

California State Auditor

B U R E A U O F S T A T E A U D I T S

California Gambling Control Commission:

*Although Its Interpretations of the
Tribal-State Gaming Compacts
Generally Appear Defensible, Some
of Its Actions May Have Reduced the
Funds Available for Distribution to Tribes*



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June 22, 2004

2003-122

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning the California Gambling Control Commission's (Gambling Commission) administration of the Indian Gaming Revenue Sharing Trust Fund (trust fund).

This report concludes that the Gambling Commission has operated amidst controversy since its inception, with wide-ranging questions raised about its appropriate role, authority, and many of its actions. Both the Gambling Commission and its critics point to language in the 1999 Tribal-State Gaming Compacts (compact) when supporting their positions. Representatives of various tribes have argued that the Gambling Commission has incorrectly interpreted certain provisions of the compact and that these interpretations have had a detrimental effect on the tribes. However, many of these issues have arisen because the compact language on which the Gambling Commission and its critics base their positions is not always clear. Although many of the Gambling Commission's interpretations are not popular among many of the tribes, they appear defensible.

The report also concludes that the Gambling Commission generally administered the trust fund in compliance with its understanding of the requirements in the compact. However, in one quarter, the Gambling Commission may have underpaid one tribe by \$416,000 and overpaid each remaining noncompact tribe by \$5,100. In addition, for two of the three license draws we reviewed, the Gambling Commission did not consistently adhere to its policy for conducting the draws. Finally, the Gambling Commission has not adequately communicated its conflict-of-interest policy to staff and commissioners nor has it clarified expectations regarding outside compensation, financial interests, and what activities are allowed to commissioners under the law.

Respectfully submitted,

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SUMMARY

Audit Highlights . . .

Our review of the California Gambling Control Commission's (Gambling Commission) administration of the Indian Gaming Revenue Sharing Trust Fund (trust fund) revealed the following:

- Some tribes have questioned the Gambling Commission's decisions about such matters as:*
 - *The number of gaming devices that may be operated statewide.*
 - *The treatment of licenses the Sides Accountancy Corporation issued before the Gambling Commission began issuing licenses.*
 - *The offsetting of quarterly license fees by the amount of nonrefundable, one-time prepayments.*
 - *The formula for calculating trust fund receipts.*
 - *The process for allocating gaming device licenses.*
- Distributions to noncompact tribes were generally consistent with the Gambling Commission's policy, with the possible exception of one quarter.*

continued on next page . . .

RESULTS IN BRIEF

The California Gambling Control Commission (Gambling Commission) has dealt with challenges to its authority and to many of the decisions it has made in administering the Indian Gaming Revenue Sharing Trust Fund (trust fund). Representatives of various Indian¹ tribes have argued that the Gambling Commission has incorrectly interpreted certain provisions of the 1999 Tribal-State Gaming Compacts (compact)² to the detriment of the tribes. Many of these issues have arisen because the compact language is not always clear. Generally, although various tribes disagree with many of the Gambling Commission's interpretations, the interpretations appear defensible given the confusing language in the compact.

The trust fund was created by the Legislature in 1999. In its assigned role as trustee of the trust fund, the Gambling Commission is responsible for allocating gaming device licenses to tribes, ensuring that the allocation of gaming devices does not exceed the total authorized by the compact, collecting license fees from tribes operating gaming devices, and allocating those fees among noncompact tribes—tribes operating fewer than 350 gaming devices.

Some critics believe the Gambling Commission has not properly fulfilled its role, arguing that it is not meeting its responsibility to the noncompact tribes. The Gambling Commission has stated that its responsibilities to the noncompact tribes are to collect and distribute trust fund money; it does not believe it is obliged to maximize benefits to these tribes.

At least three tribes have questioned whether the Gambling Commission has the authority to issue gaming device licenses. However, the attorney general has opined that because the compact assigned the Gambling Commission the role of trustee

¹ Throughout this report we have used the term "Indian." We have used this term because it is the term used in both federal law and the compact.

² Sixty tribes signed 61 compacts that had standard language agreed upon in 1999. Our review covered only these compacts because these are the only compacts that require tribes to make payments to the Indian Gaming Revenue Sharing Trust Fund. Because these compacts all contain standard language, we refer to them collectively as "the compact" in the report.

- ☑ *The Gambling Commission did not follow its procedures for allocating gaming device licenses for two of the three draws it conducted.*
 - ☑ *The Gambling Commission has not adequately communicated its conflict-of-interest policy to staff and commissioners, and the law governing the outside financial activities of commissioners is not clear.*
-

of the trust fund, it is clear that the intent was for the Gambling Commission to also be the sole entity responsible for issuing licenses. The compact language regarding the number of gaming devices that can be operated is not clear, and so various groups have calculated different totals for this maximum. For instance, the Tribal Alliance of Sovereign Indian Nations maintains that 110,189 gaming devices should be allocated statewide, whereas the Gambling Commission contends that only 61,957 are available for statewide allocation.

The Gambling Commission was not always consistent in its application of the principles it established for dealing with gaming device licenses issued by the Sides Accountancy Corporation, the entity that allocated licenses before the Gambling Commission became operative. This inconsistency raises questions about whether the tribes put the gaming devices into commercial operation within 12 months of receiving licenses as required by the compact.

Some tribes disagree with the Gambling Commission's interpretation of the process described in the compact for allocating licenses. Based on its interpretation, the Gambling Commission did not allocate licenses to two tribes during its third license draw held in December 2003. The Colusa Indian Community of the Colusa Rancheria believes it should have received 108 licenses and the Paskenta Band of Nomelaki Indians believes it was entitled to 75 licenses from this draw.

Additionally, some tribes believe the amount of trust fund money available for disbursement to noncompact tribes has been significantly reduced because of the Gambling Commission's interpretations of the compact language. Based on its reading of the compact, the Gambling Commission excludes the first 350 licensed gaming devices for each tribe when calculating the quarterly payments owed. Conversely, the California Tribes for Fairness in Compacting (coalition), which represents several noncompact tribes, argues that the gaming tribes should be assessed fees on all licensed gaming devices and that the compact intended to exclude quarterly fees only on unlicensed gaming devices—that is, the first 350 devices, for which a tribe need not acquire a license, and grandfathered devices in use before the compacts were signed. Using the coalition's interpretation, the 15 tribes we reviewed would have paid an additional \$19.1 million in license fees from September 2002 through December 2003.

Some tribes, including the coalition, believe the Gambling Commission's practice of offsetting quarterly license fees by the amount of the nonrefundable one-time prepayments tribes are required to pay when obtaining licenses violates the intent of the compact. Given the current allocation of licenses, if the Gambling Commission agreed with the coalition's interpretation, \$37 million more would be available for distribution to noncompact tribes through the end of the compact term in December 2020.

In yet another debate, some tribes disagree with the Gambling Commission staff's interpretation that in using the term "commercial operation," the compact intended for all of a tribe's gaming devices—licensed and unlicensed—to be in operation simultaneously and continuously. The Gambling Commission has not yet adopted this proposed definition, and it is planning to meet with the tribes to discuss possible changes before it does so.

Also, a decision on multiterminal gaming devices—machines that can be played independently by a number of people—may result in some tribes being ineligible for trust fund disbursements while others may exceed the gaming device limit of 2,000 established by the compact. Although the commissioners have yet to formally adopt a position on multiterminal devices, staff have determined that the Gambling Commission should count each terminal as a gaming device that needs to be licensed separately. Based on this determination, Gambling Commission staff identified one tribe as ineligible for a trust fund disbursement during one quarter and found eight other tribes were operating more than 2,000 gaming devices each, the maximum allowed under the compact.

Challengers have taken some, but not all, controversial issues into the dispute resolution process. For instance, two tribes jointly filed a lawsuit challenging the Gambling Commission's authority to interpret compact provisions, but it was dismissed by the U.S. District Court. The Gambling Commission is aware of at least five other instances in which tribes requested meet-and-confer sessions with the Governor's Office.

Despite the controversy surrounding many of the Gambling Commission's actions, its administration of the trust fund is generally consistent with its interpretations of the compact provisions. For instance, all of the deposits into the trust fund for 14 of the 15 tribes we reviewed were accurate and timely, and the Gambling Commission has taken steps to deal

with delinquent payments from the other tribe. However, we determined that the Gambling Commission may have underpaid the Lower Lake Rancheria (Lower Lake) tribe \$416,000 for one quarter and overpaid the remaining eligible tribes \$5,100 each for the same quarter. This error occurred because the federal Bureau of Indian Affairs (BIA) inadvertently left Lower Lake off the Federal Register of Indian Nations, which the Gambling Commission uses to determine whether a tribe is eligible to receive trust fund distributions. According to the Gambling Commission, it believes it did not err in withholding a distribution from Lower Lake because it bases eligibility on written evidence of federal recognition, and the BIA did not officially reaffirm the government-to-government relationship with the tribe until December 29, 2000. However, the BIA stated in writing that the government-to-government relationship between the federal government and Lower Lake was never severed.

The Gambling Commission conducted reviews in June and September 2003 to determine whether tribes had placed their licensed gaming devices in commercial operation within 12 months after receiving the licenses, as required by the compact. Two of the seven tribes it determined failed to put all of their licensed gaming devices into commercial operation within the required period did not contest the cancellation of their unused licenses. The Gambling Commission has not taken any formal action against the remaining five tribes, pending the resolution of its definition of the term “commercial operation.” Additionally, for two of the three license draws it conducted, the Gambling Commission did not comply with its own license draw methodology. As a result, four tribes received a total of 307 gaming device licenses that should have been allocated to four other tribes.

Finally, the Gambling Commission has not adequately communicated its conflict-of-interest policy to all staff and commissioners. Consequently, its staff and commissioners may not be fully aware of circumstances that may represent potential conflicts of interest. Additionally, the law governing outside financial activities that commissioners may engage in is very broad and needs clarification.

RECOMMENDATIONS

If the governor concludes the Gambling Commission's interpretation and policies do not meet the intended purposes of the compact, the governor should consider renegotiating the compact with the tribes to clarify the intent of the language, to help resolve disputes over the interpretation of the language, and to enable the efficient and appropriate administration of the trust fund in each of the following areas:

- The maximum number of licensed gaming devices that all compact tribes in the aggregate may have.
- The offset of quarterly license fees by nonrefundable one-time prepayments.
- The number of licensed gaming devices for which each tribe should pay quarterly fees.
- Automatic placement of a tribe into a lower priority for subsequent license draws.
- The definition of commercial operation.

If compact language is not renegotiated, the Gambling Commission should finalize its definition of what constitutes commercial operation for gaming devices.

The Gambling Commission should also finalize its position regarding gaming devices with more than one terminal to determine whether these devices should be counted as more than one device.

The Gambling Commission also should confer with the federal BIA and determine whether there is any federal law that requires it to pay Lower Lake for the quarter ending September 30, 2000, and, if not, whether any law prohibits it from paying Lower Lake. Barring any law to the contrary, we believe it is appropriate for the Gambling Commission to provide Lower Lake its fair share of the funds allocated that quarter and to deduct that amount from distributions to tribes that received distributions in that quarter.

To ensure that all tribes applying for gaming device licenses are provided the appropriate opportunity to obtain the number of licenses they are applying for, the Gambling Commission should consistently follow the license allocation procedures it has adopted.

