

# ***Stand Up For California!***

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July 26, 2002

Honorable John Hensley, Chairman  
California Gambling Control Commission  
2399 Gateway Oaks Drive, Suite 100  
Sacramento, CA. 95833-4231

**RE: Comment on Commission Policy Regarding Tribal State Gaming compacts  
Section 5.0 (Indian Gaming Special Distribution Fund)**

Dear Chairman Hensley and Commissioners:

Stand Up For California is writing to you today to comment on the staff report of July 2, 2002 on Section 5.0 of the Indian Gaming Special Distribution Fund. First, the staff report was straightforward and uncomplicated in explaining the accounting methodology of fees, especially for all of us who lack the expertise of formal accounting procedures. Moreover the visuals and handouts including the Attorney General's informal opinion have provided definition and clarity with regards to the scheduled fees and timetable for payment.

The development of the current tribal state compact did not involve local government or communities of citizens. There was no public policy debate in which to provide an opportunity for comment on the concepts or language, much less for local governments and citizens to add their needs. However, the spirit in which the compact established the Special Distribution Fund was intended to provide relief for the support of state and local government agencies impacted by tribal government gaming. Moreover the fund was only intended to supplement the costs of the impacts; it did not remove the obligation of tribal governments to act responsibly by making an effort to mitigate their fair share of the impacts created by their casino developments.

Stand Up For California supports the Attorney General's informal opinion of the **earlier date** for these payments to begin. This is consistent with the compact terms. The commonsense explanation of the methodology for calculations of these payments is critical to the effectiveness of the regulatory agencies of the State of California. However it should be noted that the calculation of “Percent of Average Gaming Device Net Win” as outlined in the graph under sections 5.1 (a) of the tribal state compact requires only 28 of the current 49 gaming tribes to make payment.

In our view the current compact language defining the formula in practical application promotes an unbalanced collection of fees to the state needed to offset environmental and administrative impacts. Thus, future amendments and modifications to the tribal state compact must require all tribes who participate in class III gaming to pay into the Special Distribution Fund.

- Tribal gaming is fast approaching a \$5 billion dollar a year industry in California. If this industry were taxed at the same rate as Nevada or New Jersey Casinos, this Special Distribution Fund would be earning in excess of \$300 million dollars a year.
- The payment into this fund by tribal gaming is 'chump change' compared to the fees, taxes and other regulatory costs that the vested gaming interests of California or other states are required to pay. Yet tribes assert that their gaming profit needs are unique, implying that they must be given additional exemptions, or perhaps more accurately stated reparations.
- One thing is clear; little thought was given to the structure of this payment schedule with regards to the growth of the newly developing industry of tribal gaming. The current language assures that State and local governments will receive less and less as the tribes revenues increase.
- In 2003 in the upcoming compact re-negotiations, there must be public debate that will address the many issues that this fund must supplement and a structure to the payment of quarterly fees that promotes equity between all compact tribes and adequate revenue collection to provide funding to offset the impacts to the State. This component must address future growth and needs while bearing in mind the duration of the compact is 20 years

The tribes' challenge of the CGCC authority cannot be taken seriously. This authority is clearly evident in Section 2.17 of the Tribal State Compact that defines the role of the CGCC as an authorized official agency.

*"State" means the State of California or an authorized official or agency thereof.*

Section 5.0 refers several times to the "State". Executive Orders D-29-01 and D-31-01 further authorize the appointment of the California Gambling Control Commission as the "State" agency responsible for the orderly regulatory oversight and supervision over the operation, concentration, and supervision over gambling establishments in this state and over all persons or things having to do with the operations of gambling establishments pursuant to Business and Professions Code section 19810A through 19960.2A. Clearly and indisputably the Special Distribution Fund is a State of California Fund. The State is clearly the vehicle to administer this fund and the state agency (i.e. the CGCC), which does so is not the issue.

- If the CGCC's authority is so ambiguous, then Stand Up For California urges the Governor to resolve the matter by issuing an Executive Order whose language clearly delegates the state's authority under the Compact to this particular state agency.

The ambiguity asserted by tribal governments is that the moneys made available to local government through Section 5.0 of the tribal state compact 'absolves' them of their obligation to responsibly

mitigate their fair share of the impacts created by their casino developments. Do tribal governments also intend to shrink from their duties under Section 10.8.2 to identify and mitigate off Reservation impacts of their casinos? A tribe's payment to the Special Distribution Fund does not absolve them of their responsibility to protect the environment.

*Section 10.8.2 (b) 2 "Make good faith efforts to mitigate any and all such significant adverse off Reservation environmental impacts." [Emphasis added]*

One of the most important of the compact's terms was the framework for environmental protection for the off-reservation impacts of a casino operation. California's tribal-state compact requires tribes to -- in good faith -- incorporate environmental standards consistent with the California Environmental Quality Act (CEQA). This component requires tribes to identify and mitigate all significant adverse impacts on the off Reservation environment. This was the guarantee to California's citizens when the Governor and the Legislature ratified the compact, giving the tribes the right to conduct casino operations. Yet, many tribes are not doing so. In fact, they are trying to circumvent their obligation to do so at various places in the state.

This fund was not intended to be at the disposal of tribal governments to enhance roadways or other ancillary developments to and for their casinos. Clearly and indisputably as stated in the Preamble of the Tribal State Compact tribes have agreed to provide to the State of California revenue in exchange for the "unique opportunity for the tribe to operate its Gaming Facility in an economic environment free from competition".

Finally, the definition of "**Average Device Net Win**" as defined and clarified by the staff report of July 2, 2002 is clear, net win is the drop, the amount of money left over after all winners have been paid. Tribal governments due to the nature of tribal sovereignty are insulated from paying taxes and regulatory fees and present an unfair competitive advantage over other vested gaming interests or other similar private businesses of citizens. There is no language within the Tribal State Compact to provide that tribal operations should be allowed to deduct basic operating expenses or promotional costs prior to paying their calculated share of quarterly fees based on the "average device net win" as defined in the staff report, for exercising the privilege of offering slot machine gaming in California.

Tribal gaming generates significant impacts affecting services that ensure the health and safety of the public. The revenues collected from tax paying citizens and their businesses support local government. Tribal governments are an entity paying no local taxes, an entity that is not governed by any local regulatory authority but are indeed entities that use the services of local government. Local government is not prepared nor should it operate as a charity of tribal gaming governments.

In summation tribal gaming governments must pay into the Special Distribution Fund according to the clear meaning of the Compact language rather than try to find "questionable accounting practices" which allow them to reduce their financial obligations to the State and local governments.

- The language of the Compact requires this payment,
- The CGCC staff has got it right,
- The formula for payment is fair and similar to that collected from other California gaming interests,

- The tribes have paid nothing for 2 years, "lets get it on"
- The State and local government need the revenue to offset environmental and administrative impacts caused by tribal government gaming,
- The citizens of the state that are addicted to gambling need help now

We hope that you find our comments helpful and supportive of both the Attorney General's informal opinion and the staff recommendations of July 2, 2002.

Sincerely,

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