

July 2007

FEDERALLY RECOGNIZED INDIAN TRIBE	YEAR OF COMPACT	CASINO IN OPERATION	GRANDFATHERED DEVICES [*]	CURRENT NUMBER OF DEVICES [†]	MAXIMUM DEVICES ALLOWED
Pit River Tribal Council	1999 Compact	X	129	156	2,000
Quechan Tribe of the Fort Yuma Reservation	2006 Amendment	X	—	349	1,100
Redding Rancheria	1999 Compact	X	401	951	2,000
Rohnerville Rancheria	1999 Compact	X	—	316	2,000
Rincon San Luiseno Band of Mission Indians	1999 Compact	X	—	1,599	2,000
Robinson Rancheria Band of Pomo Indians	1999 Compact	X	380	595	2,000
Rumsey Band of Wintun Indians	2004 Amendment	X	416	2,589	unlimited
San Manuel Band of Mission Indians	2006 Amendment	X	974	2,000	2,000 ^{**}
San Pasqual Band of Mission Indians	1999 Compact	X	—	1,261	2,000
Santa Rosa Rancheria Tachi Tribe	1999 Compact	X	472	1,950	2,000
Santa Ynez Band of Chumash Indians	1999 Compact	X	760	1,998	2,000
Santa Ysabel Band of Diegueno Mission Indians	2003 Compact	X	—	349 ^{††}	350
Sherwood Valley Rancheria Band of Pomo Indians	1999 Compact	X	127	227	2,000
Shingle Springs Band of Miwok Indians	1999 Compact	—	—	—	2,000
Smith River Rancheria	1999 Compact	X	235	262	2,000
Soboba Band of Mission Indians	1999 Compact	X	991	2,000	2,000
Susanville Indian Rancheria	1999 Compact	X	150	221	2,000
Sycuan Band of the Kumeyaay Nation	2006 Amendment	X	519	1,996	2,000 [‡]
Table Mountain Rancheria	1999 Compact	X	835	2,000	2,000
Torres-Martinez Desert Cahuilla Indians	2003 Compact	X	—	350 ^{‡‡}	2,000
Trinidad Rancheria	1999 Compact	X	196	341	2,000
Tule River Indian Tribe	1999 Compact	X	408	1,384	2,000
Tuolumne Band of Me-wuk Indians	1999 Compact	X	—	1,024	2,000
Twenty-Nine Palms Band of Mission Indians	1999 Compact	X	740	2,000	2,000
Tyme Maidu Tribe, Berry Creek Rancheria	1999 Compact	X	406	900	2,000
United Auburn Indian Community	2004 Amendment	X	—	2,722	unlimited
Viejas Band of Kumeyaay Indians	2004 Amendment	X	1,132	2,197	unlimited
Yurok Tribe	2005 Compact	—	—	—	99 ^{§§}
Totals	—	57	19,005	59,518	—

* Grandfathered devices are those the tribe had in operation on September 1, 1999.

† The 1999 compacts limit a tribe to a total of 2,000 devices.

‡ This compact was negotiated in 2006, and was ratified by the Legislature in June 2007. If approved by the federal Secretary of the Interior, the maximum number of devices allowed will increase to 5,000.

§ Opened in January 2007. Since this casino opened in 2007, they were not included in the California Gambling Control Commission's (gambling commission) device count as of March 2006.

|| The numbers indicate that the Pachenga and Morongo tribes are operating more than the 2,000 gaming devices allowed in their compacts. In early 2000 the tribes acquired devices with multiple player stations and counted them as one device. The tribes were requested to cease operation of the terminals that exceeded the number allowed by August 2006. Compliance by the tribes was confirmed by the gambling commission and Department of Justice. However, the gambling commission's most current device count was conducted in March 2006 when the tribes were still operating more than the allowed number of devices.

This compact was negotiated in 2006 and ratified by the Legislature in June 2007. If approved by the federal Secretary of the Interior, the maximum number of devices allowed will increase to 7,500.

** This compact was negotiated in 2006, and ratified by the Senate in April 2007. If ratified by the Assembly, the maximum number of devices allowed will increase to 7,500.

†† Opened April 2007. Since this casino opened in 2007, devices were not included in the gambling commission's device count of March 2006.

‡‡ Opened in spring 2007. Since this casino opened in 2007, devices were not included in the gambling commission's device count of March 2006.

§§ This compact was negotiated in 2005 and was ratified by the Legislature in June 2007. It is a new compact and if approved by the federal Secretary of the Interior, the maximum number of devices allowed will be 99.

Appendix B

GRANT AMOUNTS DISTRIBUTED TO COUNTIES FOR MITIGATION PROJECTS

In fiscal year 2005–06, grants to counties for the support of local governments affected by Indian gaming casinos totaled \$50 million through two distributions. The budget act appropriated \$30 million for this purpose, and Senate Bill 288, Chapter 13, Statutes of 2006 (Senate Bill 288), reappropriated \$20 million removed from the budget by the governor. As shown in Table B, this money was distributed among 25 counties that received anywhere from \$42,000 to \$21.3 million.

Table B
Fiscal Year 2005–06 Allocations to County Tribal Casino Accounts

COUNTY	NUMBER OF GRANTS APPROVED	BUDGET ACT	SENATE BILL 288	TOTALS
Amador		\$ 556,224	171,889	\$ 928,121
Butte		1,197,658	800,766	1,998,424
Colusa		764,513	511,161	1,275,674
Del Norte		82,842	60,346	142,188
Fresno		1,595,299	1,066,633	2,661,932
Humboldt		196,696	123,748	320,044
Imperial		47,663	29,890	77,553
Inyo		172,785	115,526	288,311
Kings		643,800	431,451	1,074,251
Lake		788,182	527,087	1,315,169
Lassen		38,856	24,366	63,222
Madera		310,845	204,932	505,777
Mendocino		253,260	169,332	422,592
Modoc		25,904	16,284	42,148
Placer		470,239	294,888	765,127
Riverside		12,762,395	8,493,267	21,295,462
San Bernardino		1,831,991	1,224,888	3,056,879
San Diego		4,989,453	3,265,799	8,325,452
Santa Barbara		1,325,471	890,224	2,211,695
Shasta		475,749	318,091	793,840
Sonoma		276,307	173,273	449,580
Tehama		133,491	83,712	217,203
Tulare		492,318	329,169	821,487
Tuolumne		56,806	37,981	94,787
Yolo		511,253	342,629	853,082
Totals	255	\$30,000,000	\$20,000,000	\$50,000,000

Sources: Fiscal year 2005–06 annual reports submitted by counties and the State Controller's Office.

* No Indian gaming local community benefit committee established.

(Agency response provided as text only.)

California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833-4231

June 29, 2007

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

Dear Ms. Howle:

In reference to your letter of June 21, 2007, I have enclosed comments regarding the draft report captioned, "California 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."

The enclosed comments titled, "California Gambling Control Commission Compliance Division Comments on the BSA Report Titled California Indian Gaming Special Distribution Fund, Review June 26, 2007," are provided in this format as many of the suggested edits relate to factual corrections that you may wish to incorporate by editing the text of the report.

The California Gambling Control Commission (Commission) believes the Bureau of State Audits (BSA) has done a thorough study and research into the local mitigation grant program authorized by statute. The description of the process is the best compilation to date of the funding mechanism and relationship to the grant program. The grant program results are not within the scope of authority of the Commission. Without statutory authority and resources, the Commission is not able to exercise a judgment as to the assessment of the local agencies grant program outcomes.

The Commission appreciated the opportunity to facilitate your staff in this worthwhile effort.

Sincerely,

(Signed by: Steven V. Giorgi)

STEVEN V. GIORGI
Executive Director

For DEAN SHELTON
Chairman

Encl.

* California State Auditor's comments begin on page 63.

California Gambling Control Commission
Compliance Division Comments on the BSA Report Titled
California Indian Gaming Special Distribution Fund
 Review June 28, 2007

① 1. **Page 3 – First paragraph, next to last sentence insert the following:**

Tribes can operate class III gaming devices after a Tribe and the State have negotiated a Compact, the Compact is ratified by the State Legislature, and the Secretary of the Interior, and the approved Compact is published in the Federal Register. The Compact governs the conduct of the gaming activity.

Delete the last sentence in the first paragraph.

2. **Page 3- Second paragraph. After the first sentence insert the following:**

③ Governor Schwarzenegger's new and amended Compacts require Tribes to make payments to the General Fund, in lieu of the distribution fund.

3. **Page 3 – Second paragraph. Change the third sentence to read:**

In fiscal year 2005-06, 26 of the 66 Tribes with Compacts deposited money into the distribution fund and 39 tribes contributed to the trust fund. [Note: the commission collected a payment from Cache Creek Casino in FY 05/06 that related to an underpayment in FY 04/05. If that payment is excluded, there would be 25 tribes that contributed to the distribution fund for FY 05/06. Also, the 39 tribes paying into the trust fund includes tribes that are amortizing prepayment credits. If the tribes amortizing credits are excluded, there would be 25 tribes making payment to the trust fund].

4. **Page 3 – Second to the last sentence**

④ A better definition of "Gross Revenues" taken from the AICPA Audit and Accounting Guide, Casinos, is:

Gross gaming revenues is the net win from gaming activities, which is the difference between gaming wins and losses before deducting costs and expenses.

Reason - The definition in the BSA report is not found in the AICPA guide and the compact requires the use of the AICPA definition of net win.

5. **Page 3 – Last sentence**

Change the wording to:

⑤ *Deposits into the trust fund are based on the number of class III gaming device licenses each tribe has acquired since the negotiation of the 1999 compacts.*

Reason – Deposits are not based upon the number of gaming devices a tribe has put into operation. It is based on the number of gaming device licenses acquired over 350.

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6. Page 4 – See Text Box (Allowed Uses for the Funds Administered by the Gambling Commission).

Change the second sentence under the bullet under "Trust Fund" to read:

Each nongaming tribe shall receive \$1.1 million per year. (5)

(There is not a "guarantee of at least \$1.1 million" per year.)

7. Page 5 – Last paragraph.

Replace the first sentence with the following:

Since the original Compacts were ratified in 1999, the Legislature has ratified five new Compacts and eight amended Compacts with various terms or requirements different from those in the original Compacts.