Finally, the Gambling Commission should ensure that all staff and commissioners are informed of the conflict-of-interest policy. Furthermore, the Gambling Commission should seek clarification of the law governing outside financial activities that commissioners may engage in.

AGENCY COMMENTS

The Gambling Commission generally agrees with our recommendations and some of our conclusions. However, it disagrees with our conclusion that it was inconsistent in the application of its principles related to gaming device licenses issued by the Sides Accountancy Corporation (Sides), and that it should have considered the licenses issued by Sides when determining the priority given to tribes in the commission's first license draw. ■

INTRODUCTION

BACKGROUND

Indian gaming on tribal land within California has become a significant source of revenue for tribes in recent years. It has also been the subject of considerable public debate and controversy. For the 54 Indian casinos currently in operation on tribal land throughout the State, the total projected revenue from slot machines in fiscal year 2002–03 was \$4.5 billion, according to the California Gambling Control Commission (Gambling Commission).

The doctrine of Indian sovereignty has been central to the debate and controversy surrounding Indian gaming. Indian sovereignty is based on well-established principles of law that protect the sovereignty of Indian tribes by limiting the jurisdiction of state governments over Indian affairs on Indian lands. As one court has stated, “In modern times, even when Congress has enacted laws to allow a limited application of [state] law on Indian lands, the Congress has required the consent of tribal governments before [state] jurisdiction can be extended to tribal...lands.” This doctrine of Indian sovereignty plays an important role in defining the relationship between tribes and states and in limiting the extent to which the State can regulate tribal gaming.

The Federal Indian Gaming Regulatory Act

Partly in response to the United States Supreme Court’s decision in *Cabazon*, which held that a state did not have the authority to enforce its “bingo statute” on tribal land, Congress enacted the federal Indian Gaming Regulatory Act (IGRA) in 1988. A court characterized this federal law as a compromise solution to the difficult questions surrounding who had jurisdiction to regulate Indian gaming. The states, acting in response to the Supreme Court’s decision in *Cabazon* as well as other court decisions, wanted greater ability to regulate gaming on tribal lands within their respective states. Congress, motivated by a concern about the economic conditions on tribal lands, wanted to promote Indian gaming as a means of providing economic self-sufficiency for tribes.

In enacting IGRA, Congress stated that its purpose was to provide “a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments” and “to shield [tribal gaming] from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation.” A federal court has described IGRA as an example of “cooperative federalism” in that it seeks to balance the competing sovereign interests of the federal government, state governments, and Indian tribes by giving each a role in the regulation of gaming by Indian tribes.

IGRA establishes three classes of gaming activity—Class I, II, and III—each subject to differing jurisdiction by tribes, states, and the federal government. Class I gaming is limited to social games solely for prizes of minimal value or gaming connected to traditional tribal ceremonies or celebrations. Class II gaming includes such games as bingo and similar games of chance. The tribes themselves generally have regulatory authority over Class I and Class II gaming. Our audit is limited to Class III activity, which includes off-track wagering, lotteries, banking card games, and slot machines. As a California Appellate Court has noted, Class III Indian gaming is considered the most important part of the regulatory scheme imposed by IGRA because it includes high-stakes, casino-type games that may be a substantial source of revenue for the Indian tribes. The regulation of Class III gaming has been the most controversial aspect of IGRA and has been the subject of numerous lawsuits. For Class III gaming to be permissible on tribal lands, those lands must be located in a state that permits that form of gaming. In addition, under IGRA, Class III gaming can be conducted only after a tribe has negotiated a tribal-state compact governing the conduct of gaming activities, the federal secretary of the interior has approved the compact, and the tribe has adopted an ordinance or resolution approved by the chair of the National Indian Gaming Commission. It is illegal to conduct Class III gaming on tribal land without a tribal ordinance and a tribal-state gaming compact.

The tribal-state compact is the key to Class III gaming under IGRA. With such a compact, the federal government cedes its primary regulatory oversight role over Class III Indian gaming and permits states and Indian tribes to develop joint regulatory schemes through the compacting process. In this way, the state may gain the civil regulatory authority that it otherwise lacks, and a tribe gains the ability to offer Class III gaming. IGRA

permits the tribal-state compact to include provisions relating to a number of issues that arise once Class III gaming begins, including the application of tribal or state criminal and civil laws and regulations of the Indian tribe or state, the allocation of civil and criminal jurisdiction between the state and the tribe necessary for the enforcement of gaming laws and regulations, and the assessment of fees by the state in amounts necessary to defray the costs of regulating gaming activities. It is important to note, however, that the extent of a state's regulation over Class III gaming on tribal lands is limited to the authority granted by IGRA and by the federally approved tribal-state gaming compact entered into pursuant to IGRA.

The Gambling Commission

The Gambling Commission was created by the 1997 Gambling Control Act to serve as the regulatory body over many gambling activities, including Indian gaming, in the State. It has jurisdiction over the operation, concentration, and supervision of gambling establishments. Although the Gambling Commission became operative on August 29, 2000, when the governor appointed a quorum of commissioners with Executive Order D-29-01, he did not sign the executive order until March 8, 2001. This appointed board, which is to consist of five commissioners, oversees the Gambling Commission and makes policy decisions for the Gambling Commission.

According to the Gambling Commission, since its inception in August 2000, it has always operated with less than five commissioners, at times operating with only three. The Gambling Commission also has an executive director to oversee its daily administration. According to the Gambling Commission, it had an acting executive director for only four months, between February and June 2001, and its first permanent executive director was appointed by the commissioners on March 17, 2004. The Gambling Commission also indicated that during the six-month period ending December 31, 2000, staff consisted of an office technician and an executive on loan from another state department. Over the next six months, three staff were hired, another was loaned for four months, and one was on contract to the Gambling Commission—resulting in a total of nine staff by June 30, 2001. The Gambling Commission stated that by June 30, 2003, it had 35 staff. For fiscal year 2003–04, the Gambling Commission had an approved budget of \$5.5 million and approximately 40 authorized staff positions to support its operations.

Tribal-State Gaming Compacts in California

Compact tribes—federally recognized tribes that entered a compact with the State in 1999 and that operate more than 350 Class III gaming devices.

Noncompact tribes—federally recognized tribes that operate fewer than 350 gaming devices, which includes some tribes with compacts and all tribes that do not game at all and have no compact with the State.

In March 2000, Proposition 1A, designed to facilitate Indian gaming, received voter approval. Proposition 1A amended the California Constitution to give the governor the authority to negotiate and enter into compacts, subject to ratification by the Legislature, and to give federally recognized Indian tribes authority to operate slot machines and lottery games, as well as certain types of card games, on Indian lands in California, consistent with IGRA.

In anticipation of voter approval of Proposition 1A, the State entered into 61 Tribal-State Gaming Compacts (compact) with 60 of the 106 federally recognized Indian tribes in California. The 61 compacts later received final federal approval, as required by IGRA. These compacts are effective until December 31, 2020, and are generally identical. As of April 2004, there were 54 tribal casinos operating in California. See Figure 1 for the locations of the casinos operating Class III gaming by federally recognized Indian tribes in California. Appendix A lists the tribes with compacts and indicates the number of gaming devices each is allowed to operate.

The compact designates the Gambling Commission as the trustee of the Indian Gaming Revenue Sharing Trust Fund (trust fund), and in that role it collects license fees from Indian tribes operating gaming devices, deposits the fees in the trust fund, and allocates these fees among the noncompact tribes. In addition, the governor directed the Gambling Commission to allocate gaming device licenses to Indian tribes and ensure that the number of licenses issued statewide does not exceed the total number authorized by the compact.

Class III Gaming Permitted by the Compact—The operation of gaming devices, any banking or percentage card game, and, under certain conditions, the operation of any devices or games authorized under state law to the California State Lottery. Tribes may enter a separate compact to conduct off-track wagering.

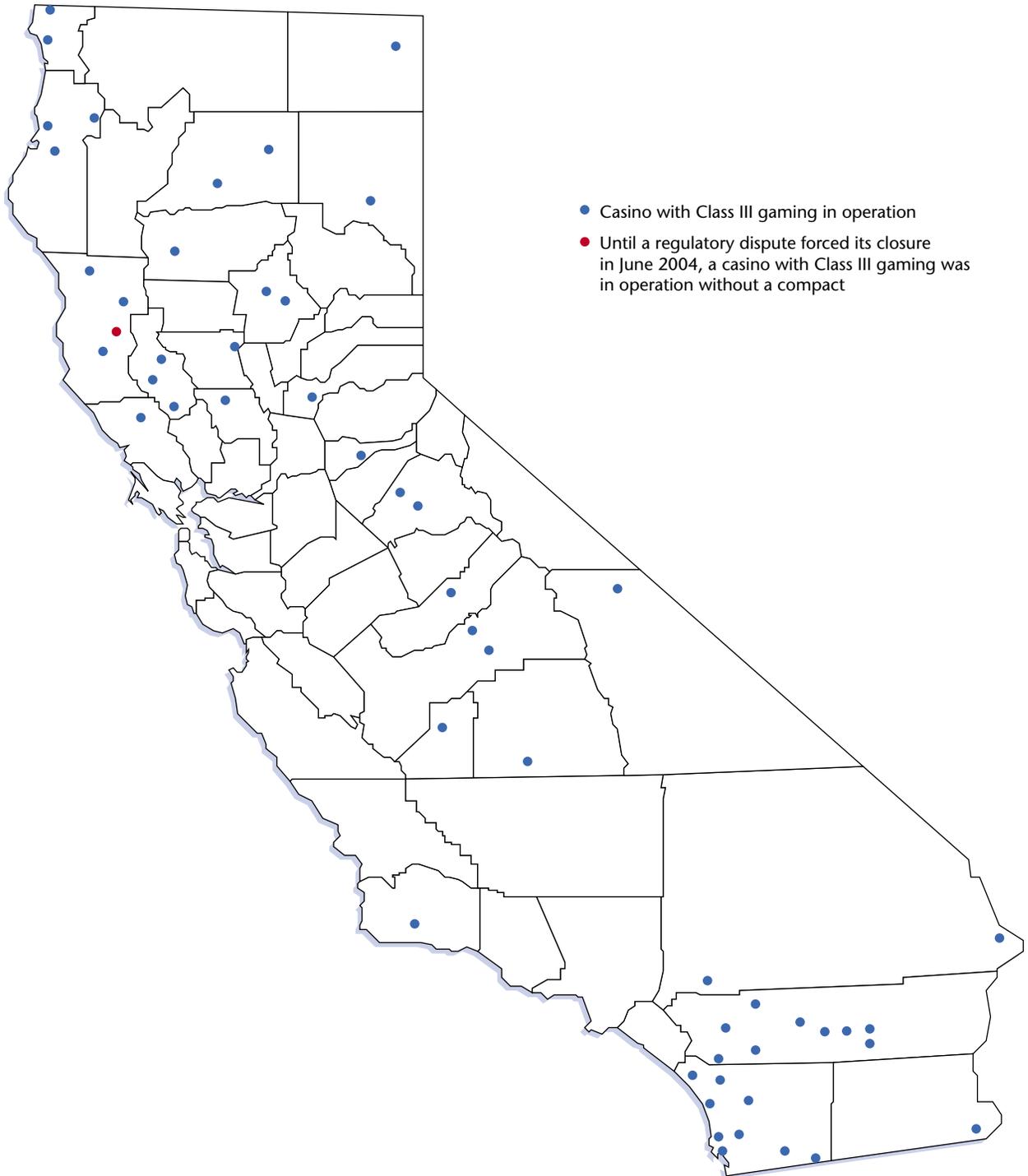
Gaming Device as Defined by the Compact—In general, a slot machine that permits individual play with or against that device or system to which the device is connected for games of chance or skill with the possible delivery of something of value.

