing of statements of economic interest. Humboldt also indicated that it believes grant funds are inadequate to address casino impacts, and Amador suggested that the current grant requirements are rigid, unresponsive, and overly prescriptive.

Introduction

Background

In the 11 years since the passage of Proposition 1A and the signing of the initial tribal-state gaming compacts—agreements that authorized 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 various court decisions have changed the landscape of Indian gaming. According to the California Gambling Control Commission (gambling commission), as of June 2010, Indian tribes operated almost 65,000 class III gaming devices. Class III gaming devices include 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 2001 to \$7 billion in federal fiscal year 2009.

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 authorized by the 1988 federal Indian Gaming Regulatory Act (IGRA) 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, namely the tribe, the State, and the federal government. The tribes themselves have exclusive jurisdiction over class I gaming, which is not subject to regulation by the IGRA. Tribes also have jurisdiction over class II gaming, but this activity is subject to the IGRA. Our audit is limited to class III gaming devices. Under the IGRA, a tribe may conduct class III gaming on Indian lands only in a state that permits such gaming. Moreover, the tribe must negotiate a compact with the state governing the conduct of gaming activities, the U.S. Department of the Interior must approve the compact, and the tribe must adopt an ordinance

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.

Sources: United State Code, Title 25, Section 2703, and the California Constitution, Article IV, Section 19.

or resolution approved by the chair of the National Indian Gaming Commission. The compact will then take effect only when notice of approval by the U.S. Department of the 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.

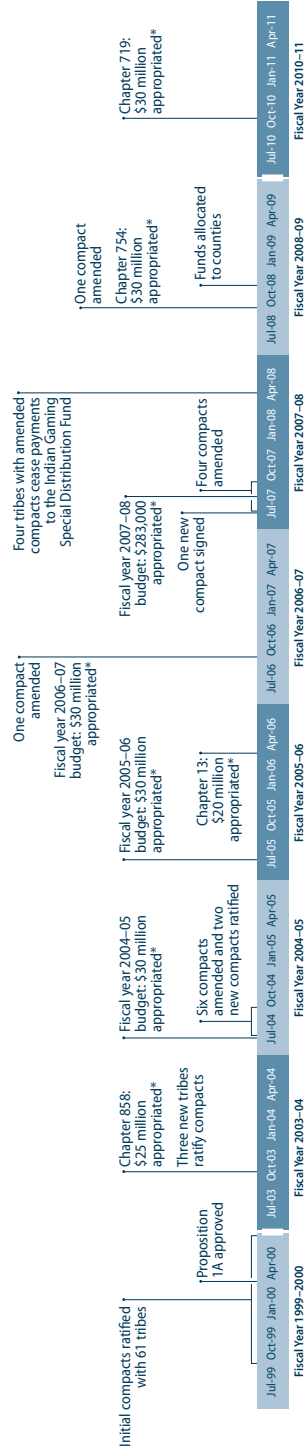
Tribal-State Gaming Compacts in California

In the State's March 2000 primary election, Proposition 1A received voter approval. Proposition 1A amended the California Constitution to give the governor the authority to negotiate and enter into compacts, 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 voter approval of Proposition 1A, the governor negotiated and the Legislature approved legislation ratifying compacts with many tribes. State law ratifying these compacts, which are identical in most respects, affirms that any future compact entered into by the State that is identical to the original compacts in all material respects is ratified unless the Legislature objects within 30 days of the governor submitting the compact to it. The State eventually entered into 61 of these tribal-state gaming compacts (1999-model compacts). The 1999-model compacts later received final federal approval as required by the IGRA, 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 to the State, on a sovereign-to-sovereign basis, a portion of their revenues from gaming devices 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.

Between 2003 and 2010, the governor negotiated, the Legislature ratified, and the federal government approved six additional compacts and amendments to 12 of the original compacts (post-1999-model compacts). A time line of these events is presented in Figure 1. As Table 1 on page 8 shows, the provisions in the 1999-model compacts related to contributions to state-administered funds are significantly different from the provisions in the post-1999-model compacts.

Figure 1
Time Line of Events Related to Indian Gaming in California



Sources: Tribal-state gaming compacts; budget acts for fiscal years 2004-05, 2005-06, and 2006-07; Chapter 858, Statutes of 2003; Chapter 13, Statutes of 2006; Chapter 754, Statutes of 2008; and Chapter 719, Statutes of 2010.

* Appropriations are for local mitigation grants.

Table 1
Summary of Revenue Provisions for Ratified and New Tribal-State Gaming Compacts

	ORIGINAL COMPACTS					POST-1999-MODEL COMPACTS				
	1999-MODEL COMPACTS	2003 COMPACTS	2004 COMPACTS	2004 AMENDMENTS	2006 AMENDMENTS	2007 COMPACT	2007 AMENDMENTS	2008 AMENDMENTS		
Number of class III devices allowed per compact	Up to 2,000 devices	From 350–2,000 devices per tribe	From 1,500–2,000 devices per tribe	Unlimited number of devices	Up to 1,100 devices	Up to 99 devices	From 5,000–7,500 devices per tribe	Up to 5,000 devices		
Contributions to the Indian Gaming Revenue Sharing Trust Fund	Payments on a per-device basis	None	Payments on a per-device basis and contingent upon net win	Payments of \$2 million annually per tribe; or payment based on a per-device fee	Payments on a per-device basis and contingent upon net win	None	Payments of \$2 million annually per tribe	Payments of \$4.6 million annually per tribe		
Contributions to the Indian Gaming Special Distribution Fund	Payments based on percentage of net win from devices operated as of September 1999	None	None	None	None	None	None	None		
Contributions to the General Fund	None	Payments of 5 percent of net win	Payments based on total number of devices in operation and percentage of net win	Payments based on total number of devices in operation or percentage of net win	Payments based on percentage of net win	Payments based on percentage of net win	Payments of 15 percent of net win from devices in excess of 2,000 and 25 percent of net win from devices in excess of 5,000	Payments of 20 percent to 25 percent of net win		
				Payments of \$5.75 million to \$33.8 million for certain tribes			Payments of \$23.4 million to \$45 million annually			

Sources: Tribal-state gaming compacts.

As of September 2010 California had compacts with 67 of California’s federally recognized tribes, 57 of which operate a total of 58 tribal casinos. Figure 2 on the following page shows the locations of casinos with class III gaming devices operated by federally recognized Indian tribes. The Appendix lists the tribes with compacts and indicates the maximum number of gaming devices each tribe is allowed to operate.

California Gambling Control Commission

California’s 1997 Gambling Control Act created the gambling commission to serve as the State’s regulatory body over gambling activities, including Indian gaming. This commission has jurisdiction over the operation, concentration, and supervision of gambling establishments. Various aspects of the gambling commission’s oversight authority are provided by different sources, namely state law, executive orders, and compact provisions. Five commissioners appointed by the governor oversee and make policy decisions for the gambling commission. The gambling commission performs audits and collects trust fund deposits based on quarterly license fees. It also acts as the trustee of the trust fund and administers the distribution fund.

Indian Gaming Special 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 wins into the distribution fund that state law established in the State Treasury. 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. As Table 2 indicates, the percentage of average net wins for grandfathered devices deposited into the distribution fund ranges from 7 percent to 13 percent, depending on how many devices the tribe operated on September 1, 1999.

Table 2
Indian Gaming Special Distribution Fund Tiered Payment Schedule for 1999 Tribal-State Gaming Compacts

NUMBER OF DEVICES IN OPERATION AS OF SEPTEMBER 1, 1999	PERCENTAGE OF AVERAGE GAMING DEVICE NET WINS
201–500	7%
500–1,000	10
1,000+	13

Source: Tribal-state gaming compacts ratified in 1999.

Note: Tribes with 200 or fewer devices in operation as of September 1,1999, do not pay into the Indian Gaming Special Distribution Fund.

Figure 2
Location of Indian Casinos Operating Class III Gaming Devices in California



Sources: California Gambling Control Commission documents, tribal-state gaming compacts, and State Controller's Office allocations.

* This circle represents two casinos in Riverside County, which are operated by the same tribe, that have 1,994 devices combined. Individual numbers of devices for each casino were not available.

The California Government Code (Government Code) specifies that the money deposited into the distribution fund is available for appropriation by the Legislature to address four needs, prioritized as follows:

1. Supporting the 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. In fiscal year 2008–09, the Legislature appropriated a total of \$50 million for this purpose.
2. Funding problem-gambling prevention programs managed by the Department of Alcohol and Drug Programs (Alcohol and Drug Programs). The Legislature appropriated a total of \$4.3 million for this purpose in fiscal year 2008–09. In addition, the Legislature appropriated \$4 million to Alcohol and Drug Programs from this fund for local assistance.
3. Paying the operating costs for the Indian gaming regulatory functions of the gambling commission and of the Department of Justice (Justice). In fiscal year 2008–09, the Legislature appropriated a total of \$24.9 million for this purpose.
4. Supporting local governments impacted by tribal gambling. The Legislature appropriated a total of \$30 million for this purpose in fiscal year 2008–09.

Indian Gaming Revenue Sharing Trust Fund

The terms of the 1999-model compacts require tribes that acquire licenses for gaming devices to contribute to the trust fund, which state law established in the State Treasury. For each license it acquires, a tribe operating under a 1999-model compact must pay into the trust fund a nonrefundable one-time prepayment fee of \$1,250. The compacts also require tribes to pay license fees each quarter. As Table 3 on the following page indicates, to calculate a tribe's quarterly license fee, the compacts use a graduated rate schedule based on the tribe's number of licensed gaming devices. In May 2001 the gambling commission made its first distribution to tribes without compacts and to tribes with compacts that operate fewer than 350 gaming devices, and since that time it has attempted to distribute \$1.1 million annually to each of these tribes. However, trust fund revenues have never provided sufficient money for the gambling commission to make the full annual distributions. Therefore, since fiscal year 2003–04, the gambling commission has transferred amounts from the distribution fund to supplement the yearly distributions.

Table 3
Indian Gaming Revenue Sharing Trust Fund Tiered Payment Schedule for 1999 Tribal-State Gaming Compacts

NUMBER OF LICENSED GAMING DEVICES	FEE PER DEVICE PER YEAR
0–350	\$0
351–750	900
751–1,250	1,950
1,251–2,000	4,350

Source: Tribal-state gaming compacts ratified in 1999.

Note: The first 350 devices operated by a tribe do not require licenses. Devices operated prior to September 1, 1999, do not require licenses.

Problem-Gambling Prevention Program

The Office of Problem and Pathological Gambling, which is administered by Alcohol and Drug Programs, is the second priority for the use of distribution fund money. This office spent \$3.9 million in fiscal year 2008–09. A deputy director at Alcohol and Drug Programs stated that it allocated roughly \$1.6 million of its appropriation for conducting public awareness campaigns and for operating toll-free crisis management telephone lines; \$1 million for treatment support services, such as establishing a Web-based data repository and billing system, training new providers to treat problem-gambling behaviors, and continuing research to determine behavioral treatment efficacy; \$750,000 for educating organizations and individuals on the signs of problem-gambling behaviors; \$200,000 for research into youth gambling behaviors; and the remainder for assessing prevention services needs, developing and enhancing policies and procedures, convening an advisory group, producing publications, and administering and monitoring the program. In addition, Alcohol and Drug Programs received \$4 million from the distribution fund for local assistance, with which it implemented a stepped-care multimodal treatment program, including interventions as well as outpatient, intensive outpatient, and residential care.

Regulatory Activities of the Gambling Commission and Justice

The gambling commission spent \$7.9 million and Justice spent \$14.9 million in fiscal year 2008–09 for regulatory activities related to Indian gaming. The gambling commission stated that its responsibilities related to tribal gaming include oversight of class III gaming operations; distribution of tribal gaming revenues to various state funds and to authorized, federally recognized, noncompact tribes; monitoring tribal gaming through periodic background checks

of tribal key employees, vendors, and financial sources; validation of gaming operation standards through testing, auditing, and review; and fiscal auditing of tribal payments to the State pursuant to compact provisions.

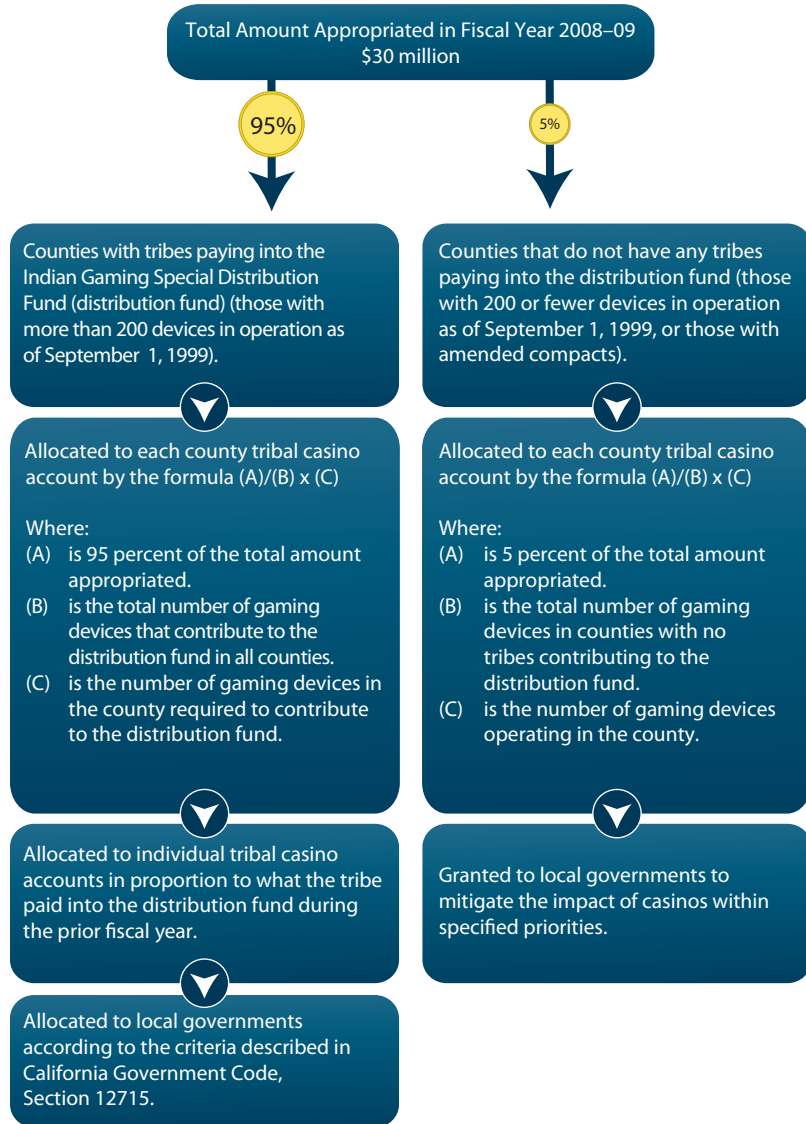
Justice stated that it uses its distribution fund allocation to support the regulatory activities related to Indian gaming for three of its divisions: the Bureau of Gambling Control in the Division of Law Enforcement, the Division of Public Rights, and the Hawkins Data Center. For example, the Indian Gaming Law Section of the Division of Public Rights monitors Indian gaming practices, and it consults and advises the governor on compact negotiations and Indian law issues. The Bureau of Gambling Control works with other state gaming agencies and tribal gaming agencies to regulate gaming on tribal lands.

Local Governments Affected by Tribal Gambling

The Government Code's fourth priority for distribution fund money is supporting local government agencies impacted by tribal gaming. When funds are appropriated from the distribution fund for mitigation grants, the State Controller's Office (Controller), in consultation with the gambling commission, divides these funds among eligible counties to use for mitigation projects according to a methodology established in state law. As Figure 3 on the following page shows, the Government Code defines a method for dividing these funds between counties with tribes that contribute to the fund and counties that have casinos but that do not have tribes that contribute to the fund. The Government Code also describes how funds are allocated to the county tribal casino account for each county. For counties in which tribes pay into the distribution fund, the money is further allocated into an individual tribal casino account for each tribe based on the amount that the tribe paid into the distribution fund in the previous fiscal year.

