



County of San Diego

WALTER F. EKARD
CHIEF ADMINISTRATIVE OFFICER
(619) 531-6226
FAX: (619) 557-4060

CHIEF ADMINISTRATIVE OFFICE

1600 PACIFIC HIGHWAY, STE. 209, SAN DIEGO, CA 92101-2472

HELEN N. ROBBINS-MEYER
ASST. CHIEF ADMINISTRATIVE OFFICER
(619) 531-4940
FAX: (619) 557-4060

September 11, 2007

Elaine M. Howle
State Auditor
555 Capitol Mall, Ste. 300
Sacramento, CA 95814

Dear Ms. Howle:

RECOMMENDATIONS IN JULY 2007 REPORT 2006-036

The cover letter transmitting Report 2006-036 (Audit of Indian Gaming Special Distribution Fund) requests that audited Counties respond within 60 days, 6 months and one year on the San Diego Indian Gaming Local Community Benefit Committee's (Committee) efforts to implement recommendations within its statutory authority. This letter constitutes the first of the three requested responses. Our response also includes comments on certain conclusions reached in the Audit adversely describing the work of San Diego's Committee and corrects what we believe are incorrect interpretations of state law and mitigation funding of post-1999 compacts.

A. GENERAL COMMENTS

1. Report 2006-036 states the following:

"Four of six counties we visited – Riverside, San Bernardino, San Diego and Sonoma – disagreed with our conclusion that the Legislature intended that distribution fund grants be used to mitigate the impacts of Indian casinos in their respective counties. Additionally, Riverside and San Diego counties disagreed with our conclusion that interest earned on unspent grant money should be used for casino mitigation projects."

2. The first sentence above incorrectly describes San Diego's opinion regarding the distribution of grant funds. The Barona, Sycuan and Viejas

Tribes, and the local government representatives on the Committee, agree that the Legislature intended that distribution fund grants be used to mitigate the impact of Indian casinos.....” San Diego is very aware of the intent of the Legislature and the provisions of SB621 and has been diligent in the implementation of state law. The only area of disagreement between the Bureau of State Audits (BSA) and the Committee is whether certain approved projects mitigate the impacts of casinos. San Diego believes that the Committee has complied with existing law, as follows:

- a. Existing law requires the tribes contributing to the Special Distribution Fund to make a finding that a project has a reasonable relationship to impacts of casinos; and
 - b. Existing state law does not require that projects solely mitigate impacts of casinos as the Report would like it to require. Had the Legislature intended to impose the standard the BSA Report argues for, the word “solely” or “primarily” would have been included in state law and tribal representatives on the Committee would not have been given the responsibility to establish that a project “has a reasonable relationship to a casino impact.”
3. The sentence in the Report “*Additionally, Riverside and San Diego counties disagreed with our conclusion that interest earned on unspent grant money should be used for casino mitigation projects*” refers to the interest earned on unspent grant money. San Diego disagrees with the interpretation of state law by the BSA Counsel. Government Code Section 53647 provides that interest on money held by the County must be paid into the general fund unless otherwise directed by law or the governing body. Since neither state law establishing the Special Distribution Fund, nor the Board of Supervisors have directed that interest earned on unspent grant funds be directed for casino mitigation projects, San Diego County has complied with Government Code Section 53647 that requires the interest on grants to the County be deposited in the general fund.
 4. The BSA, in its comments on the response from San Diego County, states on Page 97 that “....San Diego appears to be unfamiliar with how mutual aid calls are reimbursed.” In fact, fire agencies in San Diego County are not reimbursed by either local tribes or another local fire agency for their dispatch costs or response costs.
 5. The Governor has eliminated funding for grants to local governments from the Budget, therefore any required actions by the Committee, discussed in the next section of this report, will not be considered for implementation until funding is restored and the Committee meets again.

B. RECOMMENDATIONS WITHIN BENEFIT COMMITTEES' STATUTORY AUTHORITY

The responses below indicate the timetable for implementing any of the appropriate BSA Recommendations; in some cases, decisions on whether or how the implementation will be conducted will have to wait until the Committee meets again.

The person responsible for implementation of the BSA Recommendations or bringing the BSA Recommendations to the Committee for consideration is Ms. Chantal Saipe. Her contact information is as follows:

Ms. Chantal Saipe, Tribal Liaison
County of San Diego
1600 Pacific Highway, Rm. 212
Mail Stop A-6
San Diego, CA 92101
Phone: (619) 685-2542
Fax: (619) 531-5476
chantal.saipe@sdcounty.ca.gov

1. Require local governments to submit supporting documentation that clearly demonstrates how proposed projects will mitigate the effects of casinos.