The preamble to the compact recognizes that the parties to the compact “are mindful that this unique environment [Class III gaming] is of great economic value to the Tribe and the fact that income from Gaming devices represents a substantial portion of the tribes’ gaming revenues. In consideration for the State’s willingness to enter into this Compact, the tribes have agreed to

provide to the State, on a sovereign-to-sovereign basis, a portion of their revenue from Gaming Devices.” The terms of the compact also recognize that the State has a “legitimate interest

FIGURE 1

Location of Indian Casinos Operating Class III Gaming in California



Source: California Gambling Control Commission, April 2004.

Note: Map is an approximation and is not drawn to scale. Icons are representative of approximate locations.

in promoting the purposes of IGRA for all federally recognized Indian tribes in California, whether gaming or non-gaming.” To accomplish this goal, the compact indicates that each of the State’s noncompact tribes may receive distributions of up to \$1.1 million each year from the trust fund.

Issuance of Gaming Device Licenses

The compact allows the issuance of a limited number of gaming device licenses that must be operated in compliance with compact provisions. Although the compact clearly states that the Gambling Commission is to collect license fees from the compact tribes and disburse these funds to the noncompact tribes, it is silent as to which entity is responsible for actually issuing the gaming device licenses. Before the governor

appointed commissioners for the Gambling Commission, some compact tribes selected the Sides Accountancy Corporation (Sides) to issue gaming device licenses. According to the Gambling Commission, Sides contracted with 39 tribes and conducted the first licensing draw—the process used to award gaming device licenses—on May 15, 2000. Ultimately, Sides issued 29,398 gaming device licenses.

However, in March 2001, one week after retroactively appointing commissioners to the Gambling Commission, the governor issued an executive order directing the Gambling Commission to (1) administer the draw process for allocating gaming device licenses to tribes; (2) control, collect, and account for all license fees; and (3) ensure that the allocation of gaming devices among California Indian tribes does not exceed the allowable number provided in the

compact. At that time, the Governor’s Office also directed Sides to stop conducting license draws and to remit records of its draws to the Gambling Commission. Taking the position that any licenses issued by Sides were invalid, the Gambling Commission subsequently issued 25,688 licenses that it considers valid to the same tribes and in the same number as Sides had previously issued. In addition, through its first license draw, the Gambling Commission issued 3,710 of the licenses Sides had originally issued because the tribes returned the Sides-issued licenses for allocation to all interested tribes. Finally, the Gambling Commission has issued 2,753 additional licenses

Gaming Devices Allowed by the Compact

“Unlicensed” (Authorized) Gaming Devices

Without a gaming device license, a tribe may operate the larger of the following:

- (1) “Grandfathered” gaming devices, which are the gaming devices a tribe had in operation on September 1, 1999.
- (2) “Entitlement” gaming devices, which according to the compact, is 350 gaming devices.

“Licensed” Gaming Devices

A tribe may acquire licenses to use gaming devices in excess of the number the compact authorizes it to use, but in no event may the tribe operate more than 2,000 gaming devices.

that had never been released, bringing the total issued to 32,151, the maximum number the Gambling Commission believes the compact allows.

The Indian Gaming Revenue Sharing Trust Fund

The Gambling Commission made its first distribution to the noncompact tribes—tribes operating fewer than 350 gaming devices—in May 2001 and has continued to make distributions since that time. Compact tribes that purchase licenses for gaming devices fund the trust fund with the fees they pay for these licenses. For each license they purchase, tribes must pay into the trust fund a “nonrefundable one-time prepayment fee” of \$1,250. The compact also requires tribes to pay license fees each quarter. It uses a graduated rate schedule, based on the number of gaming devices or licenses a tribe has, to determine the amount of quarterly license fees a tribe pays. In no event, however, can a tribe operate more than 2,000 gaming devices, meaning that a tribe’s unlicensed and licensed gaming devices combined cannot exceed 2,000. Appendix B summarizes trust fund receipts through January 2004.

Dispute Resolution

The compact requires that a dispute between a tribe and the State first be subjected to a process of meeting and conferring in a good-faith attempt to resolve the dispute through negotiation. Currently, the Governor’s Office administers these meet-and-confer negotiations. However, if a dispute is not resolved to the satisfaction of the parties within 30 days after the first meeting, either party may seek to have the dispute resolved by an arbitrator. The United States District Court may resolve disagreements that are not otherwise resolved through arbitration or other mutually acceptable means. As we discuss in Chapter 1, numerous disagreements have arisen over interpretations of the compact language.

For a time line of significant events surrounding the creation of the Gambling Commission, the approval of the 1999 compacts, and the administration of the trust fund, see Appendix C.

SCOPE AND METHODOLOGY

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits review the Gambling Commission's administration of the trust fund. Specifically, we were requested to review the Gambling Commission's policies and procedures for accounting for money in the trust fund, including those for collecting and distributing the money. In addition, the audit committee asked us to determine whether the Gambling Commission complies with applicable requirements to collect and distribute money in the trust fund, as well as whether it had implemented and was enforcing sections of the compact regarding the allocation of gaming device licenses. Finally, we were asked to evaluate the Gambling Commission's policies and procedures for identifying, addressing, and eliminating conflicts of interest.

To understand the Gambling Commission's responsibilities regarding the administration of the trust fund, we reviewed state laws and executive orders, as well as the September 1999 compact language. We also reviewed applicable federal laws to gain an understanding of federal requirements related to Indian gaming in general.

We interviewed Gambling Commission staff and reviewed minutes from selected commission board meetings and reports to the Legislature to determine what policies and procedures the Gambling Commission has implemented to account for money in the trust fund, including procedures for collecting, depositing, and distributing this money.

To determine whether the Gambling Commission adheres to the policies and procedures it has implemented, we reviewed selected trust fund receipts and disbursements. Specifically, we determined whether the Gambling Commission collects nonrefundable one-time prepayment fees on licenses, examined the formula the Gambling Commission uses to calculate the amounts each compact tribe owes on a quarterly basis, and determined whether selected tribes had made their required payments. To determine whether the Gambling Commission disbursed trust fund receipts to the appropriate noncompact tribes, we evaluated its process for determining eligibility and for calculating and disbursing the receipts. We reviewed the Gambling Commission's actions to monitor and enforce the compact's licensing requirements and its collection of

trust fund receipts. We also reviewed draws to determine if the Gambling Commission had issued gaming device licenses in accordance with its procedures.

Finally, to assess the compliance of the Gambling Commission's policies and procedures with compact provisions, including its interpretation of the compact, we reviewed legal opinions and relevant sections of the compact. We also interviewed representatives of gaming and nongaming tribes to learn the tribes' perspectives on the Gambling Commission's administration of the trust fund, as well as its interpretation of the compact. Lastly, we interviewed Gambling Commission staff to determine whether the Gambling Commission has policies and procedures regarding conflicts of interest, and we reviewed related documents.

In Chapter 1 we describe the Gambling Commission's perspective on various positions it has taken that others have questioned, as well as the perspective of those who disagree with the Gambling Commission. Although we have not concluded on the propriety of the Gambling Commission's positions—a task that should be completed through the meet-and-confer process, arbitration, or court decisions—we did assess the Gambling Commission's consistency in applying the positions it has taken and have noted any inconsistencies we observed. ■

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CHAPTER 1

Some of the California Gambling Control Commission's Interpretations of Compact Provisions Have Been Disputed

CHAPTER SUMMARY

The California Gambling Control Commission (Gambling Commission) has operated amidst controversy since its inception, with wide-ranging questions raised about its appropriate role, its authority, and many of its actions. Often both the Gambling Commission and its critics point to language in the 1999 Tribal-State Gaming Compacts (compact)³ to support their positions. However, the compact itself is often unclear. Concerns have focused on whether the Gambling Commission has the authority to issue licenses. Another debate has centered on whether it is a trustee for the tribes receiving Indian Gaming Revenue Sharing Trust Fund (trust fund) payments and, if so, whether its actions are consistent with that role. Although many of the Gambling Commission's actions have been contested by tribal organizations and individual tribes, they are likely defensible given the ambiguous language used in the compact.

Other concerns have arisen about specific decisions the Gambling Commission has made in collecting and distributing trust fund revenues and in allocating gaming device licenses among the tribes. For example, the Gambling Commission has not always consistently applied the principles it adopted to make decisions related to licenses the Sides Accountancy Corporation (Sides) issued under a contract with more than half of the compact tribes before the Gambling Commission acquired this role.

Among other questioned decisions are those related to the process for allocating licenses, the number of gaming devices a tribe can operate before it has to start paying into the trust

³ Sixty tribes signed 61 compacts that had standard language agreed upon in 1999. Our review covered only these compacts because these are the only compacts that require tribes to make payments to the Indian Gaming Revenue Sharing Trust Fund. Because these compacts all contain standard language, we refer to them collectively as "the compact" in the report. Since 1999, the State has entered additional compacts with three more tribes.

fund, the timing of tribes' first quarterly payments, the use of the nonrefundable one-time prepayments for licenses to offset the quarterly payments, the definition of commercial operation of gaming devices, and the calculation of the total number of allowable gaming licenses in the State. The number of available licenses has contributed to the importance of the debate about these issues because the tribes are competing for a limited resource. Also, a pending decision by the Gambling Commission on multiterminal gaming devices may result in some tribes being ineligible for trust fund disbursements and others exceeding the gaming device limit.

Finally, according to the compact's dispute-resolution provisions, disputes between the tribes and the State must first be subjected to a process of meeting and conferring in a good-faith effort to resolve the dispute. However, while some tribes disagree with the Gambling Commission's compact interpretations, the number of meet-and-confer sessions with the Governor's Office has been limited, according to information the Gambling Commission provided.

OPINIONS DIFFER ABOUT THE GAMBLING COMMISSION'S APPROPRIATE ROLE IN ADMINISTERING THE TRUST FUND

Critics of the Gambling Commission have argued that compact language establishes the Gambling Commission's role as a trustee over the trust fund and, as such, the Gambling Commission should act in the best interests of the tribes receiving distributions from the fund. In contrast, the Gambling Commission sees its role not as that of a traditional trustee but as an administrative agency with responsibilities defined in the compact for administering a public program. The Gambling Commission recognizes its responsibility to collect trust fund revenue and distribute the revenue to noncompact tribes, which are federally recognized tribes operating fewer than 350 devices, but it does not believe it is obliged to maximize benefits to these tribes. When interpreting ambiguous provisions of the compact, Gambling Commission staff have given general preference in the following order of priority, as applicable:

- To the interpretation that is most consistent with the overall scheme of the compacts.

The Gambling Commission recognizes its responsibility to collect trust fund revenue and distribute the revenue to noncompact tribes, but it does not believe it is obliged to maximize benefits to these tribes.

- To the interpretation favored by all or nearly all compact tribes that participated in a series of workshops the Gambling Commission held throughout the State to solicit the compact tribes' perspectives.
- With respect to provisions imposing payment obligations, to the interpretation that resolves any substantial doubts concerning intent in favor of those obligated to make the payments.