The \$30 million allocated to local governments in fiscal year 2008–09 was divided among 25 counties that issued 185 grants. The amounts received by these counties varied considerably. For example, Modoc County received the least of any county and elected not to spend the funds it was allocated, so the money reverted to the distribution fund as required by law. Riverside County received the most funds—more than 47 percent of the \$30 million—and it distributed the funds in 60 grants averaging more than \$235,000 each. Figure 4 on page 15 summarizes the purposes for which counties reported spending their distribution fund allocations for fiscal year 2008–09.

Figure 3
Allocation of Funding From the Indian Gaming Special Distribution Fund to Local Governments

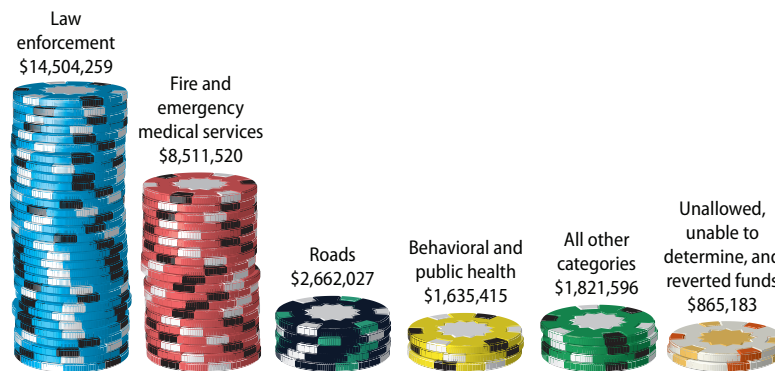


Sources: California Government Code, sections 12714 and 12715, and Chapter 754, Statutes of 2008.

State law creates, in each county in which Indian gaming occurs, an Indian Gaming Local Community Benefit Committee (benefit committee) that awards grants from the distribution fund. Generally, each county’s benefit committee consists of two county representatives selected by the county board of supervisors, three elected representatives selected by the county board of supervisors from cities located within four miles of a tribal casino, and two representatives selected on the recommendation of a majority of the county’s tribes paying into the distribution fund. In a county in which only one city is

located within four miles of a tribal casino that is in an unincorporated part of the county, only one elected representative of that city sits on the benefit committee. In counties that do not have a tribal casino within four miles of a city, the county board of supervisors and the tribes in the county mutually select additional members of the benefit committee in lieu of city members. San Diego County's benefit committee consists of two representatives of the county selected by the county board of supervisors, one elected representative selected by the board of supervisors from the city located within four miles of a tribal casino, three representatives selected on the recommendation of a majority of the county's tribes paying into the distribution fund, and the sheriff of San Diego County.

Figure 4
Total Mitigation Expenditures From the Indian Gaming Special Distribution Fund by Category, as Described in County Annual Reports for Fiscal Year 2008–09



Source: Fiscal year 2008–09 annual reports submitted by counties.

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 for the distribution of grant funds. To allocate funds correctly to local governments in counties that have a tribe paying into the distribution fund, benefit committees must determine the geographical proximity of cities and the county, using a set of criteria known as the nexus test established in the Government Code. Figure 5 on page 17 shows the nexus test criteria and the required allocation of funds, in which 60 percent of the funds are allocated using the nexus test and the remainder are awarded as discretionary grants, allowing the benefit committees to choose which local governments receive the money. These criteria are intended to provide a fair and proportionate system for awarding grants to local governments impacted by tribal gaming.

Responsibilities of Indian Gaming Local Community Benefit Committees

- Awarding grants.
- Ensuring that funds are allocated according to priorities established by law.
- Establishing all application policies and procedures for grants from the Individual Tribal Casino Account or County Tribal Casino Account.
- Assessing the eligibility of applications for grants from local jurisdictions impacted by tribal gaming operations.
- 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.

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.

After the benefit committees award grants and the grants receive affirmative sponsorship of the tribes from whose individual tribal casino accounts the funds are distributed, the benefit committees submit lists of the approved grants to the Controller, which releases the funds directly to the local government entities awarded the grants. Although multiyear grants are allowed, any money that counties do not grant by the end of the fiscal year reverts to the distribution fund. Grants are administered by the county, which can be reimbursed for up to 2 percent of the funds for demonstrated administrative expenses. The Government Code defines 12 priorities for the award of grants, as shown in the text box. For example, grant funds can be used to help pay for the cost of maintaining roads that experience an increase in traffic due to casino patrons, for the proportion of staffing costs related to the additional workload firefighters experience because of the need to respond to emergencies at the casinos, or for additional police officers needed because the presence of casino patrons increases the number of individuals in their jurisdiction.

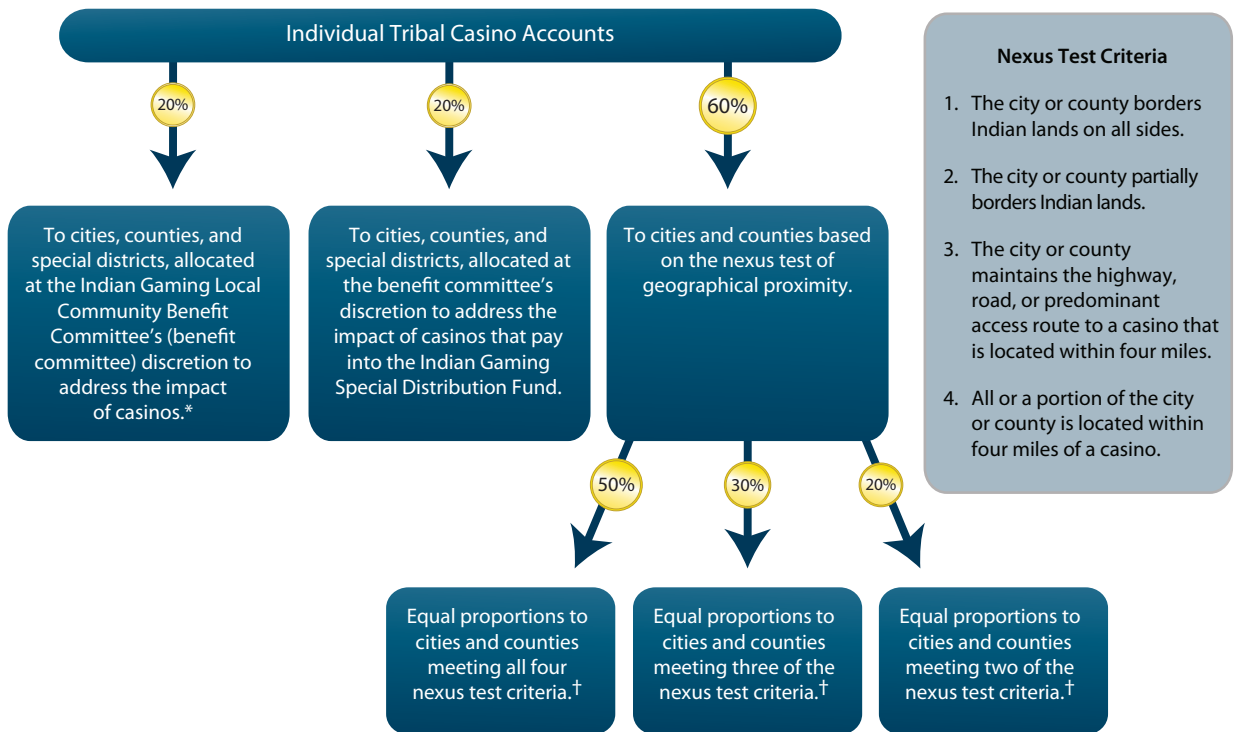
Prior Report and Legislative Action

In July 2007, as required by the Government Code, Section 12717, we issued a report on the Indian Gaming Special Distribution Fund. Titled *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), this report included a finding that some projects funded by the distribution fund were not related to an impact from a casino. Specifically, 15 of the 30 grants reviewed for that report either did not address a casino impact or were primarily unrelated to casino impacts. Although the intent of the law was to support local government agencies impacted by tribal gaming, the law did not contain specific requirements that local governments use the funds only for projects addressing casino impacts.

The 2007 report also found that counties and benefit committees needed to improve their administration of distribution fund grants. For example, the report cited several instances in which local governments did not use the interest they earned on unspent distribution fund money to pay for casino mitigation projects. Several local governments asserted that state law authorized the

use of interest earned on the grants for general purposes. However, the report concluded that because these are grant funds, local governments should use the interest the funds produce for the purposes established in the compacts and in state law. Moreover, 11 of the benefit committee members in the counties sampled for the 2007 report failed to file required statements of economic interests. In addition, the audit revealed that only nine of the 24 counties receiving grant funds submitted annual reports to all of the required legislative committees and the gambling commission on the projects financed by the distribution fund.

Figure 5
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.

Our July 2007 report prompted several actions. The former governor eliminated \$30 million from the fiscal year 2007–08 appropriation from the distribution fund, citing concerns raised in the report and indicating that he would support restoring the appropriation if counties and benefit committees addressed those concerns. Further, in September 2008, Chapter 754,

Statutes of 2008 (Chapter 754), enacted as an urgency measure, implemented several of our recommendations. Specifically, Chapter 754 requires that benefit committees select only grant applications that mitigate casino impacts and only provide funds in proportion to the impact in cases when a project's benefits exceed the impacts. Chapter 754 also clarifies that school districts are not eligible for funding, requires that all grant funds be deposited in interest-bearing accounts, and states that the interest must be used to mitigate casino impacts. Finally, Chapter 754 requires counties to provide their annual reports if they are to remain eligible for distribution fund money the following year.

Recent Court Decisions

Federal courts issued two decisions in the past year that have had significant implications for Indian gaming in the State. One case concerned the limit on the number of gaming device licenses set by the State under the 1999-model compacts. The other case called into question a provision that the State sought to negotiate into an amended compact.

In its August 2010 decision in *Cachil Dehe Band of Wintun Indians of the Colusa Indian Community v. California*,¹ the Ninth Circuit of the U.S. Court of Appeals (Ninth Circuit) held that the State had misinterpreted the section of the 1999-model compacts for determining the number of gaming devices that California tribes are permitted to license. Two tribes claimed that the compacts permitted more licenses than the State had determined were allowed. The Ninth Circuit held that the limit on licenses exceeds the number recognized by the State, and the court upheld a lower court's order that the State conduct a license draw open to 1999-model compact tribes for the additional licenses. At the time of the ruling, the State had already conducted the ordered license draw in October 2009 as required by the lower court's ruling and had issued 1,878 additional licenses.

In *Rincon Band of Luiseno Mission Indians of the Rincon Reservation v. Schwarzenegger*,² a case decided in April 2010, the Ninth Circuit found that the State had negotiated with the Rincon Band of Luiseno Mission Indians (Rincon tribe) in bad faith by conditioning its agreement to expand the Rincon tribe's class III gaming rights on the tribe's agreement to pay a percentage of its revenues to the State's General Fund. The court ruled that the State's repeated insistence that the tribe pay a percentage of its net revenues to the General Fund was an attempt by the State to

¹ 681 F.3d 1066.

² 602 F.3d 1019.

impose a tax on the tribe in violation of the IGRA. The State has appealed the decision to the U.S. Supreme Court, which, as of November 2010, has not yet decided whether it will hear the case.

Scope and Methodology

Section 12717 of the Government Code requires the Bureau of State Audits to conduct an audit every three years regarding the allocation and uses of moneys from the distribution fund by the recipients of the grant money and report its findings to the Legislature and all other appropriate entities.

To determine if distribution fund money is allocated appropriately to each county, we reviewed the Controller's calculation of the amounts for each county.

Using factors that included the amounts of funding received and geographic location, we selected seven counties—Amador, Humboldt, Riverside, San Diego, Santa Barbara, Shasta, and Yolo—to evaluate the uses of distribution fund grants. We reviewed the composition of the benefit committees for these counties to ensure that their membership met the requirements of state law, and we requested copies of members' conflict-of-interest filings. We are referring several concerns we identified related to conflict-of-interest filings to the Fair Political Practices Commission, the entity responsible for enforcing these requirements. To assess whether grant funds are being awarded appropriately at the county level, we reviewed county and benefit committee policies and procedures, and we interviewed county staff regarding the awarding of distribution fund grants. We also reviewed the eligibility of local governments to receive funds in each sample county and assessed whether the benefit committees awarded funds appropriately according to the criteria in state law.

To evaluate whether grants awarded in the counties we selected had reasonable relationships to casinos' impacts and satisfied the requirements in state law, we obtained annual reports for fiscal year 2008–09 grants, which were the most recent grants available at the time of our audit. We then selected between one and four grants in each county we visited, using such criteria as the amount of the grant, the purpose of the project funded, and the description of the project. We prioritized our selection of some grants according to whether the grants' descriptions appeared questionable. We then reviewed grant applications describing the selected projects and their relationships to casinos' impacts, interviewed grantee staff, and obtained supporting documentation about those impacts. We reviewed evidence of the impacts that the projects were designed to mitigate; the proportionality of the grant

funding to the casinos' impacts; the amounts, appropriateness, and reasonableness of grant funds spent; and the use of any interest earned on these grant funds.

Some grantees provided us hard-copy documentation from various electronic systems, such as accounting or time-keeping information. We performed limited work to assure ourselves of the nature of the information. However, because we were assessing the funding decisions made by, and the information available to, the benefit committees rather than evaluating the operations of the grantees, we did not perform standard data reliability procedures to provide assurance of the accuracy or completeness of this information.

To determine the ability of the distribution fund to continue to fund the programs that depend on it, we compared distribution fund revenue and expenditures. Using these figures, we projected the distribution fund balance from fiscal years 2011–12 through 2014–15. Because one of the major expenditures for the distribution fund is to cover shortfalls in the trust fund to ensure that payments mandated by state law can be made to tribes that do not have compacts or that have compacts but operate fewer than 350 gaming devices, we also reviewed trust fund activity from fiscal years 2000–01 through 2009–10 to identify changes in revenue and expenditures.

Finally, as part of our review of the distribution fund balance and the cause of changes in the revenue it receives, we obtained all post-1999-model compacts. Although these compacts remove requirements to contribute to the distribution fund, they do require that tribes negotiate agreements with local governments to mitigate casino impacts after subsequent casino construction or expansion. To determine the extent to which such local agreements exist, we contacted all tribes with post-1999-model compacts that have casinos or that have filed environmental impact reports. We inquired as to whether these tribes had negotiated any agreements; if so, we obtained copies of the agreements to confirm that the local agreements provided for the mitigation of casino impacts.

Chapter 1

BENEFIT COMMITTEES EXERCISED POOR JUDGMENT IN AWARDING SOME GRANTS, AND GRANT ADMINISTRATION NEEDS IMPROVEMENT

Chapter Summary

Indian Gaming Local Community Benefit Committees (benefit committees) have had difficulty in complying with Indian Gaming Special Distribution Fund (distribution fund) grant requirements and with related laws. Our review of a sample of 20 grants awarded in seven counties in the State revealed that three were unrelated or not proportionally related to any adverse impacts that the respective Indian casinos may have on their surrounding areas. For 10 other grants, the grantees were unable to quantify or provide evidence of the casinos' impacts. Additionally, some counties failed to award local governmental entities within a certain geographical proximity to their respective casinos the minimum amounts that the law sets aside for those entities. One county awarded a distribution fund grant to an ineligible applicant, leaving fewer funds for distribution to eligible entities and projects. Further, some members on the benefit committees in four of the seven counties we reviewed failed to file required statements of economic interests.

Some Local Governments Could Not Quantify the Impacts of Casinos, and Some Grants Were Not Proportional or Were Unrelated to the Casinos' Impacts

State law requires that distribution funds be used only to mitigate impacts from casinos on local jurisdictions and that the grant expenditures be proportional to the casinos' impacts. However, the benefit committees in six of the seven counties we reviewed granted more than \$3.2 million to local governments that could not demonstrate or quantify the impacts from the local casinos, and Yolo County granted all of its funds—almost \$336,000—to an entity that was not eligible to receive them. Additionally, we found that three grants, totaling almost \$400,000, were unrelated or not proportionally related to any adverse impact an Indian casino might have to the surrounding area.