Also make similar correction on Page 33 and everywhere else this information appears. (5)

Please note that the Legislature does not "amend" Compacts – they ratify amended Compacts. While various terms and requirements in the new and amended Compacts are different from the 1999 Compacts, some of the provisions have been retained.)

8. Page 6 – First Sentence.

Revise the following to the first sentence (see underlined/deleted text) and add new sentences:

However, although the post-1999 Compacts bypass the distribution fund when negotiating for mitigation projects, some counties with tribal casinos with amended Compacts where these casinos are located continue to receive money from the distribution fund. Specifically, existing law allows these counties to continue to receive funding for mitigation projects. Legislation would be necessary to change the allocation methodology to restrict these counties from receiving future annual allocations for mitigation projects. (5)

9. Page 8 – First Paragraph.

(Inyo County submitted their FY 2005-06 mandated report to the Commission (report dated April 26, 2007). Please contact us if you need a copy. (6)

10. Page 8 – Second Paragraph, Fourth Sentence.

Revise the sentence as follows (see underlined/deleted text):

California Gambling Control Commission
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- ⑤ The pending Compacts will change the method of calculating contributions to the ~~distribution fund~~ and trust fund and require tribes to begin contributing to the State's General Fund instead of the distribution fund.

11. Page 9 – Top of Page

The report states that "Despite the significant decrease in contributions to the distribution fund, pending legislation may require its continued use to pay for any shortfall in the trust fund..."

- ⑦ This is inaccurate, as existing law and the 1999 Compacts authorize the distribution fund to be used for shortfalls in payments to the trust fund. If BSA is referring to SB 62 (Florez) as the "pending legislation", this bill provides that if there are insufficient funds in the distribution fund to fully fund payments to eligible recipient tribes from the trust fund, money from payments made by Compact Tribes to the General Fund shall be transferred to the trust fund to address the deficiency.

It is important to note that four of the Governor's pending amended Compacts with Morongo, Sycuan, San Manuel, and Pechanga all include Compact provisions to provide a mechanism to allow the State Gaming Agency (Commission) to redirect a portion of the "flat fee" payments made by these Tribes to cover any shortfalls in the trust fund to ensure that the trust fund has sufficient resources to make payments to eligible Tribes.

- ⑦ Please make conforming changes in the discussion related to the distribution fund and trust fund on Page 48 and 56 to reflect the provisions in the Governor's four pending amended Compacts.

12. Page 11 – Line 2, first paragraph

- ⑤ Operate more than 58,000 Class III electronic gaming devices such as... [There are more than 58,000 gaming devices, 58,000 relates to Class III.]

13. Page 11 - Last sentence

Change wording to:

- ⑤ "...distributions to tribes that do not have compacts or operate fewer than 350 gaming devices..."

Reason - The money is paid to tribes operating fewer than 350 gaming devices as defined in compact section 4.3.2(a)(i), not those operating 350 or fewer gaming devices.

14. Page 12, Line 3, first paragraph

- ② "As one court stated,..." Which court? It is an unattributed quote.

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15. Page 13, Line 4, first paragraph

"... includes high-stakes casino-type games..." Is this a direct quote from a court case or a paraphrase which is not cited? (2)

16. Page 13, Line 1, second paragraph

In approving the compact, the federal government permits states and Indian tribes to develop joint regulatory schemes through the compacting process. (5)

In approving the compact the federal government does not cede its regulatory authority. However, the CRIT decision has limited that authority with regard to Class III gaming, by holding that the NIGC has no statutory authority to promulgate or enforce regulations governing minimum internal control standards.

17. Page 14 – Under heading TRIBAL-STATE GAMING COMPACTS IN CALIFORNIA, third sentence

The sentence states that the State entered into 61 compacts with 60 tribes. That would mean one tribe has two compacts. This probably results from BSA counting Viejas and Barona as one tribe (Capitan Grande Band of Diegueno Mission Indians). BSA should consider providing an explanation if the language is kept this way. (5)

18. Table 1 – Summary of Revenue Provisions for Ratified and Pending Tribal State Gaming Compacts

Is the "2004 Compact" (column 4) intended to cover the new 2004 Compacts? (2)

The "Pending 2005 Compact" (column 6) was negotiated again in 2006. Accordingly, Yurok is a new 2006 Compact.

The Table appears to leave out several of the pending new and amended Compacts (Big Lagoon, Los Coyotes, Quechan, Lytton). If BSA intends to only cover certain Compacts, it would be clearer to list the names of the Compacts in the Table. (8)

For the "2004 Amendment" (column 4) - Contributions to the Revenue Sharing Trust Fund

The RSTF payments under "2004 Amendment" are not based on a per-device fee or a flat fee based on the year of operation. The 2004 amended Compacts pay a flat fee into the RSTF. (9)

Footnote 1 should be clarified. The payments footnoted in the Table 1 to the General Fund under "2004 Amendment" are annual transportation bond payments. These payments are made by five Tribes (Pala, Pauma, Rumsey, United Auburn and Viejas) and total \$100.8 million per year. (5)

**California Gambling Control Commission
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Contributions to the General Fund

- ② "Net Wins" – this should read "net win"

19. Page 15 - Insert

Reference number 2. It states that "Entitlement gaming devices, which according to the compacts are...."

- ⑤ The 1999 compacts do not use or define the word "entitlements". The word "entitlements" is a naming convention used by the CGCC to refer both to compact section 4.3.1(a) and (b) gaming devices. BSA may want to consider striking the words "...according to the compacts..."

20. Page 15 – First paragraph, last sentence

Change wording to:

- ⑤ "...distributions to tribes that do not have compacts or operate fewer than 350 gaming devices..."

Reason - The money is paid to tribes operating fewer than 350 gaming devices as defined in compact section 4.3.2(a)(i), not those operating 350 or fewer gaming devices.

21. Page 15 – Last full paragraph, first sentence

- ⑩ The sentence states there are 108 federally recognized tribes. However, page 14 states there are 106 federally recognized tribes. Inconsistent numbers. [Note: the commission uses 107 as the number of federally recognized tribes. The BSA in their audit report of the trust fund used 106]

22. Page 15 – second paragraph

- ⑪ Correct the number of Tribes and Tribal casinos. There are 55 Tribes that operate a total of 56 Tribal casinos. This does not include the La Jolla Slot Arcade operated by the La Jolla Band of Mission Indians. This casino last operated in August of 2004 (operated seasonally). Also not included are Santa Ysabel and Torrez-Martinez. Those tribes opened casinos in April 2007.

23. Page 16 – first paragraph

- ⑤ Second sentence - Change the word "board" to commission.

24. Page 16, first paragraph, second to the last sentence

- ⑤ Suggest a wording change from "new-device license fees" to "gaming device license prepayment fees".

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Reason – The current wording makes it sound as though there is a license fees on new-devices, which is not the case.

25. Page 16, first sentence

Clarify language related to audits. Some suggested language:

"The gambling commission's regulatory authority includes auditing the books and records related to the class III gaming operation of the Indian casino that pay into the distribution fund and general fund to ensure...." (5)

Reason – To clarify the limited scope of the audit of books and records and the funds to which the audits pertain.

26. Page 16, second sentence

A better definition of "Gross Revenues" taken from the AICPA Audit and Accounting Guide, *Casinos*, is: (4)

Gross gaming revenues is the net win from gaming activities, which is the difference between gaming wins and losses before deducting costs and expenses.

Reason - The definition in the BSA report is not found in the AICPA guide and the compact requires the use of the AICPA definition of net win.

27. Page 17, second sentence

A better definition of "Gross Revenues" taken from the AICPA Audit and Accounting Guide, *Casinos*, is: (4)

Gross gaming revenues is the net win from gaming activities, which is the difference between gaming wins and losses before deducting costs and expenses.

Reason - The definition in the BSA report is not found in the AICPA guide and the compact requires the use of the AICPA definition of net win.

28. Table 2, following page 17

September 1999 should be September 1, 1999 to be consistent with the compact. September 1, 1999 is an important date to the distribution fund. (5)

**California Gambling Control Commission
Compliance Division Comments on the BSA Report Titled
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29. Page 18, bottom paragraph, fifth sentence

Change wording to:

- ⑤ "...distributions to tribes that do not have compacts or operate fewer than 350 gaming devices..."

Reason - The money is paid to tribes operating fewer than 350 gaming devices as defined in compact section 4.3.2(a)(i), not those operating 350 or fewer gaming devices.

30. Figure 2, following page 20

- ⑤ September 1999 should be September 1, 1999 to be consistent with the compact. September 1, 1999 is an important date to the distribution fund.

31. Figure 2, following page 20

- ⑤ First block under 5%, (those with fewer than 200....) should be fewer than 201 per 1999 compact section 5.1(a).

32. Page 33, first sentence, last paragraph

- ② The sentence states that the State entered into 61 compacts with 60 tribes. That would mean one tribe has two compacts. This probably results from BSA counting Viejas and Barona as one tribe (Capitan Grande Band of Diegueno Mission Indians). BSA should consider providing an explanation if the language is kept this way.

33. Page 54, paragraph 2, second from last line

- ⑤ "... by the federal Bureau of Indian Affairs..." The Secretary of the Interior must approve compacts.

34. Page 55, paragraph 1, line 5

- ⑫ Page 55, paragraph 1, line 5 and the footnote at the bottom of the page has no attribution in Appendix A in the copy provided to CGCC.

Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE CALIFORNIA GAMBLING CONTROL COMMISSION

To provide clarity and perspective, we are commenting on the California Gambling Control Commission's (gambling commission) response to our audit report. The numbers below correspond to the numbers we have placed in the margins of gambling commission's response.

Given the nature of the comments provided by the gambling commission, we are disappointed that it chose not to work with us regarding any concerns it has over technical details and with the specific wording used in the report. As is our policy, we asked executive management staff at the gambling commission to contact staff if they had any concerns about the report. However, despite having seven business days to respond, staff from the gambling commission made no attempt to contact us. Had they elected to do so, many of the issues discussed in the gambling commission's response could have been quickly resolved to the satisfaction of both parties. Also, while preparing our draft audit report for publication, page numbers shifted. Therefore, the page numbers that the gambling commission cites throughout its response do not correspond to the page numbers in our final report.