According to the Gambling Commission, in reaching their decisions the commissioners considered not only the approach of the Gambling Commission staff but also a wide array of positions and viewpoints, including those of compact tribes that participated in a series of statewide workshops held to seek input on how to interpret compact language. Additionally, they took into account various legal opinions, including those from the Office of the Attorney General, the Office of the Legislative Counsel, and the Gambling Commission's legal division, and they considered comments from the public and from the noncompact tribes made at Gambling Commission hearings. Although many of the Gambling Commission's decisions were not popular among the tribes, because compact provisions are not always clear, its decisions generally appear defensible.

QUESTIONS HAVE BEEN RAISED ABOUT THE GAMBLING COMMISSION'S AUTHORITY TO ISSUE GAMING DEVICE LICENSES

The compact gives tribes the right to conduct Class III gaming (we define and discuss Class III gaming in the Introduction) and gives the Gambling Commission certain authority and aspects of responsibility to regulate that gaming, but it does not plainly assign the authority to issue gaming device licenses to either the tribes or the Gambling Commission. At least three tribes have questioned the Gambling Commission's authority to issue gaming device licenses, primarily because the compact is not clear on this matter. The tribes have argued that the authority to issue licenses is an element of their sovereignty that they have not explicitly relinquished under the compact. Although the compact does not name a specific entity to issue gaming devices, it requires notification of the trustee when a tribe wants to acquire a license. Believing that they had licensing authority, in May 2000, 39 tribes entered into contracts with Sides to act as trustee and authorizing it to issue licenses and collect related fees. In the same month, the Governor's Office and the Department of Justice sent a joint

letter to Sides referring to Sides as the license “Pool Trustee,” commending the tribes for reaching an agreement on procedures for allocating licenses, and providing specific instructions for determining the aggregate number of licenses Sides could issue under the terms of the compact.

The Tribal Alliance of Sovereign Indian Nations (TASIN), an intertribal organization representing 14 tribes, had proposed as a successor to the Sides arrangement that a gaming device licensing board with a majority tribal representation and minority state representation be assembled to issue licenses. Like the Sides arrangement, this proposal was based on the understanding that the compact gave the tribes the authority to issue gaming device licenses and represented an effort to reach a compromise with the State.

An executive order in March 2001 identified the Gambling Commission as the trustee and the entity with the authority to issue licenses and administer the trust fund.

Subsequently, an executive order in March 2001 identified the Gambling Commission as the trustee and the entity with authority to issue licenses and administer the trust fund. The Gambling Commission later concluded that the Sides-issued licenses were invalid, and the Governor’s Office directed Sides to discontinue issuing licenses. The attorney general also concluded that the compact contemplates that the Gambling Commission will be administering the issuance of licenses. The attorney general’s opinion stated, in part, that the compact’s provisions detailing the operation of the licensing point to the trustee as the licensing authority, and the compact’s requirement that tribes wanting to acquire licenses must notify the trustee, and no one else, is inconsistent with the notion that the licensing authority is any entity other than the trustee—the Gambling Commission. According to the Gambling Commission, because only 39 of the 60 tribes that had signed the compacts entered into an agreement with Sides for issuing licenses, the contract cannot be assumed to represent all tribes. In addition, the Gambling Commission notes that the tribes’ interpretation of the compact’s licensing process raises the possibility of multiple competing groups of compact tribes conducting independent processes for issuing gaming device licenses, even though the compact envisions a single process.

THE TOTAL NUMBER OF GAMING DEVICES THAT MAY BE OPERATED UNDER THE COMPACT IS UNCLEAR

The statewide limit on gaming devices is one of the most contentious issues arising from the compact, and it significantly affects the debate on other issues. Rather than specifying an actual

maximum number of gaming devices, the compact describes the process to be used to arrive at the total number of gaming devices to be allowed in operation. Ambiguity in this description has resulted in a number of different interpretations. Specifically, as shown in Table 1, the Gambling Commission, the Legislative Analyst’s Office, the Governor’s Office, and TASIN have conflicting interpretations of the compact language that result in significant differences in their computations of the total number of gaming devices the compact allows to be in operation statewide.

TABLE 1

Significant Differences in the Calculations of the Maximum Number of Gaming Devices That Tribes Are Allowed to Operate Statewide

Organization	Licensed Devices	Unlicensed Devices (Grandfathered and Entitlement)	Total Devices Statewide
Gambling Commission	32,151	29,806	61,957
Legislative Analyst	60,000	53,000	113,000*
Governor’s Office	15,400	29,806	45,206
TASIN	64,283	45,906	110,189

* This number represents the Legislative Analyst’s “best estimate” of what the compact would allow. However, the Legislative Analyst indicates that different interpretations of the compact language could result in significantly different totals.

For example, the Gambling Commission calculated the maximum number of gaming devices that may be operated in the State at 61,957, whereas TASIN asserted that this number should be 110,189. As Table 1 also indicates, the statewide limit in the compact includes both licensed and authorized (unlicensed) gaming devices.

The Compact Establishes Two Components for Calculating the Number of Licensed Gaming Devices Allowed

The compact defines two components of the statewide maximum number of licensed devices that the compact tribes can operate. Specifically, the compact terms state that this maximum number shall be a sum equal to the following:

- Component 1: 350 multiplied by the number of noncompact tribes as of September 1, 1999.

- Component 2: For each tribe, the difference between (1) 350 and (2) the lesser of (a) the number of gaming devices operated by the tribe on September 1, 1999, or (b) 350 devices.

Unfortunately, because the meaning of key terminology describing the first component is not clear, various groups have applied the formula differently. For instance,

the Gambling Commission and TASIN have disagreed about what is meant by “noncompact tribes.” Specifically, the Gambling Commission believes that the number of noncompact tribes as of September 1, 1999, includes only federally recognized tribes operating fewer than 350 gaming devices as of that date. As a result, the Gambling Commission’s calculation of this component of the formula resulted in 29,400—84 noncompact tribes times 350. The Gambling Commission believes this number is appropriate because the compact defines noncompact tribes as “federally-recognized tribes that are operating fewer than 350 gaming devices,” and there were 84 such tribes when all the compacts were signed. TASIN, on the other hand, argued that because no tribes had yet signed a compact as of September 1, 1999, all 107⁴ federally recognized tribes should be included in this part of the equation, regardless

of the number of gaming devices they had in operation as of that date. Consequently, TASIN calculated this part of the formula as 37,450—107 tribes times 350—or 8,050 more than the Gambling Commission’s figure.

The Gambling Commission and TASIN also have calculated Component 2 differently. Again, their conflicting understanding of which tribes the calculation applies to is the primary cause of the difference, and, in fact, the compact description of Component 2 is obscure at best. The disparity in the two entities’ calculations is the result of two factors. First, the Gambling Commission believes that, of the tribes operating gaming devices on September 1, 1999, only 16 were

A tribe may operate:

- **Unlicensed devices**—without a gaming device license, a tribe may operate the larger of the following:
 - (1) “Grandfathered” gaming devices, which are the gaming devices in operation by the tribe on September 1, 1999.
 - (2) “Entitlement” gaming devices, which, according to the compact, is 350 gaming devices.

And

- **Licensed devices**—gaming devices operated by a tribe in excess of the number of authorized gaming devices it has.

⁴ TASIN’s calculation included the Barona Group of Capitan Grande and the Viejas Group of Capitan Grande. However, as we discuss later in this chapter, neither of these tribes is federally recognized; instead, they are subgroups of a single federally recognized tribe, the Capitan Grande Band of Diegueno Mission Indians. According to the attorney general, it was appropriate for the State to enter into compacts with the two subgroups, but nevertheless the number of federally recognized tribes in California is actually 106.

The Tribal Alliance of Sovereign Indian Nations believed that the Gambling Commission should have made an additional 23,800 licenses available for allocation.

operating fewer than 350. However, TASIN stated that there were 17 such tribes and, as a result, believed the Gambling Commission should have made more licenses available for allocation. According to the information included in the 61 compacts signed by the tribes, it appears that the Gambling Commission's number accurately reflects the number of tribes operating fewer than 350 gaming devices on September 1, 1999. Secondly, TASIN also argued that the 350 entitlement devices available to the 68 tribes that were operating no gaming devices should be included in the calculation. Consequently, TASIN believed that the Gambling Commission should have made an additional 23,800 licenses available for allocation. The Gambling Commission disagrees with this assertion and did not include any allowance for these tribes in its calculation.

The Number of Unlicensed Gaming Devices in Operation Has Also Been the Subject of Debate

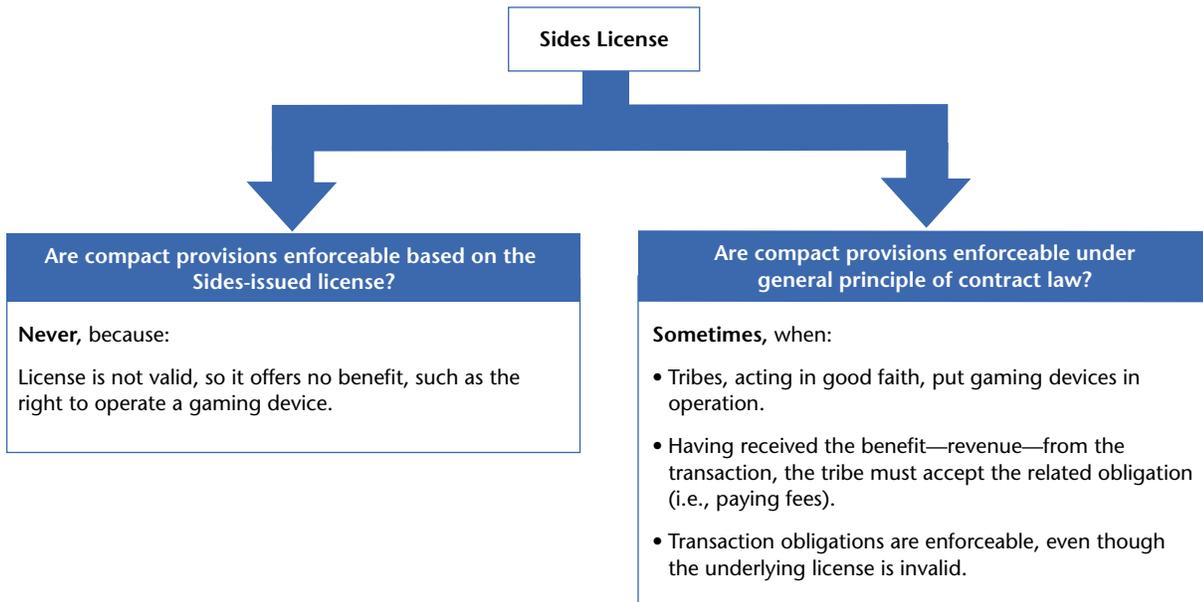
As they do with the number of licensed devices, the Gambling Commission and TASIN have also disagreed on the number of unlicensed devices allowed under the compact. The compact authorizes tribes to operate, without a license, the larger of either the grandfathered devices (gaming devices in operation as of September 1, 1999) or 350 devices (entitlement devices). The Gambling Commission asserts that there were 19,005 grandfathered devices and 10,801 entitlements, resulting in 29,806 unlicensed devices. TASIN asserted that there were 16,156 grandfathered devices and 29,750 entitlements, resulting in a total of 45,906. When calculating the total number of grandfathered devices, the Gambling Commission included all grandfathered devices for all tribes, whereas TASIN included in its count devices operated by those tribes that had *more than* 350 grandfathered devices. When calculating entitlements, the Gambling Commission included only entitlements for the tribes that had signed compacts with the State. Conversely, TASIN included all tribes—compact and noncompact—that were entitled to operate up to 350 gaming devices on September 1, 1999, arguing that noncompact tribes are still entitled to 350 devices. These differences can again be attributed at least in part to the unclear language in the compact.