Our review of 20 grants distributed by benefit committees in seven counties found that at least one recipient in each of six of the counties either was unable to quantify the impacts of the respective casino or used the funds for a project that did not mitigate a casino impact. The seventh county, Yolo, issued one grant for

Benefit committees in six of the seven counties we reviewed granted more than \$3.2 million to local governments that could not demonstrate or quantify the impacts from the local casinos, and Yolo County granted all of its funds—almost \$336,000—to an entity that was not eligible to receive them.

almost \$336,000 to an ineligible recipient. As Table 4 shows, grants totaling more than \$3.2 million—56 percent of the \$5.7 million total amount of the grants reviewed—went to recipients who were unable to demonstrate the impacts of local casinos. Because the recipients could not quantify the impacts of the casinos, we could not determine whether the amounts spent on the recipients' projects were proportional to the impacts of the casinos.

Table 4
Appropriateness of Grants Awarded by Indian Gaming Local Community Benefit Committees

COUNTY	SOLELY RELATED TO, OR PROPORTIONAL TO, CASINO IMPACT	GRANTEE UNABLE TO QUANTIFY CASINO IMPACT	FUNDS AWARDED DO NOT MITIGATE, OR ARE GREATER THAN THE PROPORTION OF, THE CASINO'S IMPACT	ENTITY INELIGIBLE TO RECEIVE GRANT
Amador	1 Grant \$88,200	2 Grants \$105,794	–	–
Humboldt	2 Grants \$70,103	1 Grant \$25,000	–	–
Riverside	1 Grant \$441,000	1 Grant \$905,627	2 Grants \$135,000	–
San Diego	–	3 Grants \$1,787,910	–	–
Santa Barbara	2 Grants \$1,163,403	1 Grant \$173,281	–	–
Shasta	–	2 Grants \$228,406	1 Grant \$258,515	–
Yolo	–	–	–	1 Grant \$335,854
Totals	6 Grants \$1,762,706	10 Grants \$3,226,018	3 Grants \$393,515	1 Grant \$335,854

Source: Bureau of State Audits' review of fiscal year 2008–09 Indian Gaming Special Distribution Fund grants.

Although many local governments had difficulty in quantifying the impacts of their local casinos, six of the 20 grants we reviewed were related solely to or were proportional to casinos' impacts. Santa Barbara County's fire department and the Blue Lake Fire Protection District in Humboldt County, for example, received distribution fund grants for fire services. Both fire departments tracked casino-related emergency calls and were able to demonstrate that the amount of funds they received was proportional to the services they provided to the local casinos.

During the fieldwork portion of our audit, we initially determined that the Amador County Sheriff's Department (sheriff's department) was unable to quantify the impact of the casino for a grant it received. The sheriff's department provided information that quantified the number of incidents the sheriff's department indicated were casino-related and showed a

proportional relationship to the amount of grant funding received. However, according to the undersheriff, although the sheriff's department uses an indicator in its electronic case files to indicate which incidents were casino-related, it is the sheriff's policy to avoid mention of the casino in the description of the case unless being at the casino was relevant to the facts of the incident or the incident occurred at the casino. Without more detailed information on the incident's relationship to the casino, we could not determine if the casino contributed to causing these incidents. However, based on a suggestion provided to us during the agency review period that we only consider those incidents occurring at the casino, we concluded a sufficient number of incidents occurred at the location of the casino for us to consider that the impact was proportional to the grant funding.

We found that most of the local governments we reviewed that received distribution fund grants identified impacts of their local casinos, although many of those same governments could not demonstrate or quantify the proportion of the impacts. For instance, the city of El Cajon in San Diego County received a \$95,000 distribution fund grant. The city intends to use the money to resurface streets that have been affected by bus traffic from the terminals that provide transportation to and from five local casinos. The El Cajon Transit Center provides bus service for one casino, while the casino bus terminal across the street provides transportation to four other casinos. In its application, the city identified three streets surrounding the two terminals that needed repair. We visited the casino bus terminal and observed severe damage to the road where casino buses enter and exit the casino bus terminal. The city estimated that 90 percent, 75 percent, and 10 percent, respectively, of the total cost of resurfacing the three streets is attributable to casinos. However, according to the deputy city manager, El Cajon did not undertake any traffic counts on the affected streets. Thus, we were unable to confirm that the given impact estimates are proportional to the casino buses rather than to city buses and regular city traffic.

In Riverside County, a mitigation project undertaken by the county fire department received almost \$906,000 for equipment for wildland fire response. According to data provided by the fire chief, 34 percent of the wildland fires in the county in 2009 occurred within the local casino's area of influence. The fire department defined the casino's area of influence as a large portion of the county that includes several communities. The fire chief confirmed that the casino has not necessarily led to an increase in actual fires; instead, it has caused an increase in fire potential. We realize that the number of fires can vary from year to year for many reasons; however, because the fire department has not tracked the incidences related to the casino, we were unable to determine if

According to the deputy city manager, El Cajon did not undertake any traffic counts on the affected streets. Thus, we were unable to confirm that the given impact estimates are proportional to the casino buses rather than to city buses and regular city traffic.

the amount of grant funds awarded was necessary to mitigate the casino's impact. This situation highlights the difficulty of assessing grants that may reduce potential risk associated with a casino in contrast to evaluating those grants that mitigate an identified and quantifiable impact.

In another instance, San Diego County's benefit committee awarded a \$1.4 million grant to San Diego County that was administered by the San Diego County Regional Fire Authority. The county then entered into an agreement with the San Miguel Consolidated Fire Protection District (San Miguel). According to the county fire services coordinator, San Miguel will use the funds to construct a regional fire and public utilities training center that will be owned by the Heartland Fire Training Authority, a joint powers authority. The county fire services coordinator informed us that the county applied for the funds because it wanted to obtain additional funds for San Miguel to use for a regional training facility that expands training opportunities beyond existing sites that are at capacity. He also stated that this will provide a regional facility for consistent training for career and volunteer firefighters on specialized subjects that are used in responding to a critical incident.

Information provided by the county at our request described impacts from the casino experienced by the local governments within the county. However, the county did not supply information necessary for determining the proportion of the total workload that related to the county's casinos, nor did it reasonably consider the other benefits that this grant provides for the portion of the workload that is unrelated to casinos. In addition, although the county asserted that the grant was for its benefit and provided a copy of an agreement with San Miguel to administer the grant, the county described itself on the application for funds as a *pass-through*. Although San Diego County was eligible for grants from funds allocated using the nexus test—described in the Introduction—San Miguel was not, and the \$1.4 million granted was greater than the total amount of discretionary funding available to local governments in the county. Finally, according to the fire services coordinator, the county paid an additional \$400,000 in September 2010 to become a partner in the regional training center, despite the fact that it had previously provided the \$1.4 million grant to support the construction of the training center. However, the fire services coordinator later contradicted his statement and explained that although \$400,000 has been authorized, the county is not yet a partner.

Although San Miguel Consolidated Fire Protection District (San Miguel) was not eligible for grants from funds allocated using the nexus test, San Diego County—which was eligible for such grants and did receive \$1.4 million—passed the funds on to San Miguel through an agreement.

During our prior audit of distribution fund grants, we reviewed a \$700,000 grant that San Miguel applied for independently of the county, and subsequently received for the purpose of building a tower for firefighters to use in training to put out fires in large

structures. At that time, San Miguel stated that this project was necessary because the casino was one of only a few large structures within its jurisdiction. However, when we followed up on the expenditure of that grant during the course of this audit, San Miguel's deputy chief stated that the \$700,000 was used for planning and architectural costs for the creation of a larger comprehensive training facility, rather than to build the tower. Despite San Miguel's receiving more than \$2 million in distribution fund grants thus far for the training facility, the deputy chief stated that because the training tower is the final aspect of the center to be built, additional funds will be required to pay for its construction.

We also found that three grants, totaling almost \$400,000, were unrelated or not proportionally related to any adverse casino impact. For example, the city of Redding's water utility received a distribution fund grant in the amount of roughly \$259,000 for water system improvements. According to the application, a pump station in the city needed replacement because the below-ground installation was subject to moisture damage and because a recent roadway expansion had encroached upon the facility. Although repair of the pump station would benefit the local casino, the city's need for the improvements did not relate directly to the impact caused by the casino as called for in the law.

Three grants totaling almost \$400,000 were unrelated or not proportionally related to any adverse casino impact.

County Procedures for Reviewing Grant Applications Should Be Improved

When we reviewed the procedures and practices established for grant selection in the seven counties in our sample, we found that the benefit committees in six of the counties approved grant applications only after local tribes reviewed and selected the applications they wished to sponsor. In essence, the tribes made the grant selection and the benefit committees signed off on the selections. In fact, in two counties, applications were submitted directly to the local tribes. The tribes subsequently provided the benefit committees with a list of sponsored applications that matched the total amount of funding available, and the committees were unable to provide documentation of any discussion or public debate about the applications. Because the benefit committees in these counties were not involved in the initial review process, we question what influence they have over the ultimate selection of applications and their ability to ensure that the proposed projects mitigate casino impacts. Although the law contains no explicit direction requiring benefit committees to select grants before obtaining tribal sponsorship, using their current process these benefit committees are only technically fulfilling their duty to select grants, and are not selecting grants prior to tribal sponsorship as the law intended.

In contrast, San Diego County's benefit committee established detailed policies and procedures to ensure that the committee is involved in the process of selecting grants for mitigation projects. The committee first reviews all applications for eligibility before allowing the applicants to make brief presentations to the committee. It then forwards the applications to the tribe for review, after which the committee further discusses grant selections. The county's procedures account for potential disagreement and allow for further tribe and committee consideration. San Diego's process also promotes collaboration between the committee and the tribe, and it ensures public involvement and participation even though the justification for some projects may have weaknesses. Shasta County's process, as described by an administrative analyst, also promotes such collaboration. Although applications are forwarded to the tribe for sponsorship prior to the benefit committee meeting, the applications are provided to all committee members and are discussed at the meeting, regardless of whether they are sponsored by the tribe. This process gives committee members an opportunity to discuss the applications that were not sponsored by the tribes, and ultimately all committee members agree on which applications will be approved.

When we reviewed the procedures used by other benefit committees to select grants, we found that applications are generally provided first to the tribes, whose sponsorship of applications appears to leave little or no opportunity for some committees to provide input on which grants receive funding or to hold public discussion of the relative merits of all applications. As a result, those applications not sponsored by the tribe are not reviewed by the committee. The benefit committees subsequently granted the funds to recipients that could not always demonstrate casinos' impacts. According to our review of minutes from benefit committee meetings, the full benefit committees appear not to have discussed, reviewed, or considered those applications not sponsored by the tribes that may or may not have been able to demonstrate measurable impacts from casinos. According to its county counsel, Amador County's process differs in that the applications are submitted directly to the chief executive officer of the local casino but are then reviewed by the benefit committee for selection prior to receiving tribal sponsorship. Although the grant application also describes this process, the county did not provide any meeting minutes or written procedures demonstrating how the applications were reviewed and processed.

The law establishing the distribution fund directs the benefit committees to consider the impact of casinos when selecting grants. Specifically, the law states that the benefit committees shall select only grant applications that mitigate impacts from casinos on local jurisdictions. Additionally, the law requires that

Benefit committees must select only grant applications that mitigate impacts from casinos on local jurisdictions.

if a local jurisdiction approves an expenditure that mitigates a casino's impact and that also provides other benefits to the local jurisdiction, the grant selected shall finance only the proportionate share of the expenditure that mitigates the impact from the casino. These requirements encourage the distribution of grant funds in amounts that are sufficient for addressing a casino's impact and allow funds to be used to mitigate several impacts, rather than funding in their entirety expensive mitigation projects that are only partially related to a casino.

Our review of the laws related to grant selection suggests that they intend benefit committees to select grants before obtaining tribal sponsorship of the grants. Our concern regarding the processes being used by the various counties is not intended to suggest that tribal sponsorship is irrelevant or that it cannot add value to the process. Not only is tribal involvement required both by compacts and by state law, but it is also an important aspect of the process. Tribes are involved in selecting the grants, through their membership on the benefit committees, and in evaluating the impact of the casinos on local government, through the sponsorship requirements. However, requiring the benefit committee to select grants before obtaining tribal sponsorship has several inherent benefits. Not only does the consideration of each grant application by the benefit committee in a public meeting allow for discussion and public comment on each application's relative merits, but it also presents the opportunity for an applicant to provide additional information and clarification on the application.

Further, delegating these responsibilities to the tribes appears to encourage the belief among participants that these are tribal funds and that the tribes decide who should receive distribution fund grants. In fact, after being approached by the tribe, the city of Desert Hot Springs applied for a grant that, according to a management analyst in the police department that administered the grant, was to provide child care for casino employees. In this case, a representative from the city of Desert Hot Springs stated that it used the funds to provide children's science fairs and camps instead of the services described in its grant application. The city notified the tribe of how city residents would benefit, and the city requested the tribe's assistance to ensure that city residents employed by the casino would be notified. In another instance, Yolo County approved grant funding to a local school district, which is an ineligible entity, because the tribe expressed a desire for the funds to be awarded to the school district. We discuss this grant in more detail in a later section of this report.

Grant recipients failed to provide evidence that quantified the casinos' impacts and thus, recipients may be receiving far more or far less funding than is necessary to mitigate particular impacts.

Although many local governments could not quantify their respective casinos' impacts, we acknowledge that these and other purchases are beneficial to the local governments. The grants that we reviewed were used to purchase a new fire truck, improve police departments' communications systems, allow better law enforcement coverage, provide hot lunches for senior citizens, and fund shortfalls to ensure that existing services and programs, such as a science camp for local students and fire protection services, could continue. Many of the applications for these grants provided logical arguments regarding how the grant recipients might be affected by the casinos. However, these grant recipients failed to provide evidence that quantified the casinos' impacts. Without such evidence, recipients may be receiving far more or far less funding than is necessary to mitigate particular impacts. If distribution funds are used for a project that does not bear a relationship to the impact of a casino, other local governments in the area are unable to fund mitigation projects. Further, the true impact of the casino is not clear. If benefit committees were able to communicate in their annual reports the number of applications with quantifiable casino impacts that the committees were unable to fund, the Legislature might better understand the local governments' need for funding to mitigate these impacts.

In addition, a more rigorous review of grant applications may be in order, given the proportion of grants we reviewed that did not quantify the impact of a casino. Specifically, such a review should focus on the evidence the grant application provides of the casino's impact and on the relationship between the increased workload due to the impact and the proportion of the grantee's overall funding that is provided by the grant. Such a review would ideally be conducted by an individual with some degree of independence and impartiality. Because counties are already reimbursed for up to 2 percent of the amount awarded to administer grants, they may be better served by using these funds to reimburse the county auditor or controller—positions that require a degree of independence and skill in assessing quantifiable subjects—to review the grant applications and certify those that quantify the casino's impact and fund projects in proportion to the casino's impact.

Some Cities and Counties Did Not Receive the Amounts That the Law Set Aside for Them

We found that in some cases benefit committees awarded cities and counties less money than the law set aside for them. The nexus tests—tests of geographical proximity established in law—determine the minimum amount that certain cities and counties should receive from the individual tribal casino accounts in each county (nexus set-aside). Five of the seven counties we sampled

were required to perform a nexus test, but four cities in three of these counties, and two separate set-asides for one of the counties, did not receive the full amount the nexus test set aside for them. Because some cities and counties did not receive their full nexus set-aside, they may not have been able to fully mitigate the impact of neighboring casinos.

California courts define an appropriation as an authorization by the Legislature for the expenditure of a certain amount of money for a specific purpose. The purpose of the fiscal year 2008–09 appropriation for distribution fund grants was for grants described in Section 12715 of the California Government Code (Government Code), which includes several requirements. One of these requirements is the nexus test. Specifically, the law requires benefit committees in counties with tribes that pay into the distribution fund to conduct a nexus test based on the criteria shown in Figure 5 on page 17 in the Introduction. Sixty percent of the distribution fund money in each individual tribal casino account in those counties is appropriated for the benefit committee to allocate to cities and counties through the nexus test, which uses various criteria to determine a local government's proximity to a casino and sets aside minimum amounts for those cities and counties that meet a certain number of the nexus criteria. This process should guarantee that cities and counties close to a casino receive the majority of the funds in a particular county. However, we found that benefit committees in several counties did not award cities and counties the full amount that the law set aside for their nexus grants.