①

The gambling commission suggested that we add language to the report to provide more technical details about certain aspects of Indian gaming. Although we made some of the suggested changes, many comments were too technical in nature and did not affect the accuracy of the report.

②

Relevant information regarding deposits into the distribution and trust funds is described in detail in the Introduction and Chapter 2 of the report. As discussed with the gambling commission at our June 19, 2007 exit conference, the Summary section of the report is not intended to describe each issue in full detail. We appreciate the commission's dedication to technical accuracy, but believe our language adequately summarizes the salient points for the interested reader.

③

We appreciate the gambling commission's suggestion, but without a detailed explanation of the costs and expenses relevant to the calculation of this figure, which are limited and very technical in nature, we believe that the language used is more appropriate.

④

- ⑤ We agree with the gambling commission's suggested change and have modified the text.
- ⑥ Subsequent to sending the draft report to the gambling commission we received the report from another source and updated our report.
- ⑦ We disagree with the gambling commission's assertion that our statement is inaccurate. As the commission states in its response, Senate Bill 62 would require that payments made to the State's General Fund be transferred to the Revenue Sharing Trust Fund (trust fund) if there are insufficient funds in the Indian Gaming Special Distribution Fund (distribution fund). The provision in the new amendments described in the gambling commission's response states that if there is an insufficient balance in the trust fund, a portion of the payments into the General Fund may be redirected. Our concern is which fund will be used first, the distribution fund or the General Fund, to ensure the trust fund is adequately funded; and our report discusses the ramifications of continuing to use the distribution fund as the first source of funding to pay for any shortfall in the trust fund. As stated on page 46 of the report, if the General Fund does pay for the shortfall in the trust fund, the distribution fund will be adequately funded for approximately 20 years. Conversely, if the distribution fund pays for the shortfall in the trust fund, it will be exhausted in approximately four years.
- ⑧ The compacts listed by the gambling commission in its response have not been ratified by the Legislature. Further, the gambling commission previously indicated to us that it did not believe that these compacts would be considered in the near future. However, because the commission finds our terminology confusing, we have re-labeled the table to identify compacts ratified by the Legislature in 2007.
- ⑨ The gambling commission is mistaken. The 2004 amendment to the compact with the Beuna Vista Rancheria of Me-Wuk Indians states that contributions to the revenue sharing trust fund are based on a graduated scale of fees for each gaming device in operation, or a "per-device" fee. Further, the 2004 amendment to the compact with the Ewiiapaayp band of Kumeyaay Indians states that: "Commencing on January 1 of the sixth calendar year of the tribe's gaming activities, the tribe shall pay on a quarterly basis to the State Gaming Agency for deposit into the trust fund for the following annual fees in accordance with the following schedule." This provision changes the amount contributed based on the year of operation.

Draft text was revised.

⑩

We understand that the La Jolla Slot Arcade is a seasonal operation that last operated in 2004, but included it in our count of casinos as the gambling commission did in the documentation they provided to us on casino locations.

⑪

The footnote was completed for the final report.

⑫

(Agency response provided as text only.)

County of Fresno
Administrative Office
2281 Tulare Street, Room 304
Fresno, California 93721

June 25, 2007

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

RE: Fresno County Indian Gaming Local Community Benefit Committee

Dear Ms. Howle:

Fresno County is in receipt of the July 2007 draft, redacted "California Indian Gaming Special Distribution Fund: Local Governments Do Not Always Use It to Mitigate the Impacts of Casinos" audit report prepared by the California State Auditor's office. The Fresno County Indian Gaming Local Community Benefit Committee was one of the six counties selected to be audited.

We appreciate the effort undertaken by the California State Auditor in this endeavor. The final, public report will be shared with the members of the Fresno County Indian Gaming local Community Benefit Committee. We anticipate their consideration of your recommendations.

Sincerely,

(Signed by: Larry Fortune)

Larry Fortune, Chair
Fresno County Indian Gaming Local Community Benefit Committee

(Agency response provided as text only.)

Placer County

Good Morning:

We have received two copies of the draft audit Report of the 2005-06 SDF / LCBC. We support the recommendations contained in the Report and will distribute copies of the Final Report to the members of the Placer County LCBC.

I also wish to thank you and the other members of your audit team for your cooperation and assistance in conducting this audit. If you have any questions please feel free to contact me.

Thank-you

(Signed by: Michael E. Paddock)

Michael E. Paddock
Senior Management Analyst

(Agency response provided as text only.)

County of Riverside's Response to the California State Auditor's Report, "California 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."*

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.

With 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 model in implementing SB 621, providing guidance and copies of all of the documents developed for the program to every other county requesting the information. Even Riverside County's Community Benefit Committee website was copied by certain counties. Riverside County is proud of the success of its Indian gaming mitigation grant program; over the past four years, \$57.8 million was allocated to 255 worthy projects. On average, more than 90 percent of the annual countywide allocation funds public safety and road projects.

On March 19, 2007, the Bureau of State Audits conducted an entrance conference and visited five grant recipients. An exit conference was conducted via conference call on June 14, 2007.

In response to the draft audit report titled "California 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," 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 received almost 43 percent of the \$50 million and distributed it in 24 grants averaging almost \$900,000 each (page 21. and Table B).

①

Riverside County Response:

Riverside County has 5,392 (44.8 percent) of the statewide 12,041 September 1, 1999 "grandfathered" machines. Riverside County received almost 43 percent of the \$50 million statewide allocation, but it was distributed through **70** grant projects, averaging approximately \$300,500 each.

②

* California State Auditor's comments begin on page 81.

County of Riverside's Response to the California State Auditor's Report, "California 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."

BSA Comment:

In fiscal year 2005/06, the Governor decreased the amount of funding available for mitigation grants in the Budget Act by \$20 million because some counties were not providing Finance with the required annual reports on the use of distribution fund spending. (Page 21)

Riverside County Response:

The following language is included in SB 621, Section 12716:

"Each county which administers grants from the Indian Gaming Special Distribution Fund shall provide an annual report to the Legislature by April 1st of each year detailing the specific projects funded by all grants in their jurisdiction."

With few exceptions, counties submitted their annual reports on time to the Legislature. It is the understanding of Riverside County that because "Finance" was not identified in SB 621 as a recipient of the required annual report; the Legislature passed SB 288, reinstating the \$20 million in funding and clarifying/

③ expanding the recipients of the annual report.

BSA Finding:

Some counties lacked transparency and accountability in their distribution fund spending. Counties are required to report to the Legislature and the Gambling Control Commission annually on the projects they financed through the distribution fund. However, our audit revealed that ... one county submitted information for the wrong fiscal year (page 8).

Our review found that at least one county did not include all required information in its most recent annual report. The law requires each county to submit an annual report on its current and prior year allocations and expenditures for distribution fund grants.

However, in fiscal year 2005/06, Riverside County failed to report its current year grant allocations and only provided expenditures of prior year grants (page 45).

BSA Recommendation:

Submit annual reports to all required Legislative committees and the Gambling Control Commission (page 10, 47).

Riverside County Response:

Senate Bill 288, Section 12716 states:

"Each county that administers grants from the Indian Gaming Special Distribution Fund shall provide an annual report to the chairperson of the Joint Legislative Budget Committee, the chairpersons of the Senate and Assembly committees on governmental organization and

County of Riverside's Response to the California State Auditor's Report, "California 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."

the California Gambling Control Commission by October 1 of each year, detailing the specific projects funded by all grants in the county's jurisdiction in the previous fiscal year, including amounts expended in that fiscal year, but funded from appropriations in prior fiscal years. The report shall provide detailed information on the following:

- (a) The amount of grant funds received by the county.
- (b) A description of each project that is funded.
- (c) A description of how each project mitigates the impact of tribal gaming.
- (d) The total expenditures for each project.
- (e) All administrative costs related to each project, excluding the county's administrative fee.
- (f) The funds remaining at the end of the fiscal year for each project.
- (g) An explanation regarding how any remaining funds will be spent for each project.
- (h) A description of whether each project is funded once or on a continuing basis."

As SB 288 directs, Riverside County's two-part annual report, dated September 25, 2006, lists the specific projects funded by all grants in the county's jurisdiction in the prior fiscal year (FY 2004/05), which expended funds from July 1, 2005 through June 30, 2006 (and after). In addition, the report identified grants awarded in the previous fiscal years (FY 2003/04 and 2004/05) which expended funds in FY 2004/05, 2005/06 and year-to-date in 2006/07. The report also provided all of the required detailed information ((a) through (h), above).

Absent the ability to seek clarification from the State on the accuracy of Riverside County's interpretation of SB 288, the California State Association of Counties (CSAC) was consulted. Riverside County staff explained that jurisdictions received funds in early July 2006 and it was our opinion the Legislature would not find any use in two months worth of expenditures. Based on the language included in the Bill (288), we determined the Legislature was requesting the expenditures covering the period July 1, 2005 through June 30, 2006 from FY 2004/05 grant awards, as well as FY 2005/06 expenditures from FY 2003/04 grant awards. CSAC agreed with Riverside County's determination.

This discussion prompted BSA staff to mention that other counties were able to award FY 2005/06 funds prior to July 2006 (allowing for a longer period of expenditures). The BSA staff asked Riverside County what caused the bottle-neck in awarding these funds, since the State Controller's Office released Individual Tribal Casino Account balances on September 30, 2005. Riverside County staff noted that because of the significant funding received for distribution each year, a process was developed in the program's first year and is adhered to each year. Staff described the following process used by Riverside County in FY 2005/06:

- The State Controller's Office released a letter, dated September 30, 2005, containing the Budget Act portion of the Individual Tribal Casino Account (ITCA) balances statewide; Riverside County's portion was \$12.7 million.
- During the subsequent Riverside County Local Community Benefit Committee (CBC) meeting, held December 12, 2005 (quarterly meeting schedule), the Committee approved the updated grant application template and schedule.
- Notice of funding availability was released to local jurisdictions on December 15, 2005.

County of Riverside's Response to the California State Auditor's Report, "California 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."