SOME QUESTIONS EXIST ABOUT THE GAMBLING COMMISSION'S CONSISTENCY IN DEALING WITH SIDES-ISSUED LICENSES

When it assumed responsibility for issuing gaming device licenses and administering the trust fund, the Gambling Commission needed a policy or rationale for consistently dealing with the licenses that Sides had previously issued and the related revenues Sides collected. The Gambling Commission considered two principles when making its decisions, which we have summarized in Figure 2.

FIGURE 2

Principles the Gambling Commission Used to Determine When Compact Provisions Were Enforceable for Sides-Issued Licenses



The Gambling Commission's position is that the gaming device licenses that Sides issued were invalid, referring to them as "putative" licenses. Although the Gambling Commission has indicated there is no formal judicial decision regarding the validity of the Sides-issued licenses because the matter has never been litigated, it notes the attorney general issued an opinion in February 2001 that the individual compacts contemplate the Gambling Commission will be issuing gaming device licenses. Moreover, in March 2001 the governor issued an executive order recognizing the Gambling Commission as the licensing authority for gaming devices. Taking into consideration the

opinion and executive order, as well as comments from tribal representatives at a series of workshops with compact tribes and recommendations of Gambling Commission staff, the commissioners ratified the *allocation* of Sides-issued licenses at their June 12, 2002, public meeting but did not ratify the licenses themselves.

The Gambling Commission subsequently issued licenses that it considers valid and that resulted in the same tribes receiving the same number of licenses as they previously received under the Sides allocation. Further, the Gambling Commission's position is that, because it considers the Sides-issued licenses invalid, the provisions of the compact related to these licenses are not enforceable. Therefore, it believes the Sides-issued licenses, *in and of themselves*, did not carry the obligation of paying the nonrefundable one-time prepayment or the quarterly fees because they were not issued under valid legal authority.

The Gambling Commission points out that, although the Sides licenses were not legally valid, those tribes that acted in good faith and benefited from the licenses by operating gaming devices had to meet compact obligations.

However, the Gambling Commission also points out that, although the Sides licenses were not legally valid, those tribes that acted in good faith and that received a benefit—revenue—from the licenses by operating gaming devices, were responsible for meeting compact obligations. The Gambling Commission's position is based on its application of a *general principle of contract law*, which provides that voluntary acceptance of the benefit of a transaction constitutes consent to the obligations arising from that transaction.

The Gambling Commission's position is that when a valid license is issued, such as those issued by the Gambling Commission itself, the tribe receives a benefit immediately—*the right to operate a gaming device*. It also notes that at the June 12, 2002, meeting, the commissioners voted to issue licenses that were to be effective from the date Sides issued its putative licenses to the tribes. Consistent with that direction, Gambling Commission staff sent letters to those tribes that had Sides-issued licenses, providing them the option of accepting the Gambling Commission's licenses retroactive to the date of issuance of the Sides licenses they were replacing or of returning unused licenses for a full credit or refund of all fees paid. Tribes wanting to return unused licenses had 30 days from the receipt of the letter in which to provide written notice of their intentions.

The Gambling Commission's position is complicated by the results of its first allocation of licenses, when tribes received the same number of licenses they had received under the Sides

allocations. As the Gambling Commission notes, the tribes felt that it was to their benefit to accept its ratification of the Sides allocations and to have the new licenses issued retroactively so as to preserve their license allocation rather than to chance a new draw process. Because the Sides allocation may have appeared to give these tribes first chance at the licenses the Gambling Commission issued, a reasonable conclusion might be that the Sides-issued licenses conferred the right to operate a gaming device, just as a valid license would.

Figure 3 depicts the terms of the Gambling Commission's vote to ratify the Sides allocations and the consequences of the choice it gave tribes that had not yet put gaming devices related to Sides-issued licenses into operation. Although we have not taken a position on the propriety of the Gambling Commission's legal conclusions related to Sides-issued licenses—for example, whether or not they were valid—we have noted the Gambling Commission's inconsistent application of its principles in one instance. However, even when its practices were consistent with the principles it established, the Gambling Commission sometimes faced questions about its decisions.

The Gambling Commission Used Its Guiding Principles to Enforce Compact Provisions

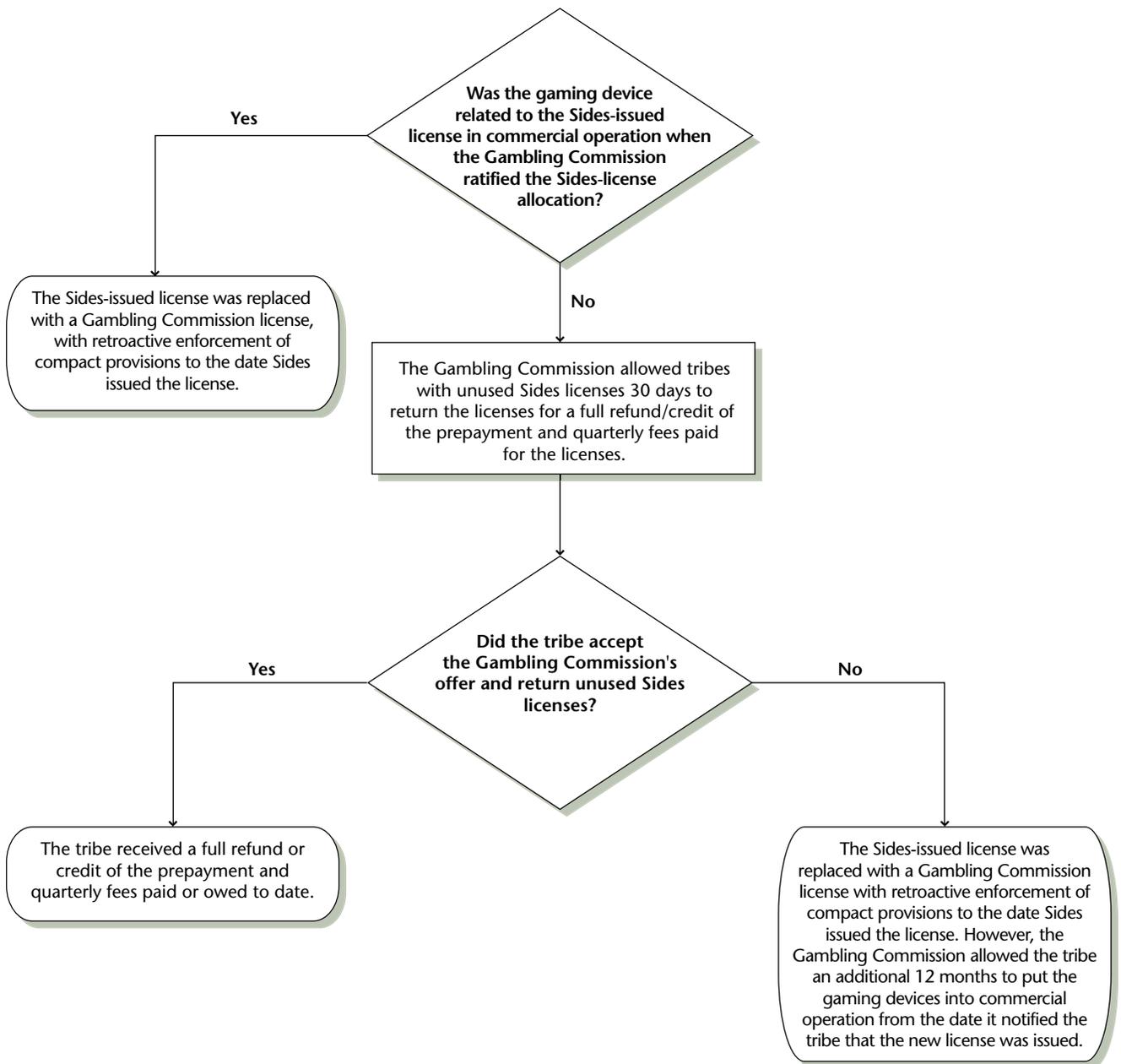
Once it concluded the Sides-issued licenses were not valid and established its guiding principles for dealing with them, the Gambling Commission had to apply its guiding principles in deciding how to enforce specific provisions of the compact related to those licenses. In particular, it made distinctions in how it would treat licenses that tribes put into commercial operation before the Gambling Commission issued its licenses and those they did not.

For those gaming devices tribes put into commercial operation before its issuance of licenses, the Gambling Commission retained the nonrefundable one-time prepayments and charged quarterly fees. This decision was consistent with the general principle of contract law: The tribes' acceptance of the benefit of revenue from the gaming activity constituted consent to the related obligations, such as making the payments. The Gambling Commission also replaced these licenses with its own valid licenses retroactively effective to the date of the Sides issuance. Thus, retroactive enforcement of the compact provisions related to the replacement licenses would have also required the Gambling Commission to retain the prepayments and fees.

The Gambling Commission replaced Sides-issued licenses that had been put into commercial operation with its own valid licenses retroactively effective to the date of the Sides issuance.

FIGURE 3

Terms Adopted by the Gambling Commission to Ratify the Allocation of Sides Licenses



Similarly, for those Sides-issued licenses that tribes did not put into operation and that the tribes did not return to the Gambling Commission for reallocation to other tribes, the Gambling Commission retained the prepayments and the quarterly fees, if any. Again, this decision was consistent with the retroactive effectiveness of the Gambling Commission's licenses. By not returning them for reallocation, the tribes opted to accept the Gambling Commission's licenses, and the related compact provisions requiring the prepayments and quarterly fees were retroactively enforceable.

In deciding to allow tribes refunds for Sides-issued licenses for which they had not put gaming devices into commercial operation and that they chose to return for reallocation to other tribes, the Gambling Commission was again consistent with its position that the Sides-issued licenses were not valid, and therefore related compact provisions were not enforceable. Also, because the licenses had resulted in no benefit to the tribes, the related compact terms were not enforceable under the general principle of contract law.

The Gambling Commission's Decision to Allow Tribes an Additional 12 Months for Activating Licensed Gaming Devices Was Inconsistent With Its Principles

However, the Gambling Commission was inconsistent with its guiding principles in one instance, when it set its policy about a specific compact provision requiring tribes to put gaming devices into commercial operation within 12 months after it notified them it had issued licenses. In June 2002, when it issued its own licenses, the Gambling Commission notified the tribes holding Sides-issued licenses that they had 12 months to put the related gaming devices into commercial operation. Thus, the tribes had not only the time since Sides issued licenses, but they also had 12 months from the time the Gambling Commission replaced the licenses. According to the compact, after 12 months the unused licenses are canceled, and the Gambling Commission reallocates them in a subsequent draw. To be consistent with its notice that, if a tribe accepted its licenses, the Gambling Commission would retroactively enforce the related compact terms to the date Sides issued the licenses, the Gambling Commission should have started counting the 12-month period from the time Sides issued the licenses. That 12-month period would have expired for most Sides-issued licenses by the time the Gambling Commission issued its replacement licenses. Some tribes objected to the Gambling Commission's inconsistent enforcement

Some tribes objected to the Gambling Commission's inconsistent enforcement of compact requirements, arguing that it unfairly granted an additional 12 months for tribes to put gaming devices into commercial operation.

of compact requirements, arguing that it unfairly granted an additional 12 months for tribes to put gaming devices into commercial operation. Instead, they argued, the licenses should have been forfeited and returned for allocation to other tribes.

