

Stand Up For California!

“Citizens making a difference”

www.standupca.org

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October 28, 2014

Honorable Edmund G. Brown
Governor of the State of California
Attn: Joe Dhillon, Sr. Advisor to the Governor
State Capitol,
Sacramento, CA. 95814

RE: Revenue Sharing Trust Fund (RSTF) Shortfall

Dear Mr. Dhillon,

The shortfall in the RSTF is no secret, and there are no doubt many reasons for this shortfall. *Stand Up For California* has written to both the Governor’s office and the California Gambling Control Commission (CGCC) in the past explaining that Tribes that have more than 350 slot machines are receiving funds from the RSTF. (*See-Letter* May 16, 2006) We believe that the methodology the CGCC uses to determine the Tribes entitled to RSTF funds is improper.

Governor Brown apparently shared this view, as his new and amended tribal state compacts include a definition of “limited gaming tribes”. Limited gaming tribes are those with more than 350 slot machines whether their casinos are located within or outside of the State of California, and are not entitled to RSTF funds. (*See-Graton Compact*, Section 5.1(d)) It has become clear that, no matter what political reasoning was used in the development of the CGCC methodology established in 2000, its application today is antiquated and needs review and perhaps guidance.

Stand Up For California writes today to suggest additional considerations in recognizing eligible tribes for RSTF moneys. The CGCC has relied solely on the 1994 Federally Recognized Indian Tribe List Act as the basis for identifying the Tribes entitled to RSTF moneys. As the State of California is aware from its long involvement in the protracted and difficult litigation surrounding the Big Lagoon Rancheria as well as a final determination of whether or not the Colorado River Indian Tribe has a reservation within the State of California, the list of federally recognized Tribes is not necessarily an accurate guide to determining how to allocate RSTF moneys.

Indeed, there are tribes included on the list of federally recognized Tribes that have been recognized by an ad hoc administrative process or that do not have the requisite relationship with

the United States to qualify. Some examples include the Big Lagoon Rancheria and Buena Vista Rancheria, but others have been added by administrative fiat or "reaffirmation"--a process for which there is no federal statute defined in law or regulation, nor any Departmental Manual provisions or other published policy memoranda governing the practice.

In September of 2008, the Secretary published final regulations for section 20 of the Indian Gaming Regulatory Act (IGRA). Although IGRA specifically provides a "limited exception" for newly acknowledged tribes, neither the statute nor the 1994 Indian Tribe List Act provides an exception for tribal groups who are restored administratively through an ad hoc process before 1988 or after. The Department of the Interior explains in the comment section of 25 C.F.R. 292:

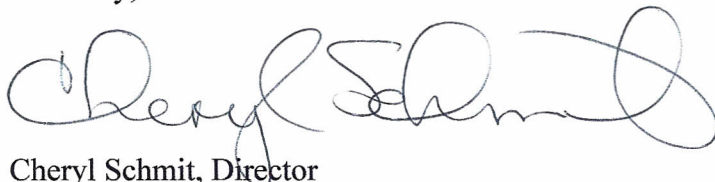
"Congress's creation of an exception for gaming on lands acquired into trust "as part of the restoration of lands for an Indian tribe restored to Federal recognition." We believe Congress intended restored tribes to be those tribes restored to federal recognition by Congress or through the part 83 regulations. We do not believe that Congress intended restored tribes to include tribes that arguably may have been administratively restored prior to the part 83 regulations.

Moreover, Congress in enacting the Federally Recognized Indian Tribe List Act of 1994 identified "only the part 83 procedures" as the process for "*administrative recognition*". (See- Notes following 25 U.S.C. 479a) (**Federal Register May 8, 2008, Page 29363**) (**Emphasis added**)

Stand Up For California encourages the State to review the status of four tribes that the Secretary added to the list of federally recognized Tribes: Tejon Tribe, Ione Band, Jamul Village, and the Lower Lake Koi. If these tribes do not meet the requirements of a Part 83 federal recognition process, the List Act Statute, or the 25 CFR 292 for eligibility for gaming, the CGCC should not continue to allow for an improper diversion of State RSTF money when there is a shortfall in these funds.

It naturally follows that the improper reaffirmation of tribes not only raises questions regarding entitlement to RSTF funds, but serious questions regarding fee-to-trust transfers and eligibility for gaming. Nevertheless, the purpose here is to address only the shortfall in RSTF moneys. Thank you once again for the opportunity to express our concerns over the regulatory framework of the tribal state compacts and bring to your attention this potentially improper distribution of State money.

Sincerely,



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