- The deadline for application submittal to Tribal governments was February 2, 2006.
- Applications and letters of sponsorship were due to the benefit committee by April 3, 2006.
- CBC members review and rank sponsored applications.
- SB 288 ITCA allocations were provided by the State Controller's Office in a letter dated May 5, 2006; Riverside County's portion was \$8.5 million.
- Award of 70 grant projects, totaling \$24 million, was made June 19, 2006.
- Release of Warrant Request forms were submitted to the State Controller's Office on or about June 23, 2006.
- Grant funding was received by local jurisdictions on or about July 7, 2006.

BSA Finding:

Benefit Committees in two counties provided a total of \$325,000 in funds to school districts which are ineligible entities because they are specifically excluded from the statutory definition of special districts (page 7).

Although state law provides clear guidance defining the intended recipients of distribution fund money—cities, counties and special districts – some benefit committees provided grant money to ineligible entities. Specifically, of the 30 grants we reviewed, we found two instances in which benefit committees awarded grants to school districts. State law specifically excludes school districts from the definition of special districts (page 41).

Riverside County awarded a distribution fund grant to the Banning Unified School District using the Banning Police Department (police department) to submit an application for it, in effect using the police department as its fiscal agent. According to the police department, the Chairman of the Morongo Band of Mission Indian Tribal Council requested that the police department apply for the grant on the school district's behalf. The police department requested a \$257,000 grant on behalf of the school district to fund two programs: \$125,000 for a program connecting troubled students with services that could enhance their academic achievement and \$132,000 for a full-time police officer on campus who would work with the school district, the community and the police department to promote campus safety. Riverside County stated that the benefit committee took a supportive position on the school district project because it addressed one of the priorities, recreation and youth programs, specified in the law that defines the uses of the discretionary fund. A representative of the county also explained that although the benefit committee recognized that the school district was not eligible to apply for distribution fund money, it approved the application because it was impressed by the collaborative nature of the project and because the tribe recognized the need to support it (page 42).

Despite the attributes of the projects just described, we believe that the benefit committees did not have adequate reasons to disregard the law and award funds to ineligible grantees. Because the Legislature has identified specific entities and purposes for this money, counties must ensure that they follow the statutory requirements. If other entities are affected by casino operations, local governments should consider asking the Legislature to amend the law to expand the eligibility requirements, rather than disregarding the requirements by providing grants to entities they know are not eligible to receive funds (page 43).

County of Riverside's Response to the California State Auditor's Report, "California 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."

BSA Recommendation:

Grant distribution fund money only to eligible entities (page 10, 47).

Riverside County Response:

Gang activity is a concern for Casino Morongo and the Banning community. The Banning Police Department implemented a Knock-Out (K.O.) Gangs program targeting known gang members and affiliates. Often, these gang members and affiliates are school age and/or have school-age siblings and friends at-risk of becoming gang members and affiliates, themselves.

The Banning Unified School District implemented a "Connect to Achieve" program for troubled students and their families. Through this funding, K.O. Gangs officers refer at-risk students to the "Connect to Achieve" program in the hopes of increasing students' self-esteem and providing activities and structure to lessen interest in gang involvement/activities. The "Connect to Achieve" program connects at-risk students with community-based counseling and substance abuse services.

The Banning Police Department assigned a school resource officer to the Banning School District. The officer works with school officials to supervise the campus and maintain order.

Grant funds were provided to the Banning Police Department for the "Connect to Achieve" program and the Banning Police Department's school resource officer. Through a sub-contract between the Banning Police Department and the Banning Unified School District, Banning Police Department monitors the progress of the "Connect to Achieve" program and reimburses the Banning Unified School District for applicable program expenses. Banning Police Department maintains the balance of the funds to reimburse itself for the staff campus resource officer. The Banning Police Department does not serve as a "fiscal agent" for the school district to enable the district to receive gaming grant funds. (5)

An aspect of this program that the BSA staff did not consider is the difference between the school district's view of the goals of the program and the casino's view. The school district views the students' progress from an academic perspective (as presented in the grant application) but the casino views students' progress from the perspective of reducing gang membership and crime (mitigation measure).

BSA Finding:

Apparently, many local governments did not consider whether other legal restrictions applied to the use of the interest earned on distribution fund money. Consequently, many local governments we visited told us they did not have procedures in place to ensure that interest earned is allocated to the originally funded project or to another project that will alleviate a casino impact (page 38).

Further, we noted two grants in Riverside County, totaling \$613,000, that local officials indicated were maintained in non-interest bearing accounts (page 39).

County of Riverside's Response to the California State Auditor's Report, "California 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."

BSA Recommendation:

Ensure that local governments spend the interest earned on project funds only on the projects for which the grants were awarded or return the money to the county for allocation to future mitigation projects (page 46).

Riverside County Response:

- ⑥ As BSA's legal counsel indicated, the Government Code states that earned interest may be deposited in the general fund unless otherwise specified by law. Because the use of interest is not specified in SB 621, some grant recipients deposited the interest into their general funds, as the Government Code allows.

Community Benefit Committee staff will provide information to all current and future grant recipients regarding the collection and use of interest from Indian gaming grants.

BSA Finding:

Benefit committees do not always make the financial disclosures required by state law. The Fair Political Practices Commission has advised that members of benefit committees are subject to the Political Reform Act (page 7).

BSA Recommendation:

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 (page 47).

Riverside County Response:

Community Benefit Committee staff will advise the Tribal representatives serving on the committee of the Fair Political Practices Commission opinion that members of benefit committees are subject to the Political Reform Act.

BSA Finding:

Local governments have failed to meet several requirements of state law and could improve other aspects of their administration of distribution fund grants. Our review revealed that one county inconsistently applied the criteria used to allocate distribution funds, and further did not adhere to the amounts determined pursuant to its allocation methodology (page 39).

In Riverside County, we (BSA staff) identified two instances where the criteria were not consistently applied. Specifically, the County concluded that the City of Banning and the county itself met three of the four nexus criteria in regard to one casino. In both cases, the county incorrectly concluded that land with each respective local government's jurisdiction bordered the tribal land where the casino was located. The county agreed with our assessment and agreed to revise its application of the nexus

County of Riverside's Response to the California State Auditor's Report, "California 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."

criteria. Further, Riverside County did not adhere to its inaccurate nexus test calculation. We identified several instances where cities in Riverside County were awarded less money than they should have been allocated under the nexus test. For example, the City of Palm Desert should have received a minimum of \$131,000, however, it only received \$46,000. According to the county's Principal Management Analyst, this occurred because the tribes may not have sponsored projects that totaled up to the maximum amount these cities should have been allocated (page 41).

BSA Recommendation:

Correct the inconsistent application of nexus test criteria and ensure that local governments receive at least the minimum amounts they are allocated under the government code requirements (page 47).

Riverside County Response:

During a recent telephone conversation between BSA staff and county staff, county staff acknowledged incorrectly crediting the county as partially bordering the parcel of land upon which the Spa Resort Casino is built. It was explained that this error occurred as a result of the checkerboard nature of the Tribal land in Riverside County. Likewise, the City of Banning received credit for partially bordering the parcel of land upon which Casino Morongo is built.

Regarding the BSA's statement that Riverside County did not adhere to its "inaccurate" nexus test calculation, county staff explained that a variance between funding for which a jurisdiction was eligible versus funding awarded may have resulted from either the jurisdiction not applying for, or the Tribe not sponsoring, projects up to the maximum amount of funding for which the jurisdiction was technically eligible. SB 621, Section 12715, paragraph (h) states, "All grants from Individual Tribal Casino Accounts shall be made only upon the affirmative sponsorship of the Tribe paying into the Indian Gaming Special Distribution Fund from whose individual Tribal casino account the grant moneys are available for distribution." It appears that awarding the maximum amount of funding to a jurisdiction for which they are technically eligible is more important to the auditors of this program than the Tribe confirming that the grant application has a reasonable relationship to a casino impact through sponsorship. Clarification should be provided to counties if the focus has changed in this regard. (7)

With respect to the specific example provided for the City of Palm Desert, the City applied for and received \$46,000. It is not known whether any other applications were submitted by the City of Palm Desert, because only sponsored applications are provided to the Community Benefit Committee.

BSA Finding:

One Riverside County grant project might have been somewhat relevant to the effects of the casinos but appeared primarily to address needs that were unrelated (page 5):

Two Riverside County grants were used for projects benefiting the entire county and were only partially related to the effects of casinos and one Riverside County grant project was not related to the casinos'

County of Riverside's Response to the California State Auditor's Report, "California 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."

impacts. Although counties might find it reasonable to use distribution fund grants to help finance a project that benefits the entire county, as a best practice, a local government should only use distribution fund money to fund the portion of the project related to the impact of a casino and use other funding sources for the portion of the project that benefits the entire county (page 26).

One Riverside County grant was not used to mitigate casinos' impacts; two Riverside County grants were not solely intended to lessen casinos' impacts but were primarily used for non-casino related needs and two grants were used specifically to alleviate casinos' impacts. Consequently, money from the distribution fund did not always go toward projects that mitigated the impacts that Indian gaming can have on communities, such as increased crime, which threatens the safety of nearby residents; traffic congestion, which increases the likelihood of accidents; and the poor air quality resulting from increased traffic (page 28).

Local governments are not always using grant funds to mitigate the impacts of casinos on communities most directly affected. We reviewed 30 distribution fund grants awarded to six counties and found that none of the six counties consistently used the grant funds solely for mitigation projects. Two Riverside County grants were used for purchase of goods and services that had the potential for use in mitigating casinos' impacts, should the need arise. However, the main beneficiaries were the counties as a whole because projects had little connection to casinos (page 30).

BSA Recommendation:

Require local governments to submit supporting documentation that clearly demonstrates how proposed projects will mitigate the effects of casinos (page 10, 46).

Riverside County Response:

The grant application form requests mitigation information. Specifically, the requests state, "On a separate sheet(s) of paper, describe the impacts associated with the Tribal casino and/or gaming (please include historical data, if available)" and "On a separate sheet(s) of paper, provide a complete description of the project, including the effect it will have on the specific impacts described above."