The Gambling Commission has indicated it made the decision that the 12-month time period began when it issued the licenses to the tribes because it believes this was both a practical and equitable solution to what had been an extremely confusing process that resulted from the Sides-issued licenses. It notes that Sides' counsel believed Sides had very limited duties when it issued licenses to the tribes, which did not even include certifying that the draws complied with the compact. However, the Gambling Commission stated it recognized that tribes had relied upon the Sides license issuance process despite the fact that Sides failed to comply with the compact. As a consequence, the Gambling Commission said it felt strongly that, in fairness to the tribes, the 12-month time period should begin at the time the Gambling Commission notified the tribes that licenses would be issued to replace the Sides-issued licenses. Further, the Gambling Commission believes that beginning from the date of the Sides-issued licenses would have created a hardship upon the tribes and would have caused the type of inequity and mass confusion the Gambling Commission was concerned about. In that the Gambling Commission issued its licenses approximately two years after Sides, it believes it would have been unfair to notify the tribes that the 12-month time period had already begun *and* passed.

At least 3,610 of the 26,915 licenses Sides issued in May 2000 were not in operation as of June 2002, more than 25 months after their issuance.

In fact, Sides itself had not enforced the 12-month requirement for the licenses it issued. Sides issued its first licenses in May 2000, and at least 3,610 of the 26,915 licenses issued at that time were not in operation as of June 2002, more than 25 months later, when the Gambling Commission replaced Sides licenses with its valid licenses and started counting the 12-month period.

THE GAMBLING COMMISSION'S DECISION TO OFFSET QUARTERLY LICENSE FEES WITH PREPAYMENTS MET WITH OPPOSITION

The Gambling Commission interprets the compact language as requiring it to offset tribes' quarterly payments by the amount of the nonrefundable one-time prepayments the tribes paid to acquire and maintain the gaming device licenses. However, the California Tribes for Fairness in Compacting (coalition), a

If the Gambling Commission had used the coalition's interpretation, approximately \$37 million more would be available for distribution to noncompact tribes from the trust fund through December 2020, given the current allocation of gaming device licenses.

coalition of several noncompact tribes, believes the Gambling Commission is misinterpreting the intent of the prepayments, noting that the Gambling Commission's staff conceded that the probable intent of those who drafted the compact was to establish the prepayment as a separate nonrefundable fee rather than as a credit against quarterly payments, according to the minutes of its May 29, 2002, commissioners meeting. In fact, the minutes indicate that the Gambling Commission acknowledged nothing in the compact expressly requires the nonrefundable one-time prepayment to be credited against the quarterly payments, stating that an argument could be made that treating the prepayment as a credit against future payments would make it, in essence, refundable. If the Gambling Commission had used the coalition's interpretation, approximately \$37 million more would be available for distribution to noncompact tribes from the trust fund through December 2020, given the current allocation of gaming device licenses.

Although the Gambling Commission's staff believe that the probable intent of the drafters of the compact was to establish a separate one-time fee of \$1,250 for the issuance of a gaming device license rather than a credit against future ongoing quarterly fees, it notes that the compact's use of the term prepayment creates a high level of doubt as to the meaning of the language. The Gambling Commission focuses on the term prepayment and argues that this term, in ordinary usage, means payment in advance. The Gambling Commission further points out that the compact specifies the quarterly payments are to "acquire and maintain a license." It reasons that the quarterly payments cannot logically be for the purpose of acquiring a license unless the prepayment is credited against them. Finally, Gambling Commission staff believe that any ambiguities in the compact language should ultimately be resolved in favor of the compact payers as opposed to the compact beneficiaries, the noncompact tribes.

However, the coalition believes the Gambling Commission resolved this matter in favor of the tribes paying license fees into the trust fund contrary to the intent of the drafters of the compact and the meaning of the term nonrefundable. It believes the Gambling Commission's action does not comply with its role as the trustee of the trust fund, which, according to the coalition, is to act in the best interests of the noncompact tribes, the beneficiaries of the fund. (The Gambling Commission's perspective on its role is discussed in more detail earlier in this chapter.) The Agua Caliente Band of Cahuilla Indians (Agua Caliente), a compact tribe, agrees with the coalition. In fact, despite

having paid more than \$1 million in nonrefundable one-time prepayments, Agua Caliente has consistently remitted its quarterly license fees in full rather than reducing them by the amount of its prepayment. The tribe has told the Gambling Commission to keep and disburse the fees, and the Gambling Commission refers to them as donations.

With the use of the term “nonrefundable one-time prepayment,” the compact language again has confused rather than clarified the intent of the drafters of the compact, and we believe additional clarification is needed. However, we believe the Gambling Commission did not focus adequately on the term “nonrefundable.” Gambling Commission staff have acknowledged that, when trying to determine the objective intent of the compact language, they are not permitted to omit language that is included in the compact or to insert language that is omitted in order to conform to an assumed intent. The deputy director of the Licensing and Compliance Division asserted to us that the Gambling Commission actually did focus on all the words, including nonrefundable, in the phrase. Nevertheless, the Gambling Commission has not explained how its interpretation accounts for the term nonrefundable.

A TRIBAL ORGANIZATION MAINTAINS THE GAMBLING COMMISSION IS MISAPPLYING THE FORMULA FOR CALCULATING TRUST FUND DEPOSITS

Inconsistent compact terms have caused disagreements over the calculation of quarterly fees for deposit in the trust fund. The Gambling Commission does not assess any quarterly fees on the first 350 licenses a tribe has. However, the coalition disagrees with the Gambling Commission’s methodology, arguing that the intent of the compact was for fees to be assessed on all licenses and that the Gambling Commission’s method for calculating quarterly license fees has significantly reduced the amount of trust fund money available for disbursement to noncompact tribes. Using the coalition’s interpretation, the 15 tribes we reviewed would have paid an additional \$19.1 million in gaming device license fees from September 2002 through December 2003.

Using the coalition’s interpretation, the 15 tribes we reviewed would have paid an additional \$19.1 million in gaming device license fees from September 2002 through December 2003.

As shown in Table 2 on the following page, the compact provides that the number of certain gaming devices a tribe operates determines the quarterly fee it pays per device. However, the terms of the compact are unclear as to which gaming devices are to be counted, so the Gambling Commission can point to one

term to defend its position and the coalition can point to another to support its interpretation. As the table indicates, the compact’s schedule of graduated payments indicates that tribes will pay nothing for their first 350 licensed devices. Consequently, the Gambling Commission not only does not assess any quarterly fees on the entitlement and grandfathered devices a tribe has, but it also does not assess fees on the first 350 licensed devices. In an actual example with grandfathered gaming devices, the Morongo Band of Cahuilla Mission Indians, with 1,627 grandfathered gaming devices and 373 licenses, pays quarterly fees on only 23 of the 2,000 gaming devices it operates.

TABLE 2

Trust Fund Tiered Payment Schedule

Number of Licensed* Devices	Fee Per Device Per Annum
1-350	\$ 0
351-750	900
751-1,250	1,950
1,251-2,000†	4,350

Source: 1999 Tribal-State Gaming Compact.

* The Gambling Commission’s calculation of the amount of quarterly fees owed is based on the word “Licensed” and it believes that the maximum number of licensed devices was intended to be 1,650 instead of 2,000.

† The coalition’s basis for its calculation of the amount of quarterly fees a tribe owes is the number “2,000,” the total number of combined licensed and unlicensed gaming devices the compact allows a tribe to operate, and it believes the schedule applies to both licensed and unlicensed gaming devices.

The coalition disagrees with the Gambling Commission’s interpretation, pointing out that the same schedule indicates that a tribe may have up to 2,000 licenses. In fact, because tribes are allowed to operate their entitlement gaming devices—up to 350 per tribe—or grandfathered gaming devices without licenses, and they are allowed to operate a maximum of 2,000 gaming devices, including both licensed and unlicensed ones, it is not possible for a tribe to operate 2,000 licensed gaming devices. Because of this apparent inconsistency, the coalition believes the intent of the payment schedule was to assess fees on all licensed devices instead of excluding the first 350 licenses, as the Gambling Commission does. The coalition argues that the only devices for which no fees should be assessed are the unlicensed entitlement and grandfathered devices.

The coalition asserts that the intent of the compact was to provide each noncompact tribe in the State the sum of \$1.1 million per year and, had the Gambling Commission assessed fees on all licenses, more money would have been available to distribute to these tribes. (As shown in Appendix D, except for fiscal year 2002–03 when legislation transferred additional funds into the trust fund, eligible tribes have consistently received less than \$1.1 million each year.) In fact, the compact provides that the amount available for distribution from the trust fund to each eligible noncompact tribe be *up to* \$1.1 million annually. In the event there is insufficient money in the trust fund to pay \$1.1 million per year to each noncompact tribe, any available money shall be distributed to eligible noncompact tribes in equal shares. However, money in excess of the amount necessary to provide \$1.1 million per year to each noncompact tribe shall remain in the trust fund to be available for disbursement in future years.

The coalition believes the Gambling Commission’s interpretation has undermined the intent of the compact, drastically reducing revenues for the trust fund. Further, it notes the compact section that includes the entire licensing scheme is entitled “Revenue Sharing with Non-Gaming Tribes.” The coalition believes this gives further support to its argument that the “entire purpose of the issuance of licenses for additional gaming devices was to create revenue sharing, and the Gambling Commission’s interpretation of this section should have been done in light of its intended purpose.” Given the inconsistencies in the compact provisions, both interpretations appear to be defensible, and the compact terms have again confused rather than clarified the intent of the compact.

QUESTIONS HAVE ALSO BEEN RAISED ABOUT WHEN TO REQUIRE TRIBES TO BEGIN MAKING QUARTERLY LICENSE FEE PAYMENTS

The Gambling Commission has taken the position that tribes should begin making quarterly payments when they receive licenses for gaming devices rather than after they put the gaming devices into operation, but the tribes themselves have disagreed on this issue, according to Gambling Commission records. For instance, one tribe—the Ewiiapaayp Band of Kumeyaay Indians—has contended that its payment obligation to the trust fund should begin only with the commercial

The Gambling Commission begins assessing quarterly fees from the time licenses are issued, but one tribe contends its payment obligation should begin with the commercial operation of the licensed gaming device.

operation of the licensed gaming device. Because the tribe had not put any of its licensed gaming devices into commercial operation, it believed that it did not owe any quarterly fees to the trust fund. However, the Gambling Commission charged this tribe and continues to charge other tribes quarterly fees from the time the licenses are issued until the licenses are surrendered or canceled, regardless of whether the gaming device is in commercial operation or not. Furthermore, according to the Gambling Commission's summaries of meetings it held with various tribes, at least seven tribes agree that quarterly fees should begin when licenses are issued rather than when gaming devices are placed into operation.