In total, we identified five local governments that received \$1.2 million less than the nexus test set aside for them. For example, in Santa Barbara County, the nexus set-aside for the city of Solvang (Solvang) was \$397,000, but Solvang was awarded only \$173,000. Similarly, in Amador County, the nexus set-aside for the city of Sutter Creek was \$65,000, but the city was awarded only \$31,000. Finally, in Riverside County, nexus set-asides for two cities and two different nexus set-asides from different casinos for the county totaled \$3.5 million, but the funds awarded to those entities from these individual tribal casino accounts totaled \$2.5 million. In all but one case, cities and counties received some level of funding; however, the amounts were less than the nexus set-asides and the money was instead awarded to other cities and counties.

The counties described several reasons for not awarding cities and counties the full amount of their nexus set-asides. In Riverside, according to a county representative, the Indian tribes did not sponsor the full amount of the applications in two instances related to the county and one related to the city of Temecula. In a fourth case, according to a city representative, it appears that the city of Palm Desert did not apply for a grant. In another instance,

We identified five local governments that received \$1.2 million less than the nexus test set aside for them.

One county indicated that they were unaware of how to correctly compute the full amount of the nexus set-aside because of an oversight when reviewing the law.

according to a county representative, Amador County—because of contradicting documentation and no direct knowledge of county deliberations or decisions—could not explain how the nexus determinations were made or why projects were funded in the amounts granted. In the third county, Santa Barbara, the assistant to the county executive officer stated that the benefit committee chose to partially fund Solvang’s grant after weighing the perceived benefit of the project as well as the casino’s impact on other local jurisdictions in the county. Furthermore, according to the assistant to the county executive officer, they were unaware of how to correctly compute the full amount of the nexus set-aside for Solvang because of an oversight when reviewing the law. Although Riverside informed cities and county departments of the amounts of the nexus set-asides, neither Amador nor Santa Barbara could provide us with documentation of such notification. If cities and counties are not aware of the amounts of their nexus set-asides, they may not apply for the full amount of grant funding or raise an objection if they are not awarded the full amount. This lack of awareness likely reduces pressure on benefit committees to award funds according to the nexus test.

While benefit committees should award grants only for purposes that mitigate the impacts of casinos, awarding to a local government entity the money set aside at the direction of the Legislature for a different specific local government entity means that the money is not being spent for the purpose, and in the amount, authorized by the Legislature. Throughout Government Code, Section 12715—the section of law describing the use and allocation of distribution fund grants—the Legislature generally requires that funds not spent for authorized purposes revert back to the distribution fund. For example, funds not awarded from a county tribal casino account or an individual tribal casino account by the end of each fiscal year are required to revert back to the distribution fund. Likewise, if a grant recipient uses grant funds for an unrelated purpose, the grant terminates immediately and the amount of the grant not yet spent reverts back to the distribution fund. Although the law contains no such express requirement for nexus funds that are not awarded as the law directs, we believe it is reasonable to expect that funds not used for the purpose authorized by the Legislature should return to the fund from which they were appropriated. Therefore, the Legislature should clarify the law if it wishes to require that nexus set-aside funds revert back to the distribution fund when benefit committees are not able, or choose not, to award the full nexus set-aside to the appropriate cities and counties.

One Grant Benefited a School District That Was Ineligible for Funding

Our review also identified a concern with the eligibility of the grant recipient in one case. In Yolo County, the benefit committee awarded a \$336,000 grant to the Esparto Unified School District despite a state law excluding school districts from the local jurisdictions allowed to receive funds. The awarding of this grant appears to have several causes. Although he was not filling the role at that time, Yolo County's county-tribe coordinator told us that he was unaware that school districts were ineligible by law for mitigation grants. He also told us that the county did not solicit grant applications and that it simply discussed possible grants with the tribe in advance of the benefit committee's meeting to select the grant. According to internal county e-mail messages, the tribe expressed a desire to award the grant to the Esparto Unified School District. The proposal memo written by the county-tribe coordinator stated that the grant funds would be used to restore programs to which cuts would be made, such as computer education, Academic Decathlon, athletics, and student transportation. Because school districts are not eligible to receive distribution fund grants, the benefit committee's award of a grant to supplant educational funding violates the law.

Although we recognize that there are many potential impacts from tribal casinos that local government agencies can mitigate with distribution fund grants, the Legislature has defined which entities are eligible for funding and has established specific purposes for the money distributed by this fund. Providing money to school districts may be a laudable goal; however, state law specifically excludes school districts from the definition of local government agencies eligible to receive distribution funds. Because local governments are unable to impose taxes and fees on tribes, the distribution fund grants offset the increased burden placed on local governments by casino operations, and the requirements established for the granting of these funds help direct the money to those local governments most affected by casino operations. If entities other than the intended local governments are receiving these funds, there is less money available to fund grants for the intended purpose of mitigating casinos' impacts in eligible local governments.

Some Benefit Committee Members Failed to Meet Financial Disclosure Requirements

We found that many county benefit committee members failed to provide timely, accurate statements of economic interests, as required by state law. Four of the counties we reviewed could not provide some required statements of economic interests for members serving on

In Yolo County, the benefit committee awarded a \$336,000 grant to a school district despite a state law excluding school districts from local jurisdictions allowed to receive funds.

We identified several concerns related to the statements of economic interests including two that were filed more than one year after the filing deadline.

benefit committees in fiscal year 2008–09. The Political Reform Act of 1974 (political reform act) requires specified state and local officials and employees with decision-making authority to file statements of economic interests that are intended to identify conflicts of interest that an individual might have. The political reform act also requires local government agencies to adopt a conflict-of-interest code, and the act describes various provisions that the code must include. Some counties we reviewed have adopted codes that fail to meet all the required provisions, leaving benefit committee members and county officials unaware of their responsibilities to identify potential conflicts of interest. If benefit committees cannot identify potential conflicts, they increase the risk that their decisions and awards could subsequently be called into question or criticized.

As Table 5 indicates, we identified several concerns related to the statements of economic interests. We received 37 of the 49 required statements of economic interests that we requested for the benefit committee members in the seven counties we reviewed. However, two of the statements we received were filed more than one year after the filing deadline. In addition, 15 benefit committee members filed statements of economic interests because they held other positions that required the statements, but the members did not include their respective benefit committee on their statements when listing the agencies for which they were filing.

We also found that in two counties the benefit committees' conflict-of-interest codes did not meet the requirements of the political reform act. In Santa Barbara County, the code did not identify the committee members as designated individuals required to file statements of economic interests. In Shasta County, the code did not specify any of the provisions required by the political reform act, such as requiring committee members to file statements of economic interests, specifying when members must file, or identifying which financial interests they need to disclose. The benefit committee in Amador County provided a document with a conflict-of-interest code that meets the requirements of the political reform act; however, according to the Amador County clerk of the board, it was on the benefit committee's agenda for a meeting held less than a month before the 2009 filing deadline for statements of economic interests but there is no record that the code received approval.

Table 5
Summary of the Indian Gaming Local Community Benefit Committees' Conflict-of-Interest Codes and Statements of Economic Interests by County

COUNTY	CONFLICT-OF-INTEREST CODE APPROPRIATELY REQUIRES BENEFIT COMMITTEE MEMBERS TO FILE STATEMENTS OF ECONOMIC INTERESTS	NUMBER WHO FAILED TO FILE	NUMBER OF STATEMENTS OF ECONOMIC INTERESTS FILED	ISSUES WITH STATEMENTS OF ECONOMIC INTERESTS FILED	
				NUMBER WHO FILED MORE THAN 90 DAYS LATE*	NUMBER WHO FAILED TO INDICATE STATEMENTS APPLIED TO BENEFIT COMMITTEE
Amador	Yes	0	7	2	5
Humboldt	Yes	2	5	0	2
Riverside	Yes	0	7	0	1
San Diego	Yes	0	7	0	0
Santa Barbara	No	3	4	0	3
Shasta	No	2	5	0	2
Yolo	Yes	5	2	0	2
Totals		12	37	2	15

Source: Bureau of State Audits' interviews with county officials and review of Indian Gaming Local Community Benefit Committees' conflict-of-interest codes.

* We used 90 days as the threshold for late filing because this is the deadline after which filing officers are to refer nonfilers to the Fair Political Practices Commission.

The political reform act, which seeks to bar public officials from using their positions to influence government actions in which they may have a financial interest, establishes various requirements related to conflicts of interest. For example, it requires each employee position designated by an agency to file with that agency a statement of economic interests disclosing annually, and within 30 days of assuming or leaving office, his or her reportable investments, business positions, interests in real property, and income. The statements require filers with no reportable financial interests to declare that fact on the cover page. Additionally, the statements require filers to list the agency or agencies to which the statement applies. The political reform act also requires local government agencies, of which benefit committees are a type, to adopt conflict-of-interest codes. The codes must designate the employee positions that must file statements of economic interests.

County officials cited various reasons for their shortcomings in this area. For example, the filing officer for Shasta County said she was unaware of the requirement for committee members to file, and a county administrator in Santa Barbara County believed the members filed directly with the county elections board due to their other responsibilities. However, because the benefit committee members were not designated individuals under the conflict-of-interest code, the elections board was not

aware that members were to file statements with the board. Santa Barbara County has since added the benefit committee to its conflict-of-interest code for county departments.

In Humboldt and Yolo counties, the filing officers did not follow Fair Political Practices Commission (FPPC) guidelines. For example, according to the former benefit committee filing officer in Yolo County, the individual holding the filing officer position for the benefit committee changed several times in a short period, and the former filing officer did not receive instruction on this part of her duties. The former filing officer stated that she did not take the steps recommended by the FPPC to ensure that designated individuals filed statements on time or at all. These steps include notifying benefit committee members about the deadline to file statements of economic interests or following up when the deadline had passed without a member filing a statement. The Amador County filing officer was unable to provide any details about efforts to collect statements from benefit committee members who failed to file on time.

The failure to follow the provisions of the political reform act and to provide accurate statements of economic interests is troubling for several reasons. When designated individuals do not file statements of economic interests, benefit committees may be unaware of conflicts of interest. In addition, the failure to provide accurate statements in a timely manner not only may be perceived by the public as an effort to conceal conflicts of interest, but may also prohibit public review of the documents, which is a key aspect of oversight. Finally, if benefit committees cannot identify potential conflicts, they increase the risk that their decisions and awards may subsequently be questioned or criticized.

Recommendations

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 amendment should require that counties forfeit equivalent amounts of future money from the distribution fund if their benefit committees approve grant applications that fail to provide evidence that projects are funded in proportion to casinos' impacts. To make certain that the projects' eligibility, merit, and relevance are discussed in a public forum during the projects' selection, the Legislature should also clarify that benefit committees should meet to consider applications before submitting them for tribal sponsorship.

Alternatively, 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 a casino's impact.

To provide an incentive for benefit committees to award cities and counties the amounts that the Legislature has appropriated to them for mitigating casino impacts, the Legislature should require that grant funds allocated for each city and county according to the nexus test revert to the distribution fund if they are not awarded to that city or county.

To help ensure that they meet the grant requirements established in the Government Code, counties should take the following steps:

- Require that the county auditor review each grant application to ensure a rigorous analysis of a casino's impact and of the proportion of funding for the project provided by the grant. Benefit committees should consider a grant application only when the county auditor certifies that the applicant has quantified the impact of the casino and verifies that the grant funds requested will be proportional to the casino's impact.
- Review the law for changes that may affect applicants' eligibility for distribution fund grants before awarding the grants so that ineligible entities do not receive grants.
- More rigorously review applications that are to be administered and spent by an entity other than the local government that applies for the funds. Specifically, benefit committees should require that each grant application clearly show how the grant will mitigate the impact of the casino on the applicant agency.
- Ensure that eligible cities and counties receive the proportional share of funding they are set aside according to the nexus test by making the governments aware of available distribution fund grants and of the minimum grant amounts that are set aside for them under the nexus test.
- Encourage eligible local governments to submit multiple applications so that the benefit committees can choose appropriate projects while ensuring that local governments are awarded the amount defined in law.
- Require benefit committee filing officers to avail themselves of the free training provided by the FPPC so that the filing officers are aware of and meet their responsibilities under the

political reform act. Counties should also adhere to FPPC guidelines for notifying filers of the need to submit statements of economic interests.

- Ensure that benefit committees' conflict-of-interest codes comply with the political reform act by reviewing the act and their codes, and changing the codes as necessary to meet the act's requirements.

Chapter 2

AMENDMENTS TO TRIBAL COMPACTS HAVE DECREASED INDIAN GAMING SPECIAL DISTRIBUTION FUND REVENUE, BUT HAVE ALSO RESULTED IN AGREEMENTS TO MITIGATE CASINO IMPACTS

Chapter Summary

Tribes with new and amended tribal-state gaming compacts (post-1999-model compacts) in the State are not required by their compacts to contribute to the Indian Gaming Special Distribution Fund (distribution fund) but must negotiate directly with local governments for projects that mitigate the effects of casinos. Revenue for the distribution fund has therefore fallen markedly. Indeed, since fiscal year 2006–07, annual distribution fund revenue has declined by more than \$100 million. Although distribution fund revenue has fallen, revenue for the Indian Gaming Revenue Sharing Trust Fund (trust fund) and the State’s General Fund have increased. Revenue to the trust fund from license fees for gaming devices increased from \$32 million in fiscal year 2007–08 to \$49 million in fiscal year 2009–10, decreasing the amount of the shortfall in the trust fund and the resulting amount required from the distribution fund (referred to as backfill). However, even with this reduction in funding obligation, the distribution fund is likely to exhaust its reserve sometime between fiscal years 2012–13 and 2014–15, depending on the level of expenditures.

The California Government Code (Government Code) defines the methodology for allocating distribution fund money to the counties, however, it did not anticipate the amendments to compacts that have occurred since the law was enacted and that have altered the number of gaming devices in counties during the course of a year. As a result, the distribution fund allocations for fiscal year 2008–09 were partially based on obsolete device counts, and two counties received approximately \$2 million more than they would have if they had received proportional allocations. Therefore, the fiscal year 2008–09 allocations appear not to have met the law’s intent to prioritize funding for local governments impacted by casinos owned by tribes that pay into the distribution fund.

Although tribes with amended compacts no longer pay into the distribution fund, the amended compacts require that tribes negotiate directly with local governments to offset the impacts of casino expansion. Specifically, the amended compacts require that tribes enter into negotiations with impacted local governments once the tribes have filed environmental impact reports for casino expansion. We found that many tribes with amended compacts had entered into negotiations with local governments. The results of these negotiations between

tribes and local governments included mitigation measures for a wide range of impacts as well as financial compensation from the tribes for mitigation projects and services provided by the local governments.

Amended Compacts Significantly Decrease Contributions to the Distribution Fund, and Additional Gaming Devices Provide More License Revenue to the Trust Fund

Allowed Uses for the Funds Administered by the Gambling Commission

Indian Gaming Special Distribution Fund

- Makes up for any shortfall in the trust fund.
- Funds gambling addiction and awareness programs.
- Pays for the regulatory activities of the California Gambling Control Commission and the Department of Justice.
- Supports local governments impacted by tribal gaming.

Indian Gaming Revenue Sharing Trust Fund

Each eligible tribe receives an allocation of \$1.1 million per year.

Sources: California Government Code, sections 12012.75, 12012.85, and 12012.90.

Since fiscal year 2008–09, the annual expenditures of the distribution fund have exceeded its revenue. Several factors have contributed to this situation. First, revenue has fallen drastically. The tribal-state gaming compacts that the Legislature voted to ratify in 1999 (1999-model compacts), and those that are identical in all material respects, require that each tribe that operates more than 200 grandfathered devices deposit a percentage of its average net wins into the distribution fund. However, these revenues have decreased as amended compacts are ratified and distribution fund payments are eliminated. Since 2004 a total of 12 compacts have been amended, eliminating the payments of some of the largest contributors to the distribution fund and, as a result, annual distribution fund revenue fell by more than \$100 million between fiscal years 2006–07 and 2008–09. State law specifies that the money deposited in the distribution fund may be appropriated by the Legislature to address four prioritized needs, as the text box shows.