SB 621, Section 12715, paragraph (h) states, "All grants from Individual Tribal Casino Accounts shall be made only upon the affirmative sponsorship of the Tribe paying into the Indian Gaming Special Distribution Fund from whose individual Tribal casino account the grant moneys are available for distribution. Tribal sponsorship shall confirm that the grant application has a reasonable relationship to a casino impact and satisfies at least one of the priorities listed in subdivision (g)."

SB 621, Section 12715, paragraph (g) states, "The following uses shall be the priorities for the receipt of grant money from Individual Tribal Casino Accounts: 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 and child care programs."

⑧ The County of Riverside disagrees with the BSA's statement, "... the main beneficiaries were the counties as a whole because projects had little connection to casinos." Tribal sponsorship and the priorities set forth in SB 621 ensure that funds are used in accordance with the law and consistent with Tribal views of gaming/

County of Riverside's Response to the California State Auditor's Report, "California 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."

casino impacts. Tribal gaming/casino impacts are probably not completely obvious and BSA staff may have experienced difficulties correctly determining whether Special Distribution Funds were used to mitigate the associated impacts, especially since input was not solicited from Tribal representatives.

Fifty-two out of 70 projects funded were for public health and safety projects (law enforcement, fire services, emergency medical services and public health). ②

Comments

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

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

While preparing our draft report for publication, page numbers changed, therefore, page numbers Riverside County refers to throughout its response may be different in the final report.

The report has been corrected. The original number is from Riverside's annual report entitled "Indian Gaming Special Distribution Fund Annual Report Fiscal Year 2005/06" which describes the information contained as "Total Amount of Grant Funds Allocated to Riverside County in FY 2005/06." However, this report erroneously contained information on money granted in fiscal year 2004-05.

Riverside is mistaken regarding the factual circumstances surrounding Senate Bill 288, Chapter 13, Statutes of 2006 (SB 288). As described in the fiscal year 2005-06 governor's budget, the governor reduced the funding because counties were not submitting annual reports. Further, SB 288 did not add the Department of Finance as a recipient of annual reports; rather, as described on page 15 of the report, it added the Joint Legislative Budget Committee, the Senate Committee on Governmental Organization, the Assembly Committee on Governmental Organization, and the California Gambling Control Commission.

Riverside is confused regarding the definition of a "fiscal year." If a report is due October 1, 2006, which is within fiscal year 2006-07, the previous fiscal year would be 2005-06. We continue to recommend that Riverside submit information required in the California Government Code (Government Code) rather than, as described on page 3 of its response, taking it upon itself to decide what information the Legislature would find useful.

We are pleased that Riverside's response elaborates on our description of how the school district is the ultimate beneficiary of these funds. On page 5 of its response, Riverside provides a model definition of a fiscal agent in describing how the police department reimburses the school district for applicable program expenses, and reimburses itself for services provided to the school district. Further, in our interviews with police department staff, they stated

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that they were asked to apply for this funding on behalf of the school district, and agreed that their role could best be described as a "pass-through entity" for the school district. Therefore, we stand by our conclusion that the grant funds were awarded to an ineligible entity. Furthermore, while as Riverside describes, the casino may view the project as mitigating its impact on crime and gang-membership, the police department told us that they had no evidence showing a reasonable relationship to a casino impact.

⑥ We stand by our conclusion that the interest on Indian Gaming Special Distribution Fund (distribution fund) money should be used for the originally intended purpose. The compacts clearly state that moneys in the distribution fund are available for appropriation by the Legislature for specified purposes, including the support of state and local government agencies impacted by tribal gaming and other purposes specified by the Legislature. The compacts also declare the intent of the parties that compact tribes be consulted in the process of identifying purposes for grants made to local governments. Our legal counsel has advised that the courts and the California attorney general have concluded that Section 53647 of the Government Code does not abrogate the general common law rule that interest must be used for the same purposes as the principal. Instead, whether the interest should be credited to the general fund for other purposes depends upon the source of the funds and restrictions that have been placed upon the funds. Our legal counsel has also advised that given the source of the funds, that is private funds that are directed to the distribution fund through a compact with a sovereign nation, the general common law rule would apply to the use of interest rather than Section 53647.

⑦ Riverside misunderstands the importance of the nexus test. As described in the legislative intent, the funding is intended to be divided equitably among local governments impacted by tribal gaming. The criteria of the nexus test, which evaluate a local government's geographical proximity to a casino, help ensure that local governments receive a fair and proportionate share of grant money. We agree that if a local government applies for less money to mitigate casino impacts than they have been allocated, the remainder should be used for other local governments. However, by deferring to the tribes its responsibility to review applications and select those to award grant funds, as the county acknowledges on page 7 of its response, it does not know if other applications related to casino impacts were submitted by local governments in this jurisdiction. As such, we continue to recommend that Riverside follow the Government Code requirements in allocating money to local governments.

Riverside is mistaken. As described in several examples on pages 22 through 26 of this report, tribal sponsorship and the priorities set forth in Government Code, Section 12715, do not ensure that the projects funded mitigate an impact caused by a casino. In reviewing these grants, we not only reviewed the descriptions in applications provided by Riverside, but also obtained the documentation to support those descriptions directly from the entities most familiar with the impacts of the casinos, the local governments receiving the funds and working to mitigate the impact of the casino on a day-to-day basis. Riverside's stated dependence on the "Tribal views of gaming/casino impacts" fails to alleviate our concern or address our finding.

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(Agency response provided as text only.)

County of San Bernardino
Board of Supervisors
385 North Arrowhead Avenue, Fifth Floor
San Bernardino, CA 92415-0110

June 28, 2007

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

Attention: Tanya Elkins

Submitted is a copy of the San Bernardino County response to your audit titled "California 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."

As requested, the County has responded to the recommendations of the audit and has included the entire response, including cover letter and attachments, on the enclosed diskette using a Microsoft Word file. If you wish to discuss the response, please contact Briana Lee, Administrative Analyst, County of San Bernardino, at 909-387-5301

Sincerely,

(Signed by: Dennis Hansberger)

Dennis Hansberger, Chair
Supervisor, Third District

* California State Auditor's comment appears on page 89.

**County of San Bernardino Response to
June 21, 2007 California State Auditor Report On
Indian Gaming Special Distribution Fund.**

The County of San Bernardino welcomes the California State Auditor's review of the important subject of the California Indian Gaming Special Distribution Fund.

The California State Auditor recommends:

- 1. Require local governments to submit supporting documentation that clearly demonstrates how proposed projects will mitigate the effects of casinos.**
- 2. Ensure that local governments spend the interest earned on project funds only on the projects for which the grants were awarded or return the money to the County for allocation to future mitigation projects.**
- 3. 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.**
- 4. Submit annual reports to all required legislative committees and the gambling commission.**

Below is the county response to the four key items highlighted in the audit report:

County Response to Item #1.

The county will continue to require local governments to submit adequate documentation that clearly demonstrates how projects will mitigate the effects of casinos.

① In the case of San Bernardino County Fire, the county believes the rescue/ambulance boat purchased with the grant award for the 06/07 fiscal year, once in service, will be used for a majority of casino related medical and rescue services and the award received for salaries was used to pay for staff that responded to reservation or casino related calls. County Fire has an agreement with the Chemehuevi Indians to cover more than 30 miles of reservation land for fire and emergency medical response. This includes waterfront, the Lake and Havasu Landing Resort and Casino. Up to 80% of service calls are to the reservation, Casino or the Lake area (for rescues) in California. Unless called out under mutual aid County Fire does not respond into Arizona, which is, where the Lake Havasu Chamber of Commerce and Lake Havasu City is located.

As provided to the auditors on March 19, 2007 the Havasu Landing Casino and Resort is located directly on Lake Havasu, in California, with a full service marina that includes three boat ramps, launch and retrieval service, fueling station, boat slips and a general store. This allows access by visitors from both Arizona and California, via the waterways, to the Casino for dining, shopping or gaming at the Casino. The Casino also has an air strip with free shuttle service to the casino and back to the airport, no landing fees and tie downs. The Casino has a complete RV park and campground that is currently under expansion with daily, weekly and monthly rates and mobile home parks with year round and long term leases available. All of these are located on the reservation which is serviced by County Fire.

The Casino also runs free boat shuttle service to and from the Casino to the London Bridge (Arizona) every thirty minutes. This shuttle service is available to all visitors coming to the Lake Havasu area. County Fire is on call twenty four hours a day seven days a week to service any and all emergency incidents that occur at

the Casino or the surrounding reservation area, including on the Lake. The emergency responses are not limited to holiday weekends when the population swells and water and road traffic increase ten fold. Based on this information, the county believes year round responses to this area can be greatly attributed to the reservation and the Casino with all of its attractions.

Attachment A is included as reference.*

County Response to Item #2.

The county will implement procedures to ensure that the interest earned on distribution funds for long-term capital projects will remain with the project. Although the law is silent on the issue of allocation of interest earned, beginning July 1, 2007 (Fiscal Year 2007/08), material amounts of grant money for long-term projects remaining unspent will be deposited in an interest bearing account and all interest earned will be allocated back to the original project or used for future mitigation projects.

County Response to Item #3.

All members of the Indian Gaming Local Community Benefit Committee will continue to be informed of the requirement to file an annual Statement of Economic Interest, 30 days or more before the filing deadline of April 1 of each year. All members of the Committee that do not file a statement a week prior to the deadline will be reminded of the requirement of filing the statement. If members of the committee thereafter do not file a statement, those members of the committee will be notified within 10 days after the deadline, that the deadline has passed and that the statement needs to be filed. If there is no compliance thereafter, a second notice will be sent to the member again notifying them of the requirement. If the member does not comply after a two week period has passed from the date of the second notice, the appropriate state agency will be notified.

County Response to Item #4.

The county has in the past and will continue to exercise due diligence in the detailing and reporting of the specific projects funded by the grants. In accordance to the annual reporting requirements as set forth by the Legislature, the county will continue to adhere to the October 1st deadline for all required entities in order to facilitate transparency in the allocation and purpose of each grant.*

* Attachment not included. For a copy of the attachment contact San Diego County.