The Gambling Commission indicated that it scheduled four regional meetings to determine the tribes' views regarding the compact's trust fund payment requirements, but that it ultimately based its interpretation of when quarterly license fees begin on the operative language of the compact. Specifically, it concluded that the quarterly payments are in exchange for acquiring and maintaining "a license to operate a gaming device" rather than for the actual operation of the gaming device. Additionally, the Gambling Commission stated that it found no expression in the language of the compact requiring quarterly payments for a license to begin only when the tribe begins to receive revenues for the gaming device. The Gambling Commission has not established when tribes begin operating their gaming devices, so we are not able to determine the extent to which trust fund revenues would have been reduced if the Gambling Commission had charged quarterly fees only when gaming devices were put in operation.

SOME TRIBES BELIEVE THE GAMBLING COMMISSION STAFF'S INTERPRETATION OF "COMMERCIAL OPERATION" IS NOT EQUITABLE

According to the compact, the license for any gaming device should be canceled if the gaming device is not in commercial operation within 12 months of the license being issued, but the compact does not define what is meant by "commercial operation." At least three tribes have argued that the Gambling Commission staff's definition of commercial operation does not agree with the compact language and that the staff has added requirements not stated in the compact. The Gambling Commission's staff plan to recommend that meetings with tribes be scheduled in order to solicit their perspectives on the meaning of commercial operation.

Gambling Commission staff believe that the intent of the 12-month rule, including the term “in commercial operation,” is to keep tribes from hoarding licenses for gaming devices, which would prevent other tribes from having the opportunity to obtain the licenses.

Gambling Commission staff believe that the intent of the 12-month rule, including the term “in commercial operation,” is to keep tribes from hoarding licenses for gaming devices, which would prevent other tribes from having the opportunity to obtain the licenses. They have therefore been applying a definition of commercial operation that requires all gaming devices, licensed and unlicensed, to be available to the public on a continuous basis and to be simultaneously placed in service on the casino floor. The underlying rationale for the continuous and simultaneous requirements is the staff’s position that the license grants a tribe the right to operate a gaming device, but the license is not attached to any particular gaming device. However, the commissioners have not yet formally endorsed this definition, and the Gambling Commission has not actually canceled any licenses, pending the commissioners’ approval of its definition. Nevertheless, the Shingle Springs Band of Miwok Indians had 650 licenses canceled, and the Cahuilla Band of Mission Indians had 100 licenses canceled when they did not challenge the Gambling Commission’s notice of intent to cancel them.

One tribe, the Campo Band of Diegueno Mission Indians (Campo), has reasoned that the Gambling Commission’s one-time or occasional counts of gaming devices in operation on a casino floor cannot provide a true count of the devices in commercial operation because the devices must be taken off the floor intermittently or taken out of play for repairs or trades. Campo also pointed out that the compact does not require continuous commercial operation of the tribe’s licensed gaming devices. Moreover, Campo and another tribe stated that nothing in the compact requires unlicensed gaming devices to be in operation. However, Gambling Commission staff have taken the position that because licenses are not tied to specific gaming devices, it is reasonable to expect all gaming devices to be in regular and frequent operation. We believe prudent business practice would dictate that tribes should be aware of the maintenance and repair needs of their gaming devices and should have enough gaming devices to ensure the regular and frequent use of the licenses. For example, a tribe may need 1,000 gaming devices on hand to keep 900 licenses in full use.

Two tribes—Campo and the Pauma Band of Luiseno Mission Indians—also challenged the Gambling Commission staff’s position that all devices, licensed and unlicensed, must be in commercial operation. They argue that when the Gambling Commission’s auditors counted gaming devices, only unlicensed devices were out of operation, and the compact does not require

Some tribes challenged the Gambling Commission staff's position that all devices, licensed and unlicensed, must be in commercial operation.

unlicensed devices to be in commercial operation. However, the Gambling Commission's staff point out that the compact language describes licenses as authorizing gaming devices in excess of the number the tribe is authorized to use—in other words, in excess of a tribe's unlicensed gaming devices. To be in excess of the unlicensed devices, licensed gaming devices must be counted after a tribe's unlicensed devices, according to Gambling Commission staff. Therefore, a tribe would first have to place into commercial operation its unlicensed gaming devices before placing into commercial operation any gaming devices authorized by its licenses. For example, if a tribe had 350 entitlement gaming devices and 900 licenses, under the Gambling Commission's expectations, 1,250 gaming devices would have to be operating for the licenses to be in continuous and simultaneous use.

Although the Gambling Commission staff have been operating under this proposed definition for commercial operation and have issued notices to several tribes of their intent to cancel gaming device licenses, as of April 2004 the commissioners had not yet approved the definition or taken any action on the staff's recommendations to cancel licenses. Before the commissioners consider the proposed definition or act to cancel licenses, the staff will be recommending that meetings with tribes be held to solicit their perspective on what constitutes commercial operation.

Should the Gambling Commission abandon the expectation of continuous and simultaneous use, however, it may be at a disadvantage because it is not currently capable of distinguishing between licensed and unlicensed gaming devices. A system for placing identification tags on each gaming device, with a unique identifying number and an indication of whether the gaming device is licensed, could provide this capability. Armed with this listing of the identification information and with reasonable expectations for the number of gaming devices that can be under repair at any given time, the Gambling Commission and its auditors may be better able to distinguish between tribes' legitimate explanations of their operations and those that mask inappropriate hoarding of licenses. However, a system of identifying specific devices and of tying devices to licenses has the potential to be labor-intensive and difficult to apply.

Number of Licenses Allowed in Each Priority

Priority 1—Compact tribes operating zero devices on September 1, 1999. Under Priority 1, a tribe may draw up to 150 licenses for a total of 500 gaming devices. (This number includes 350 entitlement devices.)

Priority 2—Compact tribes authorized to operate up to and including 500 gaming devices on September 1, 1999, including any tribes that acquired licenses under Priority 1. Under Priority 2, a tribe may draw up to 500 licenses to a total of 1,000 gaming devices.

Priority 3—Compact tribes operating between 501 and 1,000 gaming devices on September 1, 1999, including any tribes that acquired licenses under Priority 2. Under Priority 3, a tribe may draw up to 750 licenses.

Priority 4—Compact tribes authorized to operate up to and including 1,500 gaming devices, including tribes that acquired licenses under Priority 3. Under Priority 4, a tribe may draw up to 500 licenses to a total of up to 2,000 gaming devices.

Priority 5—Compact tribes authorized to operate more than 1,500 gaming devices, including tribes that acquired licenses under Priority 4. Under Priority 5, a tribe may draw the number of licenses that will bring its total up to 2,000 gaming devices.

Source: 1999 Tribal-State Gaming Compact.

SOME TRIBES DISAGREE WITH THE GAMBLING COMMISSION'S INTERPRETATION OF THE LICENSE ALLOCATION PROCESS THE COMPACT DESCRIBES

Under the Gambling Commission's interpretation of the compact's description of the license draw process—that is, the process for allocating licenses to tribes that have applied for them—two tribes that applied did not receive any gaming device licenses during the Gambling Commission's third license draw. Under these tribes' alternative interpretation of compact language, they would have received some of the licenses they requested. The compact indicates that gaming device licenses are to be awarded through a mechanism that places tribes into five categories of priority. The categories stipulate the criteria for determining a tribe's priority, but the Gambling Commission and the two tribes in question—the Colusa Indian Community of the Colusa Rancheria (Colusa) and the Paskenta Band of Nomelaki Indians (Paskenta)—disagree on the compact's terms. Had the Gambling Commission interpreted the compact as the two tribes do, Colusa would have received 108 licenses and Paskenta would have received 75.

In general, the Gambling Commission's interpretation of the compact's draw process is that the tribes are placed in five levels of priority for drawing licenses, based on the number of

gaming devices the tribes already have and whether they have previously drawn licenses. The first time a tribe participates in a draw, its priority is based solely on the number of devices. A compact tribe that has no existing gaming devices and has not participated in any previous license draws would be placed in the first priority and, with any other tribes in this priority, would be the first to receive licenses. Noting the compact provisions state that tribes in a particular priority include those that received licenses under a previous priority, the Gambling Commission then moves the tribe to a lower priority for the next draw that it participates in, regardless of how many licenses it receives in the first draw as long as it received at least one license. As a result, in its first draw, a tribe in the first category

might request 100 licenses, receive only 20, and then be moved to the second priority category in the next draw, even though it may have fewer licenses than a tribe in the first category that did not participate in a prior draw.

In an actual example, Colusa operated 523 gaming devices on September 1, 1999, and received 250 licenses during the Gambling Commission's first license draw, when it was in the third priority. Thus, at the conclusion of the Gambling Commission's first draw, the tribe had a total of 773 gaming devices. Under the fourth priority category, the compact states that "compact tribes authorized to operate up to and including 1,500 gaming devices (including tribes, if any, that acquired licenses through [the previous priority]), shall be entitled to draw up to 500 gaming devices ...". Based on its interpretation of this language, the Gambling Commission moved Colusa to the fourth priority for the next draw it participated in because, although the tribe operated only 773 gaming devices, it received licenses while in the third priority category during a previous draw. Colusa did not receive any licenses during the next draw that it participated in because all available licenses had been allocated to tribes in the first three priorities. Had Colusa remained in the third priority for that draw, it would have received 108 licenses.

Colusa and Paskenta tribes believe that the compact bases the priority for awarding gaming device licenses solely on the number of gaming devices they have.

Colusa and Paskenta disagree with the Gambling Commission's interpretation of the license draw process. These tribes believe the compact bases the priority for awarding gaming device licenses solely on the number of gaming devices they have. In the example just given, this interpretation would have allowed Colusa to remain in the third priority for the next draw it participated in because it operated only 773 gaming devices, and Priority 3 tribes can operate between 501 and 1,000 gaming devices. These tribes also believe that until they exceed the gaming device limit for a particular priority, they should remain in that priority category. They contend that benefiting from previous draws for gaming device licenses does not forfeit a tribe's future allocation status until it reaches the specified threshold for the priority category. However, in letters of protest to the Gambling Commission, neither tribe addressed how its interpretation accounts for the additional compact language regarding the effect of the priority category a tribe was in when it received licenses under a previous draw, the language that prompted the Gambling Commission's policy.

THE STATE SIGNED TWO COMPACTS WITH ONE FEDERALLY RECOGNIZED TRIBE

The State entered into compacts with both the Barona Group of Capitan Grande (Barona) and the Viejas Group of Capitan Grande (Viejas), which are subgroups of a single federally recognized tribe, the Capitan Grande Band of Diegueno Mission Indians (Capitan Grande). The confusion about their status centered around the fact that the federal government listed Capitan Grande and both Barona and Viejas on the Federal Register of Tribal Nations, which the Gambling Commission uses to identify federally recognized tribes. According to the state attorney general, the United States considers Barona and Viejas to be successors in interest of Capitan Grande. Thus, the attorney general concludes it was appropriate for the State to enter into separate compacts with each separate successor. The Gambling Commission stated that because the governor, the California Legislature, and the federal Department of the Interior approved the compacts, it could not disregard valid agreements between the State and a sovereign nation. Thus, the Gambling Commission administered the Barona and Viejas compacts as distinct and separate compacts, and each subgroup may currently operate 2,000 gaming devices.

ONE TRIBE WAS OPERATING A CASINO WITHOUT A COMPACT

Coyote Valley elected not to enter into a compact with the State because it believed that the State did not negotiate in good faith.