The amount required to cover shortfalls in the trust fund totaled more than \$33 million in fiscal year 2009–10. However, although the trust fund still receives between one-third and about one-half of its annual resources from the distribution fund, the trust fund has relied less on the distribution fund in recent years. There are two reasons for this. First, as the result of *Cachil Dehe Band of Wintun Indians of the Colusa Indian Community v. California*³ court case, the total number of licenses issued for class III devices that can be operated in the State has increased, and fees for those additional licenses have provided additional revenue for the trust fund. In addition, some amended compacts increased trust fund revenue in the form of flat-fee payments. As Table 6 shows, between fiscal years 2007–08 and 2009–10, annual trust fund revenue from license fees and interest increased from \$32 million to nearly \$49 million a year. Because of this additional revenue, less money is required from the distribution fund to supplement the annual shortfall. If additional class III licenses are issued, increased fee revenue going into the trust fund may further decrease the need for distribution fund support.

³ 618 F.3d 1066.

Table 6
Revenues, Expenditures, and Fund Balances for the Indian Gaming Revenue Sharing Trust Fund (Cash Basis)
Fiscal Years 2000–01 Through 2009–10
(In Thousands)

	FISCAL YEARS									
	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10
Revenues										
Income from license fees and interest	\$42,845	\$14,602	\$30,838	\$31,771	\$28,552	\$32,717	\$32,887	\$32,234	\$40,367	\$48,656
Transfers from Indian Gaming Distribution Fund (distribution fund) for projected current-year shortfalls						50,000*	47,000	46,200	39,200	33,700
Transfers from distribution fund for prior-year shortfalls				50,569	45,267	48,484*				
Expenditures										
Distributions	(24,800)	(15,100)	(40,420)	(29,847)	(32,440)	(65,263)	(77,000)	(77,000)	(77,000)	(76,246)
Distributions for prior-year shortfalls				(49,610)	(45,267)	(48,484)				
Fund Balances	\$18,045	\$17,547	\$7,965	\$10,848	\$6,960	\$24,414	\$27,301	\$28,735	\$31,302	\$37,412

Source: California Gambling Control Commission's cash basis fund condition statements for the Indian Gaming Revenue Sharing Trust Fund.

Note: The fund balance for fiscal year 2009–10 includes \$7.7 million in disbursements and interest from prior years that is being held pending resolution of various tribal factors.

* Transfers in this year funded the shortfall for the prior fiscal year as well as the projected shortfall for fiscal year 2005–06.

The fiscal year 2008–09 level of revenue was insufficient to fund all of the statutory priorities—in fact it was sufficient to fully address only the first two priorities.

Money from the distribution fund is also used to support problem-gambling prevention programs, the operating costs for the regulatory functions of the California Gambling Control Commission (gambling commission) and the Department of Justice's (Justice) functions related to Indian gaming, and local mitigation grants. The amount appropriated for mitigation grants has varied significantly over the past four years, but in years in which the Legislature has appropriated money from the distribution fund for this purpose, the amount has traditionally been a significant expenditure.

As shown in Table 7, the current level of revenue is insufficient to fund all of the statutory priorities. In fact, the distribution fund's revenue of nearly \$49 million in fiscal year 2008–09 was sufficient to fully address only the first two priorities, supplementing the trust fund and supporting problem-gambling prevention programs, while the remaining revenue addressed about 7 percent of the gambling commission's and Justice's expenditures related to Indian gaming. If we assume that expenditures for the first three priorities will remain the same as the amount estimated for fiscal year 2010–11, the fund will quickly exhaust its reserve even if no further money is allocated for local support in the form of mitigation grants. If appropriations of \$30 million for mitigation grants in fiscal years 2011–12 and 2012–13 are provided, the fund balance will be exhausted during fiscal year 2012–13. Alternatively, the Legislative Analyst's Office has suggested that the annual appropriation for mitigation grants should be reduced to \$5 million or \$10 million per year to preserve the distribution fund's balance for a longer period. Additionally, it has suggested that the allocation methodology be altered to ensure that only the highest-priority infrastructure, problem-gambling, and public safety needs resulting from casinos' presence receive funding and that any county receiving mitigation payments from a tribe with a recently amended compact not also receive substantial funding related to that tribe from the distribution fund. However, as Table 7 indicates, even if the Legislature appropriates only \$10 million a year for local mitigation grants, the balance would be exhausted during fiscal year 2013–14. To continue funding Indian gaming-related expenditures, other sources such as the General Fund will need to provide for some of these priorities. Although the amended compacts have resulted in a reduction in distribution fund revenue, the post-1999-model compacts do require tribes to provide revenues to the General Fund, unlike the 1999-model compacts. Therefore, while distribution fund revenue fell, the State Controller's Office (Controller) reported that the post-1999-model compacts provided revenues of \$392 million to the General Fund in fiscal year 2008–09. As the distribution fund balance is exhausted, future expenditures will need to be funded by other sources, and these General Fund revenues from Indian gaming may be one option.

Table 7
Revenues, Expenditures, and Actual and Projected Fund Balances for the Indian Gaming Special Distribution Fund
(In Thousands)

	FISCAL YEARS										
	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15		
Revenues	\$152,392	\$109,168	\$48,511	\$39,135	\$46,116 [†]	\$42,649	\$42,649	\$42,649	\$42,649		
Expenditures											
Revenue Sharing Trust Fund (trust fund) support	(47,000)	(46,200)	(39,200)	(33,700)	(31,200)	(31,200)	(31,200)	(31,200)	(31,200)		
Department of Alcohol and Drug Programs' problem-gambling prevention program	(3,125)	(3,280)	(7,870)	(7,980)	(8,426)	(8,426)	(8,426)	(8,426)	(8,426)		
Department of Justice's (Justice) and California Gambling Control Commission's (gambling commission) operating costs and miscellaneous	(18,847)	(21,113)	(26,816)*	(20,466)	(21,907)	(21,907)	(21,907)	(21,907)	(21,907)		
Mitigation grants	(29,963)	(283)	(29,902)		(30,098)						
Total Expenditures	(98,935)	(70,876)	(103,788)	(62,146)	(91,631)	(61,533)	(61,533)	(61,533)	(61,533)		
Balances	\$153,414	\$191,706	\$136,429	\$113,418	\$67,903						
Projection—No local support						49,019	30,135	11,251	(7,633)		
Projection—\$10 million local support						39,019	10,135	(18,740)			
Projection—\$30 million local support						19,019	(48,614)				

Sources: Governor's budgets for fiscal years 2008-09 through 2010-11, and the Bureau of State Audits' projection of future Indian Gaming Special Distribution Fund (distribution fund) balances based on the 2011-12 Governor's Budget.

Notes: We included contra-revenue items in expenditures and included adjustments to the fund balance in Justice's and the gambling commission's operating costs and miscellaneous category.

For projected trust fund support in fiscal years 2010-11 through 2014-15, we used the estimated figure for fiscal year 2010-11 as published in the 2011-12 Governor's Budget.

* In fiscal year 2008-09 there was a \$5 million transfer from the distribution fund to the Charity Bingo Mitigation Fund. This is included in Justice's and the gambling commission's operating costs and miscellaneous category.

† In fiscal year 2010-11 there is a \$3,467 transfer from the Charity Bingo Mitigation Fund; this is included in the revenues category.

Existing Law Does Not Anticipate the Amendment of Compacts, Causing Allocations to Be Partially Based on Obsolete Counts of Gaming Devices

In reviewing the allocations from the distribution fund to the counties in fiscal year 2008–09, we found that the Controller followed the requirements of the Government Code. This law—whose intent is to prioritize funding for local governments impacted by tribes that pay into the distribution fund—requires that allocations to these counties be based on the number of gaming devices subject to an obligation to contribute to the fund. The gambling commission provides information on this count. However, during the course of fiscal year 2007–08, amended compacts with the State were ratified for four tribes that operated contributing devices in two counties. As a result, these tribes no longer contributed to the fund during the last quarter of fiscal year 2007–08 to operate these devices, and the fiscal year 2008–09 allocation was not adjusted to reflect this fact. Although future allocations may reflect the change in the number of contributing devices, we believe that because the law does not address potential changes in the number of devices occurring during the course of the year, it distorts the stated intent of the allocation. Had the formula taken such a change into account and used a pro rata calculation to allow for the period over which each device was required to contribute, approximately \$2 million would have been allocated differently.

As Table 8 shows, the allocations to Riverside and San Bernardino counties totaled \$16.2 million. Had the law anticipated a change in the number of contributing devices in a county, this amount would have been decreased by approximately \$2 million, and 13 other counties would have received additional funds. For example, the county of San Diego would have received an additional \$503,000. Although during the fourth quarter, San Bernardino County would no longer have received a portion of the 95 percent of funds allocated to counties with tribes that operate contributing devices, this reduction in funding would have been partially assuaged by the \$82,000 it would have received in that quarter as a county that does not have contributing devices. However, it would have come at the expense of 10 counties that would have received approximately \$82,000 less funding in total.

Many Local Governments Have Negotiated Agreements With Tribes Operating Under Amended Compacts

While the revenue to the distribution fund has decreased, many local governments have negotiated written agreements with tribes to address the impacts of local casinos. Post-1999-model compacts require that before the commencement of any project, including casino construction or expansion, the tribe must file a tribal environmental impact report (impact report). No later than the issuance of the final impact report, the tribe must offer to begin negotiations with

Table 8
Actual Fiscal Year 2008–09 County Allocations Versus Allocations That Consider Compact Amendments

COUNTY	NUMBER OF GRANTS APPROVED	AMOUNT ALLOCATED	ALLOCATION UNDER PRO RATA CALCULATION	DIFFERENCE
Amador	10	\$616,826	\$717,433	\$100,607
Butte	7	1,328,145	1,544,770	216,625
Colusa	9	847,808	986,088	138,280
Del Norte	3	70,110	66,261	(3,849)
Fresno	7	1,769,110	2,057,658	288,548
Humboldt	7	177,890	168,124	(9,766)
Imperial	3	82,944	78,390	(4,554)
Inyo	6	191,610	222,862	31,252
Kings	1	713,944	830,390	116,446
Lake	14	874,056	1,016,617	142,561
Lassen	3	25,667	24,258	(1,409)
Madera	3	213,895	202,152	(11,743)
Mendocino	8	280,853	326,661	45,808
Modoc	0	17,468	16,509	(959)
Placer	9	290,779	274,815	(15,964)
Riverside	60	14,152,883	12,652,080	(1,500,803)
San Bernardino	4	2,031,590	1,606,042	(425,548)
San Diego	12	3,086,756	3,590,216	503,460
Santa Barbara	5	1,469,884	1,709,626	239,742
Shasta	4	527,583	613,634	86,051
Sonoma	3	186,683	176,434	(10,249)
Tehama	2	91,856	86,813	(5,043)
Tulare	4	545,957	635,004	89,047
Tuolumne	0	62,995	73,270	10,275
Yolo	1	342,708	323,893	(18,815)
Totals	185	\$30,000,000	\$30,000,000	\$0

Sources: Fiscal year 2008–09 Local Community Benefit Committee annual reports, State Controller’s Office county allocations, and Bureau of State Audits’ review of contributions to the Indian Gaming Special Distribution Fund.

impacted local governments, resulting in an enforceable written agreement that includes provisions for the mitigation of any casino impact or compensation for services provided by the local government. Although tribes with post-1999-model compacts are not paying into the distribution fund, local governments may still receive mitigation impact funding from the tribe through these written agreements.

We found that several tribes with post-1999-model compacts have negotiated written agreements with local governments to address mitigation of casino impacts. Twelve tribes have amended

their original 1999-model compacts, and six tribes have entered into new post-1999-model compacts. We found that nine of these tribes have filed impact reports with the State Office of Planning and Research since entering into these new and amended compacts, which obligates them to negotiate written agreements with local governments. Depending upon the compact, a tribe may be obligated to negotiate agreements with the county, surrounding cities, or other local jurisdictions that may provide services to the casino. Because we could not identify any central contact that would be aware of all negotiated agreements between tribes and local governments, we contacted the tribes directly. As Table 9 shows, we found that eight tribes with amended or new post-1999-model compacts had negotiated such agreements. These agreements included measures relating to the mitigation of several impacts, including noise pollution, air and water quality, and traffic control. The agreements also provided for monetary compensation, which ranged from tribal funding for a mitigation project to annual payments from the tribe for services provided by the local government. For example, in 2005 the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians entered into a written agreement with San Diego County as the result of a casino expansion project. This agreement included a tribal contribution of up to \$600,000 for road improvements, as well as an annual payment by the tribe to the county as compensation for the cost of services provided by the sheriff's department and the district attorney's office.

Although we did not review the adequacy of the mitigation provisions included in the written agreements, we verified in most cases that these agreements existed and that they included the mitigation provisions required by the compact amendment. We did not receive a response from four tribes that have an amended compact but have not filed an impact report since the amendment, and thus we are unable to confirm whether an agreement exists between those tribes and local governments. However, in many cases in which tribes with post-1999-model compacts have undertaken casino construction or expansion, tribes have complied with the requirements in their compacts to negotiate with local governments to ensure that casino impacts are addressed.

Table 9
Mitigation Agreements Negotiated by Tribes With Post-1999-Model Compacts

TRIBE	CASINO	AFFECTED GOVERNMENTS IDENTIFIED IN COMPACT	COMPACT RATIFICATION DATE	DATE THAT TRIBE FILED IMPACT REPORT	AGREEMENTS BETWEEN TRIBE AND LOCAL GOVERNMENTS
Agua Caliente Band of Cahuilla Indians	Spa Resort Casino	Riverside County and any affected city in which the gaming facility is located	7/10/2007	1/31/2006	No response
Buena Vista Rancheria of Me-Wuk Indians	No Casino	Amador County	9/29/2004	1/26/2007	Amador County
Coyote Valley Band of Pomo Indians	Shodakai Casino	Mendocino County	9/29/2004	NA	No response
Fort Mojave Indian Tribe of Arizona, California, and Nevada	No casino	County of San Bernardino, City of Needles	9/29/2004	NA	Not obligated
Iipay Nation of Santa Ysabel	Santa Ysabel Casino	San Diego County and any local governmental entities that will provide services to the casino or be adversely affected	10/11/2003	6/21/2004	San Diego County
La Posta Band of Diegueno Mission Indians	La Posta Casino	San Diego County and any local governmental entities that will provide services to the casino or be adversely affected	10/11/2003	2/26/2006	San Diego County
Morongo Band of Mission Indians	Morongo Casino Resort and Spa	Riverside County and any affected city in which the gaming facility is located or whose boundary is within 0.25 miles of the gaming facility	7/10/2007	10/1/2003	Currently in negotiations with Riverside County
Pala Band of Luiseno Mission Indians	Pala Casino Spa Resort	San Diego County	7/1/2004	11/28/2006	San Diego County
Pauma Band of Luiseno Mission Indians	Casino Pauma	San Diego County	7/1/2004	8/7/2007	San Diego County
Pechanga Band of Luiseno Mission Indians	Pechanga Resort and Casino	Riverside County and any affected city in which the gaming facility is located or adjacent to	7/10/2007	8/21/2003	No response
Quechan Tribe of the Fort Yuma Indian Reservation	Quechan Casino Resort	Imperial County	9/28/2006	1/26/2005	No response
Rumsey Indian Rancheria of Wintun Indians of California	Cache Creek Casino Resort	Yolo County	7/1/2004	4/30/2008	No response
San Manuel Band of Mission Indians	San Manuel Indian Bingo and Casino	San Bernardino County and any city in which the gaming facility is located or adjacent to	9/25/2007	10/18/2001	City of San Bernardino and San Bernardino County
Shingle Springs Band of Miwok Indians	Red Hawk Casino	El Dorado County	9/26/2008	NA	El Dorado County and the El Dorado County Fire District
Torres-Martinez Desert Cahuilla Indians	Red Earth Casino	Imperial County, Riverside County, and city of Coachella	10/11/2003	10/6/2004	No response
United Auburn Indian Community	Thunder Valley Casino	Placer county	7/1/2004	2/25/2008	No response
Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians	Viejas Casino	San Diego County	7/1/2004	8/10/2005	San Diego County
Yurok Tribe of the Yurok Reservation	No casino	Del Norte County and State of California	7/10/2007	NA	Not obligated

Sources: Tribal-state gaming compacts, tribal environmental impact reports, environmental impact reports, written agreements provided by the tribes, and California Government Code, sections 12012.5 through 12012.551.