Comments

CALIFORNIA STATE AUDITOR'S COMMENT ON THE RESPONSE FROM SAN BERNARDINO COUNTY

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

San Bernardino County appears to be confused about the intended beneficiaries of Indian Gaming Special Distribution Fund (distribution fund) grants. On page 1 of its response, the county refers to the agreement with the tribe to cover more than 30 miles of reservation land for fire and emergency medical response, as similarly indicated in the application for funds, which stated that the rescue/ambulance boat is used for firefighting along the shore and in the marina and for the rescue of patients from watercraft accidents. However, as stated on page 22 of our report, the intent of distribution fund grants is to mitigate the impact of casinos. Although the county states that up to 80 percent of the calls are to the reservation, casino, or lake area, the intent of the law is to mitigate the impact of the casino, and responses to other parts of the reservation would be necessary with or without the presence of the casino. We stand by our conclusion that the distribution fund grant money was not used solely for the mitigation of casino impacts. Further, the county's response notes that the award for salaries pays for staff that respond to reservation or casino calls. However, as described in the application for funds, the additional staffing is for the general Havasu area, and as described on page 25 of the report, given the popularity of the lake Havasu area, we do not believe that increased staffing for holiday weekends is entirely related to the casino. We acknowledge on page 23 of our report that the funds may be partially used to mitigate the impacts of the casino, but we also note as a best practice the procedure used by one San Diego grantee to use other funds for the portion of a project unrelated to the casino.

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(Agency response provided as text only.)

County of San Diego
Chief Administrative Office
1600 Pacific Highway, Ste. 209
San Diego, CA 92101-2472

June 27, 2007

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

Dear Ms. Howle:

RESPONSE TO CALIFORNIA INDIAN GAMING SPECIAL DISTRIBUTION FUND: LOCAL GOVERNMENTS DO NOT ALWAYS USE IT TO MITIGATE THE IMPACTS OF CASINOS

Thank you for giving us the opportunity to review your draft audit report. We have the following responses and corrective actions regarding each finding:

A. **LOCAL GOVERNMENTS DID NOT ALWAYS USE THE DISTRIBUTION FUND TO PAY FOR MITIGATION PROJECTS**

1. Statements in Report

On Page 29, the Draft Report (Report) states that two grants in San Diego were used for projects benefiting the entire county and were only partially related to the effects of the casinos. The Report then goes on to state on Page 30 that these two grants "were not solely intended to lessen casinos' impacts but were primarily [emphasis added] used for non-casino-related needs" and "... the main [emphasis added] beneficiaries were the counties as a whole because the projects had little connection to casinos."

2. Response

The County disagrees with the above statements and provides the following response for the Sheriff Crime Scene Investigation Instrumentation Grant and the Inland Agencies and East County Fire Protection Districts, FY 06/07 Dispatch Fees Grant: ①

a) Sheriff Crime Scene Investigation Instrumentation

Summary. The instrumentation purchased through the IGLCB grant is for the investigation of arson fire. The justification as presented and approved by the IGLCB committee and the sponsoring Tribes is straightforward: one of the most serious risks to the 116,000-acres of tribal lands and 10 casinos in the County is fire. (See attached map of Reservations in San Diego County) This region is one of the few in the nation that has a "fire season," much like some regions of the world have a hurricane season. **One hundred percent** of the fires present risk to the tribal lands and their properties, to ①

* California State Auditor's comments begin on page 97.

San Diego County Response to Audit

June 27, 2007

their residents and to their patrons and visitors. Further, the risk of fire is substantially increased in the East County—to the region and to the Tribal lands—by virtue of the number of visitors and patrons to gaming establishments. There is no practical way to parse the percentage of increased risk: ***the increased population creates increased risk of fire and every fire represents a risk to the security of the Tribal properties, their people, and their patrons.*** That's why the IGLCB has historically supported the purchase of fire engines and even a fire helicopter to service the region. The purchase of the arson detection instrument is no different than those earlier approved grant purchases. Further, the funding did not include the work of the criminalists at the Crime Lab who have spent hours validating the instrument, a requirement for forensic investigations pursuant to accreditation standards; nor did the funding request staffing to deploy the instrument during the course of an investigation. Thus, the grant funded only a percentage of the cost of the effort to deploy the instrument purchased with IGLCB funds.

Public safety priority. Since the inception of the IGLCB grants, fire has been a public safety priority of the Tribal governments and the public agencies that service them. The original grant applications came in the wake of the worse fire disaster—and one of the worst natural disasters of any sort—in the history of California. The fires threatened tribal lands in the East County—the location of Sycuan, Barona, and Viejas—and exposed their continuing vulnerability. Not surprisingly then the original grants partnered the San Diego Sheriff's Department, the only countywide frontline public safety agency, with local fire districts—the San Miguel/Alpine, Lakeside, Rural and East County Fire Protection Districts. The aim was to propose ways of boosting protection to the Tribes and the surrounding areas. This translated into the purchase of fire engines and a fire helicopter, as well as the funding of fire fighting personnel and training.

Since then fire fighting and emergency rescue, fire detection and prevention, have remained staples of the grant awards, creating continuity in the funding and identifying gaps in the availability and delivery of service. Identifying the necessary equipment to better investigate arson was part of an overall priority scheme set by the Tribal governments and the IGLCB committee.

Nexus to gaming. In what way is this connected to gaming? The gaming facilities of Barona, Sycuan, and Viejas are among the most successful in San Diego County. While there is no uniform method of counting "visitors" to casinos and tribal lands, the Tribal governments are able to provide solid estimates: Viejas puts the number of visitors to Tribal land last year at 5.5 million; Sycuan puts the number at 3.7 million and Barona states that the number of visitors to its casino for calendar year 2006 was 3,275,645. This number does not include visitors to other entertainment venues or those traveling through Tribal lands on their way to another destination. Thus these numbers, substantial by any measure, are a direct result of Indian gaming. The safety of visitors is an articulated priority of the Tribal leadership.

The risk. These tribal lands and their casinos are particularly vulnerable to fire. While the City of San Diego is a coastal community with a temperate climate, the East County locale of the tribal lands is dramatically different, operating in its own microclimate with its own unique ecosystem: desert-like temperatures with high vegetation that has adapted to the dry and hot conditions. Recently, a group of independent scientists, assembled for the purpose of conservation planning in East County, marked the unique ecology of this region: its geology, elevation, climate—precipitation and temperature—wildlife, and vegetation. [See Report of the Independent Science Advisors on the San Diego East County MSCP (NCCP/HCP) March 31, 2006.]

San Diego County Response to Audit

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The result is a perfect storm of fire conditions: hot temperatures, high vegetation, and fierce winds. Indeed, just as some regions of the nation have a "rainy season" or a "cold season," in San Diego County meteorologists and climatologists refer to a "fire season," a term adopted from the California Department of Forestry to designate a **state of alert**. Significantly, **San Diego is one of only three regions (the other two being its neighbors, Riverside and San Bernardino) that maintains a "fire season" state-of-alert at all times.**

The need for instrumentation. In directing funds toward the purchase of state-of-the-art arson investigation equipment, the Tribal governments and the IGLCBC identified a gap in the delivery of fire protection and investigation. That led to approval for the purchase of a GCMS.

Any and every fire in this region threatens Tribal lands, Tribal residents, and gaming patrons. And any and every fire is the subject of a fire investigation because arsonists are known to work across large geographic regions. The guy who sets a fire today in Ramona, if not caught, may get his thrills next week by setting a fire near Barona.

During October 2003, San Diego County was stricken with the worse fire in California history burning 273,246 acres and causing the death of 15 people. More than half of the county's 18 Indian Reservations were threatened or directly affected by the wildfires. The Barona Rincon and San Pasqual Reservations, which all have large casinos, were hit especially hard by the fires, which resulted in the deaths of three people. Thirty-five homes were destroyed along with a preschool and several outbuildings. On the San Pasqual reservation 67 homes were destroyed. At nearby Rincon, 75 percent of the reservation's 4,000 acres were burned.

Investigative response. The investigative response to fire addresses the needs of the Tribal lands and the surrounding region seamlessly. The County of San Diego maintains a Bomb and Arson Unit at the San Diego Sheriff's Department. It works in conjunction with fire districts throughout the County and in cooperation with the City of San Diego's Metro Arson Strike Team, a multi-agency team that is available to conduct investigations regionally. *The San Diego County Crime Laboratory provides service for all arson investigations in the unincorporated area (Sheriff's jurisdiction), including all tribal lands, and the incorporated areas of the County other than the City of San Diego.* ①

The Crime Laboratory's service is two-fold: Crime Scene Investigators respond to suspicious fires at the request of an investigator and complete a crime scene investigation. The Lab's crime scene investigation team includes Forensic Evidence Technicians, Latent Print Examiners, and Criminalists. Any evidence captured at the crime scene is returned to the Laboratory for scientific analysis. Forensic analysis of evidence routinely takes place in Forensic Biology (for DNA) and Fingerprint Analysis, as well as in Trace Evidence, where the bulk of arson investigation work is done in the crime laboratory. A Trace Evidence criminalist will compare evidence from crime scenes to samples collected from suspect and victim sources to try to determine whether there is a link between suspect, victim, and crime scene. Significantly, the types of analyses also include analysis of fire debris for the presence and identification of flammable liquids. It is in this analysis that the GCMS plays its part *in every case investigated*. In the gas chromatograph, a complex mixture of volatile organic chemicals (VOCs), such as ignitable liquids, is separated into individual components. In the mass spectrometer, each individual component is then identified. The identities of the individual components and the relative amounts of each present allow the criminalist to identify what type of ignitable liquid, if any, is present.

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This permits a forensic scientist to determine if gasoline or some other accelerant was used to help ignite a fire. That provides guidance for investigators and assists in determining whether to treat the fire investigation as criminal in nature. All of this is reported to investigators.

Conclusion. In short, authorization of this effort by the Crime Lab follows an historic public safety priority of the Tribal governments and IGLCB funding: the prevention and detection of fire. This policy priority has been in evidence since the first grants, recognizing the risk to the Tribal lands and the region because of the locale of the 10 gaming facilities and because of the increased number of visitors to the region because of Indian gaming.

b) Inland Agencies and East County Fire Protection Districts, FY 06/07 Dispatch Fees

The grant of \$217,700.92 was 58.67% of the total estimated cost of \$371,000.00 for FY06-07 Dispatch Fees, and associated costs, for two East County Fire Agencies and 14 Inland Fire Agencies. These agencies are First Responders in a 1,078-square mile area and they also respond to fires and emergencies through Mutual Aid Agreements in the whole county.