Since the beginning of the Special Distribution Fund Grant Program, in FY03-04, the Committee has adopted an Application Form that requires applicants to include a discussion of the impacts on their jurisdiction associated with the particular casino(s) from which account(s) the project would be funded; and an explanation of how the proposed project will mitigate those impacts. In FY06-07, applicants were also required to present their projects at a public meeting so the Committee could ask questions of the applicants before its approximately 45-day review period of the applications.

In the next cycle of grants, the Application Form will be amended to add a requirement that if only a small part of a project proposes to mitigate impacts related to casinos, funding for the portion of the project that provides benefits unrelated to impacts from casinos be found from another source. Additionally, applicants will be reminded to fully describe the impacts on their jurisdiction from tribal casinos and explain how their project will mitigate those impacts.

2. **Ensure local governments spend the interest earned on project funds only on mitigation projects, or return the money to the county for allocation to future mitigation projects.**

As stated earlier, Government Code Section 53647 provides that interest on all money belonging to the County must be paid into the general fund unless otherwise directed by law or the governing body. Neither state law, gaming compacts nor the Board of Supervisors directed that interest earned on unspent grant funds be used as grant funds. Section 53647 requires the interest to be separated from the principal.

In the next cycle of grants, the Committee will instruct applicants to either spend the interest earned on projects that mitigate impacts of tribal casinos, or return the money to the Committee for allocation to future mitigation projects, if state law allows jurisdictions to do so.

3. **Grant distribution fund money only to eligible entities.**

The Committee will continue to screen applicants to ensure that only eligible entities – county, cities and special districts – receive grant funding.

4. **Ensure that all benefit committee members follow the Political Reform Act and file the required statements of economic interests, and inform the appropriate agency if they fail to do so.**

Committee members will be reminded to submit the required statements on time and the Clerk of the Board of the County of San Diego will continue to send reports to the state on any failure by a Committee member to file the required statements.

5. **Submit annual reports to all required legislative committees and the gambling commission.**

The County has provided all the required annual reports to all required committees and the gambling commission by the deadline of October 1 currently in state law, and will continue to do so.

C. RECOMMENDATIONS WITHIN GAMBLING COMMISSION'S STATUTORY AUTHORITY

The County respectfully offers the following comments on recommendations directed at the California Gambling Control Commission:

- 1. Seek amendments to the California Government Code to provide direction to local governments to ensure that they use distribution fund grants only to purchase goods and services that directly mitigate the adverse impacts of casinos on local governments and their citizens.**

The Committee supports the recommendation; however, the Committee would like to offer the following caution: local tribes and local jurisdictions are the best evaluators of what constitutes direct impacts from casinos on local governments and their constituents and also the best evaluators of what constitutes proper mitigations of those impacts.

- 2. Seek legislative changes to revise the allocation methodology outlined in the Government Code so that the allocation to counties is based only on the number of devices operated by tribes that do not negotiate directly with local governments to mitigate casino impacts.**

Most tribes negotiate agreements pursuant to a tribal-state compact. All Amended compacts that local tribes have entered into since 2004 require such an agreement with the County to mitigate impacts of their projects. However, these agreements only pertain to projects begun after the agreements were signed; therefore, these agreements do not mitigate impacts of the casinos in existence before expansion projects are proposed. In addition, those local tribes whose casino projects were constructed prior to the 2004 amendments have not entered into agreements with the County that mitigate any or all of the impacts from their casinos built pursuant to the 1999 Compact language. It would be wrong to penalize local jurisdictions with pre-2004 casinos, which were constructed without agreements, because they have entered into a mitigating agreement to mitigate impacts from the expansion of those casinos.

San Diego has 10 casinos and only two tribes still paying into the Special Distribution Fund, with one, Sycuan, expected to stop paying into it if its Amended Compact becomes effective. The allocation that would be appropriate for San Diego County to properly mitigate impacts of casinos, would be in fact to base the allocation on the total number of devices in the county that are not mitigated by an agreement, regardless of whether one or more Tribes pay into the Fund.

- 3. Seek amendments to the Government Code to require that all funds be deposited into interest-bearing accounts and that any interest earned is used on projects to mitigate casino impacts.**

The County and Committee will comply with any changes in the Government Code regarding the interest on grants. The County and

Committee, however, strongly recommend that if any portion of the interest is not used for the purpose of the particular grant from which interest is generated, the interest be returned to a trust fund established by the County for distribution by the Committee to another local casino-related project.

Thank you again for the opportunity to respond to the recommendations in the Report. If you have any questions, please call me at (619) 685-2542.

Sincerely,

A handwritten signature in cursive script that reads "C. Saipe".

CHANTAL SAIPE

Tribal Liaison and County staff to the Benefit Committee