NA = Not applicable.

Recommendation

The Legislature should amend the law for allocating distribution funds to counties to include provisions for prorating a county's distribution fund allocation based on the percentage of the year that each gaming device in the county is required to contribute to the fund. Such an amendment would ensure a more proportionate distribution when the number of contributing gaming devices changes during the course of the year.

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: February 15, 2011

Staff: Philip J. Jelicich, CPA, Deputy State Auditor
Jonathon D. Kline
Christopher P. Bellows
Alicia Anne Beveridge, MPA
Jack Peterson, MBA

Legal Counsel: Scott A. Baxter, JD

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 1999-model compacts. From 2003 to 2008, the Legislature ratified six new tribal-state compacts and amendments to 12 existing compacts (post-1999-model compacts), which were approved by the U.S. Department of the Interior's Assistant Secretary for Indian Affairs. As of June 2010 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 65,000.

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 from 2003 to 2008 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 due to its confidential nature. The gambling commission has requested that we not provide information on the number of devices operated at each casino as we did in our prior report on this subject titled *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, July 2007). During the course of the current audit, the gambling commission asserted that 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 noted that the precise scope of the confidentiality provisions in the compacts is 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, the gambling commission agreed that classifying casinos by size according to

various ranges of devices would not violate the various confidentiality requirements to which the commission is subject. As a result, we present such information in Table A, as well as the maximum number of gaming devices allowed by each compact 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	NUMBER OF GAMING DEVICES*	MAXIMUM NUMBER OF GAMING DEVICES ALLOWED
Amador	Buena Vista Rancheria of Me-Wuk Indians	2004			Unlimited [†]
	Jackson Rancheria of Me-Wuk Indians	1999	✓	●	2,000
Butte	Berry Creek Rancheria of Maidu Indians	1999	✓	●	2,000
	Mooretown Rancheria of Maidu Indians	1999	✓	●	2,000
Colusa	Cachil DeHe Band of Wintun Indians	1999	✓	●	2,000
Del Norte	Elk Valley Rancheria	1999	✓	●	2,000
	Resighini Rancheria	1999			2,000
	Smith River Rancheria	1999	✓	●	2,000
	Yurok Tribe	2007			99
El Dorado	Shingle Springs Band of Miwok Indians	2008	✓	●	5,000
Fresno	Big Sandy Rancheria of Mono Indians	1999	✓	●	2,000
	Table Mountain Rancheria	1999	✓	●	2,000
Humboldt	Bear River Band of Rohnerville Rancheria	1999	✓	●	2,000
	Blue Lake Rancheria	1999	✓	●	2,000
	Cher-Ae Heights Indian Community	1999	✓	●	2,000
	Hoopa Valley Tribe	1999	✓	●	2,000
Imperial	Quechan Tribe	2006	✓	●	1,100
	Torres-Martinez Desert Cahuilla Indians	2003	✓	●	2,000
Inyo	Paiute-Shoshone Indians	1999	✓	●	2,000
Kings	Santa Rosa Indian Community	1999	✓	●	2,000
Lake	Big Valley Band of Pomo Indians	1999	✓	●	2,000
	Middletown Rancheria of Pomo Indians	1999	✓	●	2,000
	Elem Indian Colony of Pomo Indians	1999 [‡]			2,000
	Robinson Rancheria of Pomo Indians	1999	✓	●	2,000
Lassen	Susanville Indian Rancheria	1999	✓	●	2,000
Madera	Picayune Rancheria of Chukchansi Indians	1999	✓	●	2,000
Mendocino	Cahto Indian Tribe	1999	✓	●	2,000
	Coyote Valley Band of Pomo Indians	2004	✓	●	2,000
	Hopland Band of Pomo Indians	1999	✓	●	2,000
	Manchester Band of Pomo Indians	1999 [‡]			2,000
	Sherwood Valley Rancheria of Pomo Indians	1999	✓	●	2,000
Modoc	Alturas Indian Rancheria	1999	✓	●	2,000
Placer	United Auburn Indian Community	2004	✓	●	Unlimited [†]
Riverside	Agua Caliente Band of Cahuilla Indians	2007	✓ [§]	●	5,000
	Augustine Band of Cahuilla Indians	1999 [‡]	✓	●	2,000

COUNTY	TRIBE	YEAR COMPACT OR MOST RECENT COMPACT AMENDMENT WAS RATIFIED	CASINO	NUMBER OF GAMING DEVICES*	MAXIMUM NUMBER OF GAMING DEVICES ALLOWED	
	Cabazon Band of Mission Indians	1999	✓	●	2,000	
	Cahuilla Band of Mission Indians	1999	✓	●	2,000	
	Morongo Band of Mission Indians	2007	✓	●	7,500	
	Pechanga Band of Luiseno Mission Indians	2007	✓	●	7,500	
	Soboba Band of Luiseno Indians	1999	✓	●	2,000	
	Twenty-Nine Palms Band of Mission Indians	1999	✓	●	2,000	
San Bernardino	Chemehuevi Indian Tribe	1999	✓	●	2,000	
	Fort Mojave Indian Tribe	2004			1,500	
	San Manuel Band of Mission Indians	2007	✓	●	7,500	
San Diego	Barona Group of Capitan Grande Band of Mission Indians	1999	✓	●	2,000	
	Campo Band of Diegueno Mission Indians	1999	✓	●	2,000	
	Ewiiapaayp Band of Kumeyaay Indians	1999			2,000	
	Jamul Indian Village of California	1999			2,000	
	La Jolla Band of Luiseno Mission Indians	1999			2,000	
	La Posta Band of Diegueno Mission Indians	2003	✓	●	350	
	Manzanita Band of Diegueno Mission Indians	1999			2,000	
	Pala Band of Luiseno Mission Indians	2004	✓	●	Unlimited [†]	
	Pauma Band of Luiseno Mission Indians	2004	✓	●	Unlimited [†]	
	Rincon Band of Luiseno Mission Indians	1999	✓	●	2,000	
	San Pasqual Band of Diegueno Mission Indians	1999	✓	●	2,000	
	Sycuan Band of the Kumeyaay Nation [#]	1999	✓	●	2,000	
	Iipay Nation of Santa Ysabel	2003	✓	●	350	
	Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians	2004	✓	●	Unlimited [†]	
	Santa Barbara	Santa Ynez Band of Chumash Mission Indians	1999	✓	●	2,000
	Shasta	Pit River Tribe	1999 [‡]	✓	●	2,000
Redding Rancheria		1999	✓	●	2,000	
Sonoma	Dry Creek Rancheria of Pomo Indians	1999	✓	●	2,000	
Tehama	Paskenta Band of Nomlaki Indians	1999	✓	●	2,000	
Tulare	Tule River Indian Tribe	1999	✓	●	2,000	
Tuolumne	Chicken Ranch Rancheria of Me-Wuk Indians	1999	✓	●	2,000	
	Tuolumne Band of Me-Wuk Indians	1999	✓	●	2,000	
Yolo	Rumsey Indian Rancheria of Wintun Indians	2004	✓	●	Unlimited [†]	

Sources: California Gambling Control Commission's Web site; California Government Code, sections 12012.5 through 12012.551; and California tribal-state gaming compacts.

* The number of current gaming devices operated by the tribe is ● 1–350, ● 351–1,000, ● 1,001–2,000, ● 2,001 and above.

† 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 operates two gaming facilities in Riverside County.

|| 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.

In 2007 the Sycuan Band of the Kumeyaay Nation negotiated a compact amendment that was ratified by the Legislature and, according to the *Federal Register*, received approval from the U.S. Department of the Interior. However, according to the California Gambling Control Commission, the Sycuan tribal government did not ratify the compact and as a result continues to operate under the provisions of its original 1999 compact.

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(Agency response provided as text only.)

Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231

January 19, 2011

Ms. Elaine M. Howle, State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Re: Draft Audit Report – Request for Review and Comment

Dear Ms. Howle:

This is in response to your letter of January 11, 2011 requesting review and comment of the draft report, titled "Indian Gaming Special Distribution Fund: Local Governments Continue to Have Difficulty Justifying Distribution Fund Grants". We have reviewed the draft report and do not have any comments.

Thank you for providing the California Gambling Control Commission with the opportunity to work with your staff in the development of this draft report.

Sincerely,

(Signed by: Joginder S. Dhillon for Stephanie Shimazu)

STEPHANIE SHIMAZU
Acting Chairperson

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(Agency response provided as text only.)

Amador County
810 Court Street
Jackson, California 95642

January 19, 2011

Elaine M. Howle, CPA*
California State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Re: Indian Gaming Special Distribution Fund
Report No. 2010-036

Dear Auditor Howle:

Thank you for the opportunity to meet with your staff and to review portions of the draft audit report for the above-referenced audit. We appreciate the opportunity to clarify some issues and questions that arose during the course of the audit and the subsequent report.

In accordance with the telephone conversation between Jon Kline of your office and Amador County Counsel Martha Shaver, the County was given until Thursday, January 20, 2011 to respond.

We have found the information provided to be useful and will use it in subsequent rounds of funding.

A complete response from the County of Amador is attached to this cover letter, as well as a separate response from Martin A. Ryan, Sheriff-Coroner of Amador County.

Thank you again for your attention and the courtesies of your staff.

Very truly yours,

(Signed by: Chuck Iley)

Chuck Iley
County Administrative Officer

* California State Auditor's comments begin on page 61.

COMMENTS FROM COUNTY OF AMADOR
INDIAN GAMING SPECIAL DISTRIBUTION FUND AUDIT (2010-036)
DRAFT REPORT DATED FEBRUARY 2011

① Quantification of Impacts by Sheriff's Office

During the course of the audit, the auditors had several interactions with the Amador County Undersheriff, in person, via telephone and by electronic mail. The Undersheriff, who has participated in numerous audits related to grant funding, provided answers, immediately and without hesitation, to every question posed. In relation to this specific audit, on several occasions the Undersheriff voiced his concern that the audit was going beyond the scope of the normal audit process, for example asking questions concerning annual voluntary funding contributions provided to Amador County from the Jackson Rancheria Casino, which has no nexus to SDF fund expenditures. Amador County expects that the audit process will be used solely to examine whether grant funds are spent appropriately, and not be used to discredit a program in order to kill it.

②

As detailed on page 7* of the draft report, the auditors found that the Amador County Sheriff's Office did quantify the impact of the casino and showed a proportional relationship to the amount of grant funding received. This finding supports that the Amador County Sheriff's Office has requested appropriate funding through SDF, substantiated by statistical data.

It is true that the Amador County Sheriff's Office uses electronic case files with pull-down and check-box data entry and statistical recordkeeping measures. However, the statement that there is a specific Amador County Sheriff's policy "to avoid mention of the casino in the description of the case unless being at the casino was relevant to the facts of the incident or the incident occurred at the casino" is not true. As described in the attached letter from Amador County Sheriff Martin A. Ryan to State Auditor Elaine M. Howle,

③ it is a standard law enforcement principle to include only relevant information in a report documenting a crime. The Amador County Sheriff's Office Policy Manual contains no directive directing omission of casino information. To the contrary, it would not be normal law enforcement practice to document in a report that a case is related to the casino unless the casino was relevant to the investigation.

On August 3, 2010 the auditors requested specific clarification as it relates to this issue in an electronic mail message. The Undersheriff responded to this question on August 4, 2010. The exchange is set forth verbatim as follows:

***QUESTION - AUDITOR BELLOWS** - Sheriff's deputies do not include if the incident is related to the casino in their narrative of the incident. This is because the Sheriff's department has instructed their deputies to include only narrative pertinent to the actual crime or incident.*

***ANSWER - UNDERSHERIFF WEGNER** - Correct, for off site incidents and reports, unless being at the casino was relevant such as a robbery that occurs on Ridge Rd. wherein the victim met the suspect at the casino, or similar circumstances, and then obviously any crime that occurs at the casino the report will document that the deputy was dispatched there or patrolling there.*

Amador County further disagrees with the statement on page 7 of the draft report that "Because the only indicator of the relationship to the casino is the indicator, we do not have sufficient evidence to verify whether the crimes were casino related or not." This statement is not factual, as a majority of the crime reports and arrests related to the casino occurred on the casino grounds and are documented as such in

④

* While preparing our draft report for publication, page numbers changed. Therefore, page numbers referred to throughout this response may be different in the final report.

the reports listing the casino address. The attached letter from Sheriff Ryan details that reports occurring on casino grounds during calendar year 2008 included 413 reported incidents, 214 responses from one or more deputy sheriffs, 153 written crime reports, 46 custodial arrests, and 6 misdemeanor citations. All of these reports listing the casino address are obviously documented as being casino-related and are clearly verifiable. For the same time period off-site incidents related to the casino included 35 written crime reports, 17 arrests, 37 citations and 359 traffic detentions; other than the traffic detentions, which are relatively minor, there are far fewer offsite incidents than those documented as occurring on the casino grounds.

Additionally, the auditors were offered the opportunity to examine all or a sample of the casino –related cases, as suggested by the Undersheriff in an electronic mail message dated September 21, 2010. The auditors chose not to pull and review a single incident report, crime report or arrest report. The auditors could have verified that the check-box data indicating that the incident was casino-related was correct by contacting those people who were victims of crimes, who were detained or arrested to ask them if they were enroute to or from the Jackson Rancheria Casino. The fact that they chose not to do so does not warrant that those funds be placed in the “Unable to Quantify” category.

⑤

The discussion of the draft report’s findings relative to the Amador County Sheriff is further elucidated in the attached letter from Sheriff Ryan to Auditor Howle dated January 19, 2011.

Selection Process

The County of Amador confirms that the process for selection of grants is as described on page 9 of the draft report, as reported to the auditors by both Amador County Counsel Martha J. Shaver and former County Administrative Officer Theresa Daly, who was CAO of Amador County during the period covered by the audit. Local jurisdictions submit applications directly to the Jackson Rancheria’s executive officer, but all applications are forwarded to the Local Community Benefit Committee for review and recommendation, without screening or selection by the Tribe. Following discussion by the Committee, the projects recommended for sponsorship are forwarded to the Tribe. (This process, as acknowledged by the auditors on page 9 of the draft report, was described in the grant application itself.) No information has been submitted to show that this process was not followed. In Amador County, the Local Community Benefit Committee and the Tribe have worked closely to ensure that grant selection is made cooperatively and in a manner that provides maximum benefit to the community.

Reversion of Funds for Improper Nexus Set-Aside

On page 15 of the draft report, the auditors opine that “the Legislature should clarify the law if it wishes to require that nexus set-aside funds revert back to the distribution fund when benefit committees are not able, or choose not to, award the full nexus set-aside to the appropriate cities and counties.”

Government Code section 12715 describes a complicated, perhaps overly intricate process for determining percentages of funds allocable to entities in various nexus categories. There is a serious question whether being overly prescriptive unnecessarily hampers local governments from distributing funds in a manner that addresses the most urgent impacts from casinos, particularly when individual jurisdictions in a particular regional area have agreed upon the most appropriate constellation of funded projects. Many departments of the State encourage regionalism in various aspects of their endeavors. Amador County suggests that, rather than amend the legislation to provide draconian penalties such as forfeiture if projects are not funded according to rigid, perhaps unresponsive statutory formulas, the legislation might be amended to provide more flexibility in awarding grants and thus allow the utilization of a more regional approach.

Filing of Statements of Economic Interest

We note that Table 18 shows that all Amador County Local Community Benefit Committee members filed Form 700 Statements of Economic Interest, although two statements were not timely filed. All City and County representatives timely filed their statements, although they failed to list the Local Community Benefit Committee as one of the agencies on behalf of which the statement was being filed. This is a technical violation at best, since all Statements were filed and were available to anyone who might have sought to review them. Committee members will be reminded in the future to make sure that they list the Local Community Benefits Committee on the front page of Form 700.