- ② Although there are no exact statistics available, we believe there is an extremely reasonable relationship between the grant and casinos' impacts because of the millions of visitors and thousands of employees that travel through these agencies' response areas. Our belief, which was confirmed by the three Tribes on the Committee, is based on the following facts: 1) there were approximately 12 million visitors to the Barona, Sycuan and Viejas Casinos in 2006 and each of these casinos employ approximately 2000 persons; 2) all of these visitors and employees travel by car or buses; 3) there are seven (7) additional casinos in the County, three of them, Campo, La Posta and Santa Ysabel Casinos, in the inland and east county area; 4) in addition to the need to respond to medical emergencies, and car accidents in general, the San Diego Region is a high-fire risk area; and 5) there are only 41,707 residents in the Contract Service Areas of these agencies.

3. Corrective Action

The County will ensure that applications for grants clearly document the relationship between the funding requested and the impacts of Indian casinos.

B. INTEREST THAT LOCAL GOVERNMENTS EARNED ON UNSPENT DISTRIBUTION FUND MONEY HAS NOT ALWAYS GONE TOWARD THE PROJECT FOR WHICH THE GRANT WAS AWARDED

1. Statements in Report

On Page 37, the Report states that many local governments used the interest on unspent distribution fund money for general county purposes rather than on the original mitigation projects of future projects with a similar purpose and assert the Government Code grants them authority to do so. The Report also states that "Our legal counsel advised us that although the law does not specifically require a local government to allocate interest earned on unspent grant funds to original or future mitigation projects, the Government Code cited by local governments states that earned interest may be deposited in their general funds unless otherwise specified by law. The purposes for which distribution fund money may be spent are set forth in the compacts and state law. Accordingly, our counsel has advised that the interest on distribution fund money is subject to

San Diego County Response to Audit

June 27, 2007

the common law rule that unless it is separated by statute from the principal, the interest should be used for the originally intended purpose. Thus, we believe the interest should be used to support the purposes for which the grants were originally awarded."

The County disagrees with the above statements and provides the response below.

2. Response

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. Because 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. ③

3. Corrective Action

The County will consider your recommendation.

C. SOME BENEFIT COMMITTEE MEMBERS FAIL TO MEET DISCLOSURE REQUIREMENTS

1. Statements in Report

The Report states on Page 44 that "... we received only 1 of the 13 statements of economic interests for tribal representatives..."

2. Response

The County sent statements to your office for two of the three tribal representatives that served on the committee in FY05-06. ④

One Tribal Representative did not file a statement of economic interest in FY05-06. County has learned that the reason the one Tribal Representative did not file is that neither the Committee nor the Board of Supervisors had adopted a Conflict of Interest Code in FY05-06.

3. Corrective Action

The Committee has since adopted a Conflict of Interest Code and the Board of Supervisors adopted it on June 12, 2007.

D. MANY COUNTIES DID NOT PROPERLY REPORT THEIR USE OF DISTRIBUTION FUND MONEY

1. Statements in Report

On Page 45, the Report states that "in 2006 only three counties reported to all required entities."

2. Response

San Diego County has fully complied with reporting requirements in State law.

San Diego County Response to Audit

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3. Corrective Action

No corrective action is needed.

Thank you again for the opportunity to review the Report and considering our response. If you have any questions, please call me, at (619) 685-2542.

Sincerely,

(Signed by: Chantal Saipe)

CHANTAL SAIPE
Tribal Liaison and County staff to the Benefit Committee

Attachment*

* Attachment not included. For a copy of the attachment contact San Diego County.

Comments

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

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

San Diego County appears to be confused about the intended beneficiaries of Indian Gaming Special Distribution Fund (distribution fund) grants. Specifically, on pages 1 through 4 of its response, the county makes several references to the equipment purchased by the Sheriff's Department being used to alleviate potential fire threats to tribal lands, implying that their focus is the protection of tribal lands. However, as stated on page 22 of our report, the intent of distribution fund grants is to mitigate the impact of casinos. Further, San Diego County acknowledges that the equipment will be used to investigate incidents in areas unrelated to the casino or tribal lands. Specifically, on page 3 of its response, San Diego County officials state "the San Diego County Crime Laboratory (a branch of the Sheriff's Department) provides service for all arson investigations in the unincorporated area, including tribal lands, and the incorporated areas of the County other than the City of San Diego." As stated on page 2 of the report, the Sheriff's Department suggested that in the future some of these investigations may occur in the area around the casino. However, because the 116,000 acres of tribal lands make up only 4 percent of the county's area, we stand by our conclusion that the equipment purchased with distribution fund grant money is primarily for the benefit of the entire county rather than mitigating the impact of the casino.

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Although San Diego County disagrees with our determination that the equipment purchased with distribution fund grant money by the Inland Agencies and East County Fire Protection Districts was primarily to benefit the entire county, on page 4 of its response, the county acknowledges that these agencies "are First Responders in a 1,078-square mile area and they respond to fires and emergencies through Mutual Aid agreements in the whole county." However, San Diego appears to be unfamiliar with how mutual aid calls are reimbursed. Because the jurisdiction to which a department provides mutual aid is responsible for reimbursing the associated costs, any incidents at casinos or the reservation would be reimbursed by the reservation, rather than through the grant

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funds. As such, we stand by our conclusion that the grant funding is primarily for the benefit of the county rather than mitigating the impact of the casino.

- ③ We stand by our conclusion that the interest on distribution fund money should be used for the originally intended purpose. The compacts clearly state that moneys in the distribution fund are available for appropriation by the Legislature for specified purposes, including the support of state and local government agencies impacted by tribal gaming and other purposes specified by the Legislature. The compacts also declare the intent of the parties that compact tribes be consulted in the process of identifying purposes for grants made to local governments. Our legal counsel has advised that the courts and the California attorney general have concluded that Section 53647 of the California Government Code does not abrogate the general common law rule that interest must be used for the same purposes as the principal. Instead, whether the interest should be credited to the General Fund for other purposes depends upon the source of the funds and restrictions that have been placed upon the funds. Our legal counsel has also advised that given the source of the funds, that is private funds that are directed to the distribution fund through a compact with a sovereign nation, the general common law rule would apply to the use of interest rather than Section 53647.
- ④ We agree with San Diego County's statement that two of the three tribal members who served on the Indian Gaming Local Community Benefit Committee filed a statement of economic interest. As shown on page 35, we have revised the text to reflect this information.

Agency response provided as text only.

Sonoma County Local Community Benefit Committee
575 Administration Drive, Room 104A
Santa Rosa, California 95403

June 25, 2007

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

Attn: Tanya Elkins

Re: Agency Response to Request for Comments on Draft Report Titled, "California Indian Gaming Special Distribution Fund: Local Governments Do Not Always Use It to Mitigate the Impact of Casinos, and Its Viability Will Be Adversely Affected by Compact Amendments"

Ms. Howle:

On Friday June 22, I received a copy of the draft report, "California 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." The report, addressed to County Supervisor Valerie Brown, was delivered to me in my capacity as the 2007 Chair of the Sonoma County Indian Gaming Local Community Benefit Committee ("Committee").

Thank you for the opportunity to comment on the draft report. I would like to offer the following comments, which address both the process and substance of the draft report.

I received the draft report on Friday, June 22, with a requirement that written comments be submitted to the State Auditor by 5:00 p.m. on the following Wednesday, June 27. To allow for a thorough review and response, Committee staff requested the State Auditor allow an extension of one week for comments. Pursuant to our request, Steve Cummins, Audit Principal, authorized an extension to 5:00 p.m. on Friday, June 29, 2007. Although we appreciate the additional two days granted, the short timeframe for comment does not provide sufficient time for a thorough review and response.

The draft report states that reproduction and distribution is prohibited, citing a confidentiality requirement (Government Code Sections 8545(b) and 8545.1). Although the referenced code section does not appear applicable to members of the Committee, correspondence from the State Auditor specifically indicates the draft report is to remain confidential. Due to the confidentiality requirements, it is not clear who is authorized to review and comment on the report. ①

Ideally, the Committee would meet, review the report, and provide direction to staff to prepare a response. The draft report as distributed does not allow an opportunity for the Committee to meet, discuss the draft report, and formulate a written response. As such, I am responding on behalf of the Committee without the benefit of input from the entire Committee.

* California State Auditor's comments begin on page 103.

Elaine M. Howle, State Auditor
 Bureau of State Audits
 June 25, 2007
 Page 2

- ② The draft report is incomplete and substantially redacted such that the details and specifics of concerns identified by the State Auditor are not visible for review. As an example, the entire second chapter, which we assume will address how the special distribution fund's viability will be adversely affected by compact amendments, is not included in the draft report. As a Committee, we have a strong interest in insuring continued funding for local governments affected by tribal gaming. We would have appreciated an opportunity to review and comment on the findings and recommendations in this area. Due to the redacting, it is unclear if additional details which provide more specific information on grants authorized by the Committee will be included in the final report. In short, it is difficult for us to provide a comprehensive review and comment on the draft report as provided to us by the State Auditor.

- The substance of the report is also of concern. The title of the draft report, "California Indian Gaming Special Distribution Fund: Local Governments Do Not Always Use It to Mitigate the Impacts of Casinos, and Its Viability Will Be Adversely Impacted by Compact Amendments," seems to imply a misuse of special distribution funds by local governments. The implication is not supported by the content of the draft report.
- ③ The draft summary (page 4, paragraph 2) states as follows, "The grants we reviewed were used for the statutorily mandated purposes." The draft summary (page 5, paragraph 2) goes on to state that, "... there are no specific requirements that local governments must ensure that the funds are used for projects that directly address an impact from the casinos. Therefore, even though the money was not used to mitigate the impacts of casinos, the grants appear to adhere to the requirements of the law." Based on these statements, it seems the report would be more appropriately titled to indicate that all of the grants audited adhere to state statute.