Until a regulatory dispute forced its closure in June 2004, the Coyote Valley Band of Pomo Indians (Coyote Valley) operated a casino with Class III gaming devices without a tribal-state compact. The casino had been in operation since at least September 1, 1999, when other tribes signed compacts with the State. Coyote Valley elected not to enter into a compact with the State because it believed that the State did not negotiate in good faith. Because Coyote Valley operated more than 400 gaming devices, it was not eligible to receive any trust fund distribution payments, and the Gambling Commission has not made any distributions to it. Additionally, since Coyote Valley operated fewer than 700 gaming devices, under the Gambling Commission's interpretation (previously discussed in this chapter), it did not meet the threshold for making quarterly payments into the trust fund. However, if in September 1999 Coyote Valley was operating less than the number of gaming devices it currently operates, it would have been required to make

a prepayment to the trust fund in the amount of \$1,250 per license for each gaming device in excess of those in operation on September 1, 1999, or 350, whichever is greater.

Also, the terms of the compact would have required the tribe to make payments into the Indian Gaming Special Distribution Fund (special distribution fund) if it operated more than 200 gaming devices on September 1, 1999. The special distribution fund is a fund administered by the Gambling Commission for, among other things, the support of state and local government agencies affected by tribal gaming and for the payment of shortfalls that may occur in the trust fund. Because Coyote Valley had not signed a compact, it made no payments into this fund. Tribes that signed the compact and that were operating more than 200 gaming devices on September 1, 1999, are required to make payments to the special distribution fund.

Under the Indian Gaming Regulatory Act (IGRA), any tribe with jurisdiction over Indian lands on which Class III gaming is conducted must request the negotiation of a compact with the state in which those lands are located. IGRA also grants jurisdiction to United States district courts over any cause of action a tribe initiates arising from the failure of the state to enter into negotiations with the tribe for the purpose of entering into a tribal-state compact, or for the failure to conduct such negotiations in good faith. In 2000 a federal district court denied Coyote Valley's argument that claimed the State of California bargained in bad faith when negotiating the compact. In 2003 the Ninth Circuit Court of Appeals agreed with the lower court ruling, and in February 2004 the U.S. Supreme Court refused to review the case, turning down Coyote Valley's appeal.

A DECISION REGARDING MULTITERMINAL GAMING DEVICES MAY RESULT IN SOME TRIBES BEING INELIGIBLE FOR TRUST FUND DISBURSEMENTS AND OTHERS EXCEEDING THE GAMING DEVICE LIMIT

The Gambling Commission has had to address how to count certain electronic games for the purposes of determining the tribes' eligibility for receiving trust fund disbursements and establishing their gaming device allotments under the compact. The compact limits the number of gaming devices a tribe may operate to 2,000 and provides a schedule of fees that tribes must pay to acquire and maintain gaming device licenses. However, certain electronic roulette and craps games are played

from multiterminals, meaning that one machine has several terminals, and at each separate terminal a player wagers against a common outcome. The Gambling Commission's concern was whether it should count the entire system or each separate terminal as a gaming device.

Although the commissioners have yet to formally adopt a position on multiterminal devices, the staff's position is that it should count each separate terminal as a gaming device, reasoning that such an interpretation gives meaning to every provision in the compact's definition of a gaming device. Gambling Commission staff stated that the compact limits the number of gaming devices allotted to tribes to 2,000, and if the entire system was counted as one gaming device, the limitation would have no meaning. For example, a tribe could expand its gaming floor by simply adding a central system, which would operate the play of potentially thousands of player station terminals, thereby circumventing the compact's limitation on the number of gaming devices and the related payment of fees into the trust fund.

Gambling Commission staff determined that one tribe, Augustine, was ineligible for trust fund distributions during one quarter for which the tribe claimed that it was eligible.

For reasons involving a multiterminal gaming device, Gambling Commission staff determined that one tribe, the Augustine Band of Cahuilla Indians (Augustine), was ineligible for trust fund distributions during one quarter in fiscal year 2002–03 for which the tribe claimed that it was eligible. Specifically, the staff concluded that Augustine had counted a multiterminal gaming device as one device on its self-certification of the number of gaming devices it was operating, making it appear eligible for that quarter. However, Gambling Commission staff determined that the tribe operated 351 gaming devices for this quarter, exceeding the eligibility requirement by two gaming devices. According to the Gambling Commission, Augustine has requested to “meet and confer” in an attempt to resolve this issue, and the Gambling Commission instructed Augustine to direct its request to the Governor's Office.

Similarly, tribes that count multiterminals as a single gaming device may exceed the 2,000 maximum for gaming devices they can operate. In fact, according to a February 2004 report on a review performed jointly by the Gambling Commission and the Department of Justice, eight tribes were found to be operating more than 2,000 gaming devices at least in part because they were counting a multiterminal device as only one device.

ALTHOUGH MUCH DEBATE HAS OCCURRED OVER INTERPRETATIONS OF THE COMPACT, THERE HAVE BEEN LIMITED MEET-AND-CONFER SESSIONS AND LAWSUITS TO CHALLENGE THE GAMBLING COMMISSION'S VIEW

In facing these challenges to its authority and its decisions, the Gambling Commission has been in a difficult position. By the time it assumed responsibility for regulating Indian gaming, some tribes had already entered into the Sides contract that allowed them to set up an independent system for issuing gaming device licenses and expanding their gaming activities, and Sides considered its activities bound by the terms of its engagement letter with the tribes rather than by the terms of the tribal-state compact. The Gambling Commission not only had to establish its own system for regulation but also had to establish an equitable policy to address the fact that many tribes had already committed themselves to investments in casinos, believing they had valid licenses from Sides. At the same time, the Gambling Commission had to deal with the sometimes competing interests of tribes, which, having the status of sovereign nations, did not always recognize its authority. Further, the compact—the document that establishes the rules for that regulation—is flawed, and the Gambling Commission has the task of interpreting and clarifying its often-murky language. Finally, the Gambling Commission does not have the authority to enforce tribes' compliance with compact provisions. Instead, dispute resolution is left to the Governor's Office (which can meet and confer with the Gambling Commission's challengers), arbitration, or the courts.

The Gambling Commission is aware of at least five requests for meet-and-confer sessions that tribes have filed with the Governor's Office.

Challengers have taken some, but not all, the issues discussed above into the dispute resolution process. For example, according to the Gambling Commission, it is aware of at least five requests for meet-and-confer sessions that tribes have filed with the Governor's Office regarding such topics as the number of gaming device licenses available, the authority of the Gambling Commission to issue gaming device licenses, gaming device license draw priority determination procedures, and the definition of gaming device under the compact. However, the Gambling Commission stated that because of confidentiality restrictions, it is not always able to disclose the outcome of meet-and-confer sessions. In addition, in October 2002, two tribes jointly filed a case in U.S. District Court challenging the Gambling Commission's authority to interpret provisions of the compact. However, the court dismissed the suit in May 2003.

RECOMMENDATIONS

If the governor concludes the Gambling Commission's interpretation and policies do not meet the intended purposes of the compact, the governor should consider renegotiating the compact with the tribes to clarify the intent of the compact language, to help resolve disputes over the interpretation of compact language, and to enable the efficient and appropriate administration of the trust fund in each of the following areas:

- The maximum number of licensed gaming devices that all compact tribes in the aggregate may have.
- The offset of quarterly license fees by nonrefundable one-time prepayments.
- The number of licensed gaming devices for which each tribe should pay quarterly license fees.
- The date at which tribes should begin paying quarterly license fees.
- Automatic placement of a tribe into a lower priority for subsequent license draws.
- The definition of commercial operation of gaming devices.

If compact language is not renegotiated, to permit the efficient and effective tracking of gaming devices in order to determine whether tribes are appropriately placing them in operation rather than hoarding licenses, the Gambling Commission should finalize its definition of what constitutes commercial operation of gaming devices.

Finally, the Gambling Commission should finalize its position regarding gaming devices with more than one terminal to determine whether these devices are counted as one device or as more than one device. Once its position is final, the Gambling Commission should enforce compliance with the provisions of the compact for those tribes operating more than 2,000 gaming devices and should determine whether any tribe could lose its eligibility for trust fund distributions by exceeding 350 gaming devices. ■

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CHAPTER 2

The California Gambling Control Commission's Collection and Distribution of Trust Fund Money Was Generally Consistent With Its Interpretation of the Compact, but It Did Not Always Follow Its Process for Allocating Gaming Device Licenses

CHAPTER SUMMARY

The California Gambling Control Commission (Gambling Commission) generally administered the Indian Gaming Revenue Sharing Trust Fund (trust fund) in compliance with its understanding of the requirements in the 1999 Tribal-State Gaming Compacts (compact). The Gambling Commission generally ensured that the prepayment and quarterly license fees submitted by the compact tribes were consistent with its policies. Additionally, the Gambling Commission properly distributed trust fund receipts for most quarters to noncompact tribes, although in one quarter it may have underpaid a tribe by \$416,000 and overpaid each remaining noncompact tribe by \$5,100.

For two of the three license draws we reviewed, the Gambling Commission did not consistently adhere to its policy for conducting the draws. As a result, it allocated 307 licenses differently than it would have under its established procedures. The Gambling Commission also has begun monitoring tribes' eligibility for trust fund distributions and their compliance with the compact's provision that requires tribes to put their licensed gaming devices into commercial operation within 12 months of issuance or lose their licenses. However, although the Gambling Commission initially determined that seven tribes did not comply with the 12-month rule, to date only two tribes did not contest the cancellation of their unused licenses. The Gambling Commission has allowed the remaining five tribes to retain their licenses while it attempts to reach a consensus on the definition of what constitutes commercial operation.

Finally, the Gambling Commission requires certain staff to annually file statements of their financial interests, but it has not ensured that its conflict-of-interest policy is communicated to all staff and commissioners. Commissioners are bound by a statute prohibiting them from engaging in any other business, vocation, or employment, but the broad terms of the statute could be clarified.

QUARTERLY LICENSE FEES THAT GAMING TRIBES REMITTED WERE CONSISTENT WITH THE GAMBLING COMMISSION'S INTERPRETATION OF THE COMPACT

The Gambling Commission generally followed its policy when it calculated the amounts tribes owed to the trust fund for nonrefundable one-time prepayments and for quarterly fees for quarters ending September 2000 to December 2003. However, as we discussed in Chapter 1, the Gambling Commission's interpretation of the compact language describing how to calculate quarterly license fees has been challenged. Of the 15 tribes we reviewed, 14 have consistently remitted their quarterly license fees on time. (Appendix B lists the licensing fees that each tribe has deposited annually into the trust fund.) The remaining tribe—the Ewiiapaayp Band of Kumeyaay Indians (Ewiiapaayp)—was more than five quarters in arrears at one point. The compact states that tribes shall not conduct any gaming activities if they are more than two quarters in arrears in license fee payments. In fact, although it held licenses for gaming devices, Ewiiapaayp was not involved in gaming at the time. Thus, Ewiiapaayp was eligible to receive quarterly distributions from the trust fund because, although it had obtained licenses, it operated fewer than 350 gaming devices. The Gambling Commission collected the delinquent license fees by withholding Ewiiapaayp's quarterly distributions to satisfy the balance owed.

Of the 15 tribes we reviewed, 14 have consistently remitted