⑥

Martin A. Ryan
Sheriff-Coroner
700 Court Street
Jackson, CA 95642-2130

January 19, 2011

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

Re: SDF Audit

Dear Auditor Howle:

I am in receipt of a draft copy of the Bureau of State Audits audit findings entitled "Indian Gaming Special Distribution Fund: Local Governments Continue to Have Difficulty Justifying Distribution Fund grants", dated February 2011, Report #2010-036.

By way of background information, the Bureau of State Audits (BSA) contacted my Office in 2010 requesting detailed information for their use in this report. The assigned auditors dealt directly on the collection of data with my Undersheriff, James Wegner, a 21 year veteran of the Amador County Sheriff's Office. To say that this Office cooperated with the auditors is an understatement. Even considering their very detailed requests for information on the SDF related information, they overreached in my opinion in asking for details about an annual voluntary contribution made by the Jackson Rancheria which is in no way related to an SDF audit. As stated this is a totally voluntary action by the tribe, one which can be ended at anytime at their discretion. However, in the spirit of total cooperation, we provided this information, as did our County Auditor.

② ⑧

The Amador County Sheriff's Office takes great pride in the fact that we closely track casino related events that impact public safety as it relates to this Office. Cases or incidents that occur on the tribal lands are documented as such and we went so far as to add a dropdown box in our Record Information Management System (RIMS) in our vehicles to document off casino cases, incidents, and arrests for those casino visitors en route to or from the casino. My deputies ask those they stop offsite where they are going or coming from. If they respond that they are going to or from the casino the deputy checks the casino related space in the dropdown box to assist us in quantifying all casino related impacts.

In this correspondence I will specifically reference the statements from this document that are found on page 7* that related specifically to the Amador County Sheriff's Office. The exact text from this draft BSA report is as follows:

"One of the grantees in the 'Unable to Quantify' category shown in Table 4, the Amador County Sheriff, provided information that did quantify the impact of the casino and showed a proportional relationship to the amount of grant funding received. However, according to the undersheriff, although the Sheriff's department uses an indicator in its electronic files to indicate which incidents were casino-related, it is the Sheriff's policy to avoid mention of the casino in the description of the case unless being at the casino was

* While preparing our draft report for publication, page numbers changed. Therefore, page numbers referred to throughout this response may be different in the final report.

- ④ relevant to the facts of the incident or the incident occurred at the casino. Because the only indicator of the relationship to the casino is the indicator, we did not have sufficient evidence to verify whether the crimes were casino-related or not, and as a result, we included the grant in the 'Unable to Quantify' category".

I have documentation between the Undersheriff and BSA wherein the Undersheriff clearly explains the reason why we do not include information that an off-site contact was casino-related if it was not relevant to the specific crime or incident involved. This is NOT "the Sheriff's policy" as stated in the report. It is following the report guidelines established by the California Peace Officer's Standards and Training (POST) for all California law enforcement.

- ③ It is a basic standardized law enforcement principle to include only relevant information in a report documenting a crime. No such policy exists in this Office which directs staff to avoiding mention of the Jackson Rancheria Casino in the body of a report. The Amador County Sheriff's Policy on report writing for 2008, in part stated, "...the narrative is a documentation of the facts of the case, and description of the crime or complaint". It would be inappropriate to document in a report that a case is related to the casino unless the casino was relevant to our investigation.

POST, which certifies California peace officers and California law enforcement agencies mandates approved training as it relates to report writing. Specifically, Learning Domain #18, documents basic report writing training. Throughout that learning domain it references "the report must be organized and include facts to establish a crime has been committed"; "the inclusion of relevant information"; "elements of the crime, probable cause to stop and search/seize, recovery of evidence, and probable cause to arrest". Nowhere in this learning domain does it require or recommend the inclusion of irrelevant, non-crime related data.

Penalizing the Amador County Sheriff's Office for following standardized law enforcement protocol in report writing is unfair to this Office.

- ④ I further disagree with the report statement that, "Because the only indicator of the relationship to the casino is the indicator, we do not have sufficient evidence to verify whether the crimes were casino related or not". This is an inaccurate statement as the majority of the crime reports and arrests related to the casino occurred on the casino grounds and are clearly documented as such in the reports which list the casino address. Reports documented as occurring on casino grounds during calendar year 2008 included 413 reported incidents, 214 responses from one or more deputy sheriff's, 153 written crime reports, 46 custodial arrests, and 6 misdemeanor citations. Again, the address of the casino was clearly listed. For the same time period, off-site incidents included 35 written crime reports, 17 arrests, 37 citations and 359 traffic detentions.

- ⑤ Had BSA cared to examine the facts they reported as unverifiable, they would have taken the documented opportunity to review all of the cases or a sample thereof, as was suggested they do by Undersheriff Wegner. In fact, BSA did not review a single incident report, crime report or arrest report. BSA made no effort at all to verify the available information, rather they asked for and received statistical data only.

Most California law enforcement agencies are now using some form of electronic report writing and record management system, many agencies are issuing electronic citations and notices to appear, all of which, including statistical forms used by the State of California, at some level utilize either pull down or check box data input. Given this fact, based upon the criteria used by BSA, no information collected on any electronic form or report by any law enforcement agency in this state would meet their criteria for being verifiable.

- ⑦ The statement made by BSA that "Because the only indicator of the relationship to the casino is the indicator, we do not have sufficient evidence to verify whether the crimes were casino related or not" is a direct,

unsupported, and offensive attack on the credibility of the fine men and women of the Amador County Sheriff's Office and I take great exception to this statement. Checking a digital box or marking a pull down category is an act by a sworn law enforcement officer acknowledging and affirming that the incident was actually related to the casino and is no less credible than a statement of the same in a narrative report.

The statement made in this report by BSA that the information provided by the Amador County Sheriff's Office was not verifiable and, therefore, "Unable to Quantify" by their standards, is not supported by the facts. The facts do tend to indicate that there was a pre-determined outcome that was desired by BSA and the report merely supported their forgone conclusion. The facts do support that BSA ignored the opportunity to review the information which would have made our information quantifiable. The facts do support that the BSA report impugns the integrity of the professional men and women of the Amador County Sheriff's Office.

⑧

Sincerely,

(Signed by: Martin A. Ryan)

MARTIN A. RYAN
Sheriff-Coroner

Cc: The Honorable Jerry Brown, Governor, State of California
The Honorable Alyson Huber, Member, California State Assembly
Chuck Iley, CAO, County of Amador
John Plasse, Chairman, Amador County Board of Supervisors
Martha Shaver, Amador County Counsel

⑨

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Comments

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

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

The arguments regarding this single grant and the sheriff's disagreement with us regarding the necessary levels of evidence distract from the larger picture. Our criticism is not of the Sheriff's Office, but rather of the decisions to award funds made by the county benefit committee. Notably, the county fails to mention or address the fact that the applicants who received two of the three grants we reviewed were unable to provide information showing that they were proportional to the casino impact. In its singular focus on the grant to the county sheriff, the county has avoided the larger issue that the benefit committee has awarded grants to grantees that are unable to provide evidence of the casinos impact.

①

Amador's response suggests that they misunderstand the purpose and nature of the questions that they describe. Amador was the first county that we visited, and during the scoping process of the audit—during which we attempt to obtain the necessary background information related to the subject matter we are auditing from those with direct knowledge of it—we asked a variety of questions related to many aspects of Indian gaming. We collected a large amount of information for this purpose; however, our analysis of the Indian Gaming Special Distribution Fund grant did not take into account any voluntary contributions made by the tribe. Amador's concern that the audit process is being used to discredit a program in order to eliminate it is misplaced. At no point in the report do we suggest that the program be eliminated, and in fact, on page 40 we note that if the Legislature chooses in the future to maintain expenditures at their current level, the tribal contributions to the State's General Fund may be a source for doing so.

②

The information described in Amador's response, as well as the information provided in the attached letter from the sheriff, appear to be consistent with our description on page 23 that the Amador sheriff only includes mention of the casino in the description of the crime if it is relevant to the facts of the incident. If officers are instructed not to include a description of the relationship to the casino unless pertinent to the case, we fail to see why the county takes issue with our description on page 23. Further, the county has misrepresented the email it quotes in the response. The language

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attributed to audit staff was not a question, but rather a summary of the undersheriff's comments, memorialized in email form for him to confirm or correct as necessary.

- ④ As a result of the suggestion made by the county in its response on the number of incidents occurring directly on casino grounds, we have revised our analysis of this grant. Based on this additional perspective provided by the county on the proportion of the workload occurring solely at the casino address, we agree with the county that the grant is proportional to the casino workload and have altered our report accordingly. However, we stand by our determination that for those incidents not located at the casino, the information available to us does not allow us to determine the extent of their relationship to the casino.
- ⑤ The description of the undersheriff's suggestion that we review cases is disingenuous. While considering whether or not to review cases, audit staff summarized the undersheriff's comments in an email to him as follows: "Because the deputy's reason for determining [that] the incident is related to a casino is not present in the narrative, a further review of the incident reports would not yield any additional insight into how the incident and casino are related." The undersheriff confirmed the statement as follows: "Correct for the most part. If the incident occurred at the casino, a review of the incident would articulate that it was casino related solely by the address, however an event off grounds would not necessarily."
- ⑥ Amador's suggestion that "all statements were filed and were available to anyone who might have sought to review them" is misleading. Two statements were filed over a year late, and the date of the signatures on the forms was the same as the date that we received them.
- ⑦ The sheriff appears to misunderstand the nature of an audit. Audit standards require a review of evidence, not simply interviewing individuals and trusting the veracity of their statements. In this respect, to an auditor, a sworn law enforcement officer is similar to other individuals in state and local government that we audit on a daily basis.
- ⑧ Amador's criticisms are inconsistent and fail to grasp the purpose of the audit. The sheriff first suggests that our very detailed requests for information overreached, then states that we ignored the opportunity to review information. While we appreciate the additional information provided by Amador in its response, throughout the audit we provided grantees multiple opportunities to provide additional information beyond that in their application for funds. We allowed the sheriff and the county additional time to

provide information, and have reconsidered the grant in light of the additional information provided during the agency response period. The sheriff's suggestions that there was a pre-determined outcome desired, or that we chose to ignore opportunities to review relevant information are misplaced.

Finally, according to our chief legal counsel, the sheriff may have violated the Bureau of State Audits' (bureau) confidentiality laws when he apparently sent a copy of his response to our audit to an Assemblymember. State law makes it a misdemeanor for the officers and employees of a local government agency that has assisted the bureau in the course of an audit, or that has received a draft document from the bureau for comment and review, to release to the public substantive information pertaining to an ongoing audit (California Government Code, sections 8545 and 8545.1). We explained this prohibition to the sheriff and other county officials in our entrance conference before the audit began, reiterated this prohibition in the cover letter we sent with the draft, and included an admonition at the bottom of each page of the draft report indicating that the draft was confidential. Nonetheless, the sheriff's letter disclosed the bureau's preliminary findings and other substantive information from the audit in violation of the bureau's confidentiality statutes. As a result, we have requested that the sheriff refrain from such action in future audits, and we have also informed the district attorney of the county of Amador of our concerns regarding this breach of the bureau's confidentiality statutes.

⑨

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(Agency response provided as text only.)

County of Humboldt
825 5th Street, Suite 111
Eureka, CA 95501-1153

January 18, 2011

Elaine Howle*
State Auditor
California State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle,

This is a response to the draft "Indian Gaming Special Distribution Fund" report received by Humboldt County on January 11, 2011. Thank you for providing an opportunity for the County to comment on the report prior to its release.

The County has the following responses to the two recommendations included in the report:

Recommendation:

- Require that the county auditor review each grant application to ensure a more rigorous analysis of a casino's impact and of the proportionality of grant funding. Counties should only consider a grant application when the county auditor certifies that the applicant has quantified the impact of the casino and that the grant funds requested will be proportional to the casino's impact.

County Response:

Humboldt County agrees in part with this recommendation. The County agrees that conducting additional review to insure that the grant applications quantify the impact of the casino and that the funds requested are proportional may be warranted. We do not agree that the county auditor is the only option for this review and are concerned that this recommendation could delay the grant review process. We also do not believe that sufficient funds are provided to support this review process and still provide grant administration.

①

Recommendation:

- Require benefit committee filing officers to avail themselves of the free training provided by the Fair Political Practices Commission (FPPC) so that the filing officers are aware of and follow their responsibilities under the Political Reform Act of 1974. Counties should also adhere to FPPC guidelines for notifying filers to submit statements of economic interests.

* California State Auditor's comment appears on page 67.

County Response:

Humboldt County agrees with this recommendation. The benefit committee filing officer currently utilizes the free FPPC training and will adhere to the FPPC guidelines for notification.

In addition to the responses to the recommendations contained in the report Humboldt County has the following concerns regarding material contained within the body of the report:

- Some Local Governments Could Not Quantify the Impacts of Casinos, and Others Were Not Proportional or Unrelated to Casinos' Impacts

There are currently four casinos located within Humboldt County. Impact funds received are dramatically insufficient to mitigate for impacts to local infrastructure such as roads and sewers, law enforcement, emergency services, and health and human services demands. The County believes that all grant funds disbursed were utilized to mitigate casino impacts. In the future the benefit committee will work to insure that grantees can better quantify these impacts and their relationship to the funded projects.

- County Procedures for Application Review Should be Improved

Humboldt County provides the applications first to the tribes however their ranking and/or review does not impact the review by the committee. All applications are reviewed by the committee not just those supported by the tribes. Current application guidelines may not have made this process clear. The County will work to modify and clarify the guidelines to better reflect actual practice.

- Some Benefit Committee Members Failed to Meet Financial Disclosure Requirements

The County understands the importance of having benefit committee members file accurate statements of economic interests. The filing officer will continue to work with committee members to insure that they understand the need and importance of the financial disclosure requirements.

Sincerely,

(Signed by: Phillip Smith-Hanes)

Phillip Smith-Hanes
County Administrative Officer

Comment

CALIFORNIA STATE AUDITOR'S COMMENT ON THE RESPONSE FROM THE COUNTY OF HUMBOLDT

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

We agree with Humboldt that the county auditor may not be the only option for the review we suggest. However, as described on page 28, the county auditor position requires certain skills that would be useful in reviewing these grant applications. The recommendation is intended to supplant, not supplement, those reviews currently performed of grant applications proportionality to casino impacts that we concluded are ineffective.

①

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(Agency response provided as text only.)

County of Riverside's Response to the California State Auditor's* Report,
"Indian Gaming Special Distribution Fund: Local Governments Continue to
Have Difficulty Justifying 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: 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. Subsequent bills, SB 288 (Battin and Ducheny) and AB 158 (Torrico), clarified, modified and extended Sections 12712, 12715, 12716 and 12718 of the Government Code.

With roughly 44.8 percent of the statewide "grandfathered" machines, Riverside County receives approximately 43 percent of the statewide allocation of 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 five program years, \$71.7 million was allocated to 317 worthy projects. On average, more than 90 percent of the annual countywide allocation funds public safety and road projects.

On July 26, 2010, the Bureau of State Audits conducted an entrance conference and visited six grant recipients. An exit conference was conducted on November 30, 2010.

①

In response to the draft audit report titled "Indian Gaming Special Distribution Fund: Local Governments Continue to Have Difficulty Justifying Distribution Fund Grants," following is a summary of the BSA's comments, findings and recommendations and Riverside County's response.

BSA Comment:

The Bureau of State Audits (BSA) reported that Riverside County had one grantee unable to quantify casino impact (Page 5).† According to the report, Riverside County Fire Department has not tracked the wildland fires related to the local casino (Pechanga Casino); however, the report also stated that, according to the Fire Chief, in 2009, 34 percent of wildland fires occurred within the local casino's area of influence.

②

* California State Auditor's comments appear on page 71.

† While preparing our draft report for publication, page numbers changed. Therefore, page numbers referred to throughout this response may be different in the final report.

County of Riverside's Response to the California State Auditor's Report,
"Indian Gaming Special Distribution Fund: Local Governments Continue to
Have Difficulty Justifying Distribution Fund Grants"

Riverside County Response:

- ② Riverside County Fire Department does appear to be tracking casino related fire incidences or the Fire Chief would not have been able to provide the specific statistic for the local casino's area of influence.