The draft report implies, and is critical of local governments for not meeting certain standards which are above and beyond the standards established by statute. As an example, the draft report states (page 4, paragraph 2) that the audit, "... found five instances... (1 in Sonoma) when money was not used to offset the adverse effects of the casino... Healdsburg District Hospital in Sonoma County received more than \$52,000 for surveillance cameras. Although the hospital claimed it experienced several acts of vandalism in its parking areas and other disturbances, it could not provide evidence showing that those incidents were related to the casino or that the number of criminal incidents on its property had increased since the casino was built."

- As stated earlier in the draft report, this grant, like all of the others reviewed by the audit, was "used for the statutorily mandated purposes." Further, "there are no specific requirements that local governments must ensure that the funds are used for projects that directly address an impact from a casino." It is not clear why the draft report calls this grant out as an example and implies that the Hospital is required to show evidence that incidents of vandalism were directly related to the casino. Throughout the draft report, assertions are made that funded grants are not used to offset casino impacts when in fact there is no legal requirement for them to do so.
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- The draft report includes a factual error in relationship to the Healdsburg District Hospital grant. The report states (page 32, paragraph 2), "Furthermore, the hospital only used \$18,900 of the grant award on surveillance cameras. The remaining funds were used to purchase a defibrillator and to purchase and install a pharmacy climate control system. These purchases occurred even though the Sonoma County Benefit
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Elaine M. Howle, State Auditor
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Committee approved only the hospital's request to purchase and install surveillance cameras... and did not authorize and was not informed by the hospital of the decision to spend grant funds on other items." This information is incorrect and we request that it be corrected in the final report.

The Healdsburg District Hospital's original grant application requested funding for the hospital surveillance system. On May 8, 2006, the District Hospital submitted a written request to Harvey Hopkins, Chairman of the Board of Directors of the Dry Creek Rancheria, requesting additional funding for a defibrillator and to purchase and install a pharmacy climate control system. The letter of sponsorship from the Tribe to the Committee includes tribal sponsorship of the hospital surveillance system, the emergency room defibrillator, and the pharmacy climate control system improvements. A copy of the sponsorship letter, which includes all of the intended uses, was previously provided to the state auditors.

The draft report goes on to state that of the 30 grants reviewed, 10 (4 in Sonoma) were used for project benefiting the entire county and were only partially related to the effects of casinos, and five (1 in Sonoma) were not related to casinos' impacts (page 26, paragraph 1). Although details of which grants the draft report is referring to are redacted, the report goes on to state that five grants funded by Sonoma's Committee were not used solely to reduce adverse consequences of casinos. Again, the draft report implies that statute requires a direct link between a funded grant and a casino impact. Clearly current statute does not require such a link. ⑥

The draft report finds that members of the benefit committees do not always make the financial disclosures required by law. Of the counties audited, most of the Tribal representatives on the committee did not file statements of economic interest. Sonoma County did request that all members of the Committee file statements of economic interest. In Fiscal Year 2005-2006, the Tribal representatives on the Committee did not complete and return their statements of economic interest to the County. The County has no record of why the Tribe did not comply with the request to complete and return the forms. Since 2005-2006 Tribal members have completed and returned their statements of economic interest as requested by the County.

Again, I want to assert that our Committee is meeting all of the statutory requirements of Government Code Section 12710 et. seq. An understanding of the statutory use of these funds is critical to the audit's findings related to grants made by our Committee. In Sonoma County, the Dry Creek Rancheria of Pomo Indians operates the River Rock Casino, which is the only casino currently operating in Sonoma County. River Rock Casino does not have gaming devices subject to an obligation to make payments to the Indian Gaming Special Distribution Fund. As such, our Committee is subject to Government Code Section 12715(f) (1) which states, "For each county that does not have gaming devices subject to an obligation to make payments to the Indian Gaming Special Distribute Fund, funds may be released from the county's County Tribal Casino Account to make grants selected by the county's Indian Gaming Local Community Benefit Committee pursuant to the method established in this section to local jurisdictions impacted by tribal casinos. These grants shall be made available to local jurisdictions in the county irrespective of any nexus to any particular tribal casino. These grants shall follow the priorities specified in subdivision (g)." The priorities specified in subdivision (g) are: 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, and child care programs. ⑦

Following is a summary of the grants, affirmatively sponsored by the Tribe, and approved by our Committee for funding in FY 2005-2006:

Sonoma County Indian Gaming Local Benefit Committee FY 05-06 Grant Application Summary Available Funding: \$449,579.39				
No.	Jurisdiction	Name of Project	Funding Priority	Amount Funded
1	Cloverdale Fire Protection District	Firefighter Safety Clothing and Equipment	Fire Services	60,000.00
2	Healdsburg Fire Department	Partial Funding for Training Officer	Fire Services	89,786.00
3	Healdsburg Fire Department	Towing/Command Vehicle for MCI Trailer	Fire Services	48,487.00
4	Windsor Fire Protection District	Vehicle Extrication/Mult-Casualty Incident Response and Rescue Program (Phase 2)	Fire Services & Emergency Services	20,873.00
5	Cloverdale Health Care District	Personnel Enhancement	Emergency Medical Services	52,000.00
6	Healdsburg Police Department	Interoperability Program	Law Enforcement	123,706.00
7	Healdsburg District Hospital	Hospital Surveillance System	Law Enforcement, Emergency Medical Services, Behavioral, Health, & Public Health	52,247.39
8	County of Sonoma	Administrative Costs	Subtotal	447,099.39
			Total	\$2,480.00 449,579.39

⑧ All of these grants meet the spirit, the intent, and the letter of the law.

Pursuant to our Committee process, which is governed by Bylaws adopted by the Committee, each of the jurisdictions who received funding in FY 2005-2006 submitted a completed grant application which included information on how the jurisdiction is impacted by tribal casinos. The Dry Creek Rancheria Board of Directors reviewed the grant applications, determined them to be consistent with one or more of the funding priorities specified in Governments Code Section 12715(g), affirmatively sponsored them, and recommended a level of funding to the Committee. The Committee approved the recommended funding level and notified the State Controller by June 30, as required by statute.

We hope that our comments are helpful and that the final report will be substantially rewritten to accurately reflect current statute and to accurately assess whether Local Community Benefit Committees are in compliance. We are concerned with the process used in this review, including 1) inadequate time period for analysis; 2) heavily redacted documentation; 3) confidentiality constraints (that appear to limit consultation with Committee members or grantees). Further, we would appreciate acknowledgement in the final report, by the State Auditor, that our Committee is in full legal compliance with State statute. The Committee stands ready to work with the State to help insure that the impacts of tribal casinos on local communities are fully mitigated and appreciates this opportunity to review and comment on the draft report.

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Sincerely,

(Signed by: Mike McGuire)

Mike McGuire, Chair
Sonoma County Local Community Benefit Committee

Comments

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

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

The Bureau of State Audits (bureau) leaves the decision as to who is responsible for reviewing and responding to our reports up to the entity being audited. The draft report is provided to the entity whose operations are being audited, in this case the Indian Gaming Local Community Benefit Committee (benefit committee), and to whom our recommendations are being addressed. As described during our exit conference of June 21, 2007, we agreed with the benefit committee chair that in this case it seemed logical that those individuals at the county responsible for administering the Indian Gaming Special Distribution Fund (distribution fund) grant process would assist in reviewing and commenting on the draft report. Further, during the exit conference we stated that our staff were available at any time for consultation via phone to answer questions such as these.

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Sonoma County is mistaken. The draft report we provided included all of the information related to Sonoma County. The information that was redacted applied to other counties or general issues that were not related to our review of distribution fund grants at Sonoma County. Because the second chapter does not apply to the operations of the benefit committee in Sonoma County, it is not necessary for Sonoma to review or comment on it. Furthermore, according to the Government Code section that governs our operations, the bureau is not allowed to disclose information that does not pertain to Sonoma County before the public release of our report.

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We do not believe our report title implies that distribution fund grant money is being misused. Based on the results of our audit as described on pages 22 through 26, it is a factual statement that local governments do not always use grant funds to mitigate the impacts of casinos.

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As with other examples in our report, the Healdsburg District Hospital (hospital) grant was used as an example of how some grants have no claimed or actual relationship to the impact of a casino. As stated at page 22 of the report, there are no specific requirements that local governments must ensure that funds are used for projects that directly address an impact from a casino. However, we believe that the requirement for tribes to confirm that

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grant applications have a reasonable relationship to a casino impact reflects a legislative intent that grant money be used to mitigate the impact of casinos.

- ⑤ Sonoma is misrepresenting the situation. When we requested the application submitted to and approved by the benefit committee, the copy provided to us from the county files listed only the surveillance system. In addition, the request for release of funds sent to the State Controller's Office listed the project as a surveillance system. Although the tribe was informed of the change to the hospital's application, this information is not disclosed in the application or committee approval documents the county provided to us. According to Sonoma County's deputy county administrator, Healdsburg District Hospital provided additional information to the tribe, but did not provide information to the benefit committee. Further, if the benefit committee and county were informed of the change, we question why the annual report provided to the Legislature seven months later, and three months after the date it was due, described the project as "Healdsburg District Hospital—Hospital Surveillance System." As such, it does not appear that the benefit committee approved the purchase of the additional items.
- ⑥ As stated on page 5 of the report, even though the money was not used to mitigate the impact of casinos, the grants appear to adhere to the requirements of the law. Further, we make clear the difference between the requirements of the law and the intent of the law on pages 22, 23, and 25.
- ⑦ Sonoma appears to be misinterpreting the statute. As used in this section of the Government Code, the term nexus applies to a list of criteria establishing a relative level of geographic proximity, not the relationship of the project to the casino.
- ⑧ Sonoma County's concerns regarding the process used to conduct the audit are unfounded. The bureau follows generally accepted governmental auditing standards which include requirements to share the results of our audit, and provide a draft copy of the report for review. Further, the Government Code governing our operations requires us to keep the results of our audit confidential until it is made public. To comply with the Government Code, we redacted those portions of the report that were not applicable to Sonoma County. Finally, although Sonoma asks that we state they comply with the intent of the law, the stated intent of the law is to mitigate impacts from tribal casinos, and as described in the report, the documentation provided to us demonstrated that the projects funded by Sonoma had little or no direct relationship to a casino impact, as indicated in Table 4 on page 24 of our report.

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