BSA Comment:

Benefit Committees approved grant applications only after local tribes reviewed and selected the applications they wished to sponsor (page 8). The report goes on to say, "Although the law contains no explicit direction requiring benefit committees to select grants before obtaining tribal sponsorship, using the current process, these benefit committees are only technically fulfilling their duty to select grants and are not selecting grants prior to tribal sponsorship as the law intended."

Riverside County Response:

Riverside County agrees that the law does not contain explicit direction requiring benefit committees to select grants before obtaining tribal sponsorship. Further, this concern was not expressed in the 2007 audit and therefore, Riverside County concluded the procedure being followed was acceptable to the state.

BSA Finding:

Mr. Gilbert failed to list the Community Benefit Committee on his 2009 Form 700.

Riverside County Response:

- ③ Mr. Gilbert obviously was not attempting to subvert the Fair Political Practices Act requirement since he filed the Form 700, 20 days following his appointment to the Committee. In his subsequent filing, Mr. Gilbert did list his participation as an alternate on the Community Benefit Committee.

BSA Recommendation:

Tribes did not sponsor the amounts allowed under the law. In one case, it appeared the City of Palm Desert did not apply for a grant.

Riverside County Response:

Riverside County confirmed that the City of Palm Desert did not apply for grant funding.

Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE COUNTY OF RIVERSIDE

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

In the early stages of our audit, we requested six grant applications from Riverside. After review of those applications we selected four grants to review, as summarized in Table 4 on page 22.

①

Riverside's response illustrates the nature of our concern with the level of review applications currently receive. The 34 percent referenced by Riverside may appear to be, as Riverside assumed, the number of incidents related to the casino. In fact, however, the Riverside County Fire Department (fire department) deputy chief of administration confirmed via email on November 5, 2010, that the fire department cannot determine which incidents are a result of the casino's impact. Rather, as described on page 23 of the audit report, the incidents making up the 34 percent are *all* of the incidents located within a large portion of the county, which includes several communities, some of which are over 30 miles from the casino.

②

We did not indicate or suggest that the benefit committee member referenced in Riverside's response was attempting to subvert the requirements of the Fair Political Practices Act. The discussions in our report of various pieces of missing information illustrate that additional training may help ensure committee members avoid oversights such as this one, reducing the likelihood that their decisions and motives could later be open to question or criticism.

③

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(Agency response provided as text only.)

County of San Diego
1600 Pacific Highway, Room 212
San Diego, CA 92101

Ms. Elaine M. Howle, CPA, State Auditor*
California State Auditor
Bureau of State Auditor
555 Capitol Mall, Suite 300
Sacramento, CA 95814

January 18, 2011

Dear Ms. Howle,

This letter is to provide written response to the redacted copies that the County of San Diego ("County") received of your draft report *"Indian Gaming Special Distribution Fund: Local Governments Continue to Have Difficulty Justifying Distribution (of) Grant Funds"*, as a result of the audit you conducted on FY2008/09 Indian Gaming Special Distribution Fund (SDF) grants.

During the period of the audit, FY2008/09, San Diego received approximately \$3.1 million. For this round of competitive grants, the San Diego County Indian Gaming Local Community Benefit Committee (IGLCBC) received 35 proposals seeking nearly \$47 million, which far surpassed the funds available. Through a careful vetting process the IGLCBC awarded funding to the 12 projects using established application policies and procedures for grants that follow the priorities specified in Section 12715(g) of the Government Code. The County is proud of the process established by the IGLCBC; it is one that ensures careful assessment of applicant eligibility for grants from local jurisdictions impacted by tribal gaming through a competitive public process. And as part of fulfilling the County's objective for continuous improvement, we welcome feedback for improving that process.

The County's response to the draft report is provided below. Please note that we cannot verify the context of discussions or the information provided during site visits, since the state requested that committee administrative staff not attend.

Page 8[†]: Acknowledgment of San Diego County IGLCBC process

The County is pleased to see that its IGLCBC grants process is held out as an example of a good public vetting process. The County is committed to the role of administering a competitive grants process. In doing so, we strive to continually improve our process.

Page 4: The City of El Cajon

While we do think the IGLCBC performed a solid level of diligence evaluating this application, we agree that a more detailed analysis can be performed in the future. The City of El Cajon has provided substantial additional information for the street resurfacing/casino bus terminal grant project. To verify the number of bus trips on the local streets in El Cajon to pick up casino customers, the El Cajon City Traffic Engineer contacted operators of both the Casino Bus Terminal and El Cajon Transit Center to determine the number of buses scheduled

* California State Auditor's comments appear on page 75.

† While preparing our draft report for publication, page numbers changed. Therefore, page numbers referred to throughout this response may be different in the final report.

- ① each day. A review of the buses' ingress to the properties was monitored on different days to verify the street patterns being used by the various buses. Based on this information, it was determined that an average of 70 buses per day used their local streets to transport customers to the various gaming facilities, with 33 buses going to Barona, 17 buses to Viejas, 17 buses to Sycuan, and 3 buses to Golden Acorn. Although 24 hour bus counts were not taken, we are confident that the methodology used reflects accurate bus trip information and reflects the actual impacts to El Cajon's local streets. While we agree that a different analysis (i.e. traffic counts) could be used to determine potential traffic impacts, based on this particular grant and the role it played in a larger transportation project, we think the analysis was adequate. We will consider requesting traffic counts as part of the application process in the future.

Pages 5 - 7: County of San Diego Regional Fire Authority – Regional Fire & Public Utilities Training Center

- ② While we do think the IGLCBC performed a solid level of diligence evaluating this application, we agree that more detailed analysis can be done in the future. The San Diego County Regional Fire Authority is the grant recipient for the Regional Fire & Public Utilities Training Center project. The San Diego County Regional Fire Authority is an umbrella agency that serves the various fire districts in San Diego County. The San Diego County Regional Fire Authority has contracted the implementation of the project with the San Miguel Fire Protection District, as the proposed regional training center is located in San Miguel Fire's district. The San Diego County Regional Fire Authority has authority to provide \$400,000 for regional training centers. Discussions are underway. As a point of fact, the Regional Fire Authority has nothing to do with the previous \$700,000 grant received by San Miguel Fire, and the County believes comments related to that audit should not be referenced in the current report.

Page 22: Recommendations

The County will consider the recommendations and share them with the IGLCBC as follows:

Recommendation I - bullet 1 on page 22: The County will take this recommendation under advisement, as the County agrees with the importance of thorough review and the seeking of input. It may be more advantageous and cost effective to ask the County Auditor to review the grants process in lieu of each application to validate the methods used to quantify impacts. In any case, the County does not have authority to bind the IGLCBC to any course of action, so any proposed changes to the grants process must be reviewed and approved by the IGLCBC.

Recommendation III - bullet 3 on page 22: The County agrees with the need for rigorous review of the grant applications. We continuously seek to improve our process. The IGLCBC will review the County's application process for possible improvements for the request of information from applicants to ensure that metrics more clearly demonstrate proportionality for impacts.

Thank you for your consideration of the County's comments. If you have questions, please call Teresa Brownyard, Tribal Liaison, at 619-685-2287.

Sincerely,

(Signed by: Sarah E. Aghassi)

SARAH E. AGHASSI
Deputy Chief Administrative Officer
Land Use and Environment Group

Comments

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

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

The information provided in San Diego's response further illustrates our concern with this grant. We agree with San Diego that the casino buses do have an impact on portions of El Cajon's street system. We do not question the presence of an impact from the casino, but rather how much of an impact the casinos represent. During the course of our audit, the city of El Cajon provided us with the same information regarding the roughly 70 buses per day that visit the Casino Bus Terminal, using portions of Palm Avenue and Marshall Avenue. However, they were unable to provide information on the amount of other traffic on each of the streets in question. Absent this, and other key pieces of information we requested, it is not possible to determine the proportional impact of the casino buses and thus the proportion of funding that should be provided by the distribution fund grant.

①

We disagree with the county's assertion that a previous grant from the Indian Gaming Special Distribution Fund (distribution fund) for the same project should not be referenced in the current report. This project, a training facility which is estimated to cost \$4.6 million has now received roughly 46 percent of its funding from distribution fund grants. Although the San Diego County Regional Fire Authority was not party to the previous \$700,000 grant, both the \$700,000 grant and the \$1.4 million grant benefit the same project. As a result, the cumulative amount of funding seems relevant to any justifications or descriptions of casino impact. In addition, various factors related to the previous grant are relevant to our discussion of the additional application for funds for this project. Specifically, according to a San Miguel fire chief, all of the previously granted funds have been used for planning and architect costs for the creation of a larger comprehensive training facility rather than the proposed tower for high-rise training; the scope of the project has escalated significantly; and different entities have applied for funds for the same project. Such facts are relevant both to our review of the proportionality of grant funding to the casino impact, as well as to the benefit committee's evaluation of the application in question.

②

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(Agency response provided as text only.)

County of Santa Barbara
105 East Anapamu Street, Suite 406
Santa Barbara, California 93101

January 18, 2011

Ms. Elaine M. Howle, CPA*
State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Re: **Response to Audit Entitled "Indian Gaming Special Distribution Fund" Local Governments Continue to Have Difficulty Justifying Distribution Fund Grants"**

Dear Ms. Howle,

Thank you for the opportunity to respond to the draft audit report regarding the Indian Gaming Special Distribution Fund. Since County staff is responsible for the administration of the grant and staffing the Committee, responses and proposed corrective actions are noted below. While the final report will be shared with the Committee for consideration, the County wishes to note that the five day timeframe for response and confidentiality requirements did not allow for the Committee to meet, review the report and provide input into the response provided in this letter.

Finding: Local Governments Could Not Quantify the Impacts of Casinos and Others Were Not Proportional or Unrelated to the Casino's Impacts

Finding: Table 4- Appropriateness of Grants Awarded by Indian Gaming Local Community Benefit Committee

Response/ Proposed Action:

The County appreciates the State Auditor citing the Santa Barbara County Fire Department (page 3-4)[†] as an example of an entity that demonstrated the relationship between funding and the casino's impact on service. Regarding another grant, the report states that the County was unable to quantify the casino impact (Table 4, corresponding pages 4-7 were redacted and the County is unable to comment). The County did provide information related to the grant that showed traffic counts and indicated an increase in traffic volumes, attributed in part to the casino (and provided logical arguments about how grant recipients might be affected by the casinos as noted on page 11 of the draft report). However, the County did not provide traffic counts that quantified the traffic generated by the casino to the satisfaction of State Auditor staff. County staff will recommend to the Committee that grantees provide data that clearly illustrates the relationship between the funding requested and the impacts of gaming.

①

②

* California State Auditor's comments appear on page 79.

† While preparing our draft report for publication, page numbers changed. Therefore, page numbers referred to throughout this response may be different in the final report.

Santa Barbara County Response to Draft Audit
January 18, 2011
Page 2

Finding: County Procedures for Application Review Should Be Improved

Response/ Proposed Action:

The County will share this finding with the Committee and consider implementing changes to the application review process.

Finding: Some Cities and Counties Did Not Receive the Amounts That the Law Set Aside for Them

Response/ Proposed Action:

③ The report illustrates the balance that must be made by Committees in determining and quantifying the impact of casinos (pages 2-7) and financing only the proportionate share of the expenditure that mitigates the impact of the casino (page 10) while ensuring that cities and counties receive the required funding set-aside (pages 12-13). The inferred solution to a situation where a city or county does not receive its nexus set-aside because of a reduction in funding to accommodate a proportionate benefit or because the impacts to a casino are difficult to quantify is for the Committee to award the said city or county the nexus balance on another grant (provided there are multiple grants submitted) or revert back to the distribution fund. The County recommends for your consideration the inclusion of additional flexibility by the Committee in evaluating and allocating the funding nexus in light of the merits of a grant, especially if an entity only submits one grant.

Finding: Some Benefit Community Members Failed to Meet Financial Disclosure Requirements

Findings: Table 5- Summary of County of Conflict-of-Interest Codes and Filings of Statements of Economic Interests for Committees

Response/ Proposed Action:

As noted on page 20, the County has since added the Committee to its conflict of interest code.

Recommendations

Response/ Proposed Action:

The County will share the recommendations with its local Indian Gaming Local Community Benefit Committee for consideration and input so that any changes to the grant applications and review process can be made before the next awarding cycle, including clarifying the amounts available to eligible governments.

Again, thank you for the opportunity to review the draft response. If you have any questions, please do not hesitate to contact me at 805.568.3400.

Sincerely,

(Signed by: Terri Maus Nisich)

Terri Maus Nisich
Assistant County Executive Officer

Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE COUNTY OF SANTA BARBARA

To provide clarity and perspective, we are commenting on the county of Santa Barbara's (Santa Barbara) response to our audit report. The numbers below correspond to the numbers we have placed in the margins of Santa Barbara's response.

The redacted text Santa Barbara describes was related to another county. There is no detailed discussion in our report of the grant Santa Barbara refers to in its response. This grant appears in Table 4 on page 22 in the column indicating that Santa Barbara was unable to quantify the casino's impact. Although we discussed our concerns associated with this grant with Santa Barbara, in the interests of brevity the report does not include a detailed description of each grant, including the grant in question.

①

Santa Barbara's response is disingenuous. The county did not provide any traffic counts that quantified the traffic generated by the casino. The city of Solvang (Solvang), which received the grant from the Santa Barbara benefit committee, provided a forecast that showed an increase in traffic, but it did not describe how much of this traffic may be attributable to the casino. A simple count of how many vehicles from the road leading past the casino enter or exit the casino premises in a day would allow the city to quantify the proportion of traffic related to the casino, and provide a more robust justification of the grant.

②

Santa Barbara's suggestion that Solvang received less than the full amount of its nexus set-aside because of the difficulty in financing a proportionate share of expenditures while ensuring that cities and counties receive the required funding set aside is misleading. As described on page 30, Santa Barbara misinterpreted the law. More specifically, it believed the nexus set-aside for Solvang should be \$176,000. However, a more detailed reading of the provisions of the law reveals that the actual set-aside should have been almost \$397,000.

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(Agency response provided as text only.)

Shasta County
1450 Court Street, Suite 308A
Redding, California 96001-1673

January 13, 2011

Ms. Elaine M. Howle, CPA
State Auditor - California State Auditor
Bureau of State Audits
555 Capital Mall, Suite 300
Sacramento, CA 95814

Re: Shasta County Response: Draft Report—"Indian Gaming Special Distribution Fund: Local Governments Continue To Have Difficulty Justifying Distribution Fund Grants"

Dear Ms. Howle:

This letter shall serve as Shasta County's response to the draft report entitled, "Indian Gaming Special Distribution Fund: Local Governments Continue to Have Difficulty Justifying Distribution Fund Grants". Shasta County's comments are as follows:

1. **RECOMMENDATIONS** – page 22*, first bullet
 - a. Shasta County will work with the County Auditor in determining their legal responsibilities as it relates to auditing grant applications.

2. **RECOMMENDATIONS** – page 23, second bullet
 - a. Shasta County filing officers have notified all committee members of the requirement to submit Statement of Economic Interests forms.

3. **RECOMMENDATIONS** – page 23, third bullet
 - a. Shasta County is reviewing the benefit committee conflict of interest code and will update as necessary.

If you have any questions, please contact me at the numbers listed above.

Sincerely,

(Signed by: Angela Davis)

Angela Davis
Administrative Analyst

* While preparing our draft report for publication, page numbers changed. Therefore, page numbers referred to throughout this response may be different in the final report.

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(Agency response provided as text only.)

County of Yolo
625 Court Street, Room 202
Woodland, CA 95695

January 19, 2011

Elaine M. Howle
State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle:

Yolo County is in receipt of two redacted copies of your draft report entitled, "Indian Gaming Special Distribution Fund: Local Governments Continue to Have Difficulty Justifying Distribution Fund Grants." At this point Yolo County has no comments. We will distribute copies of the final report to the members of the Yolo Indian Gaming Local Community Benefit Committee.

Thank you,

(Signed by: Patrick Blacklock)

Patrick Blacklock
County Administrator

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State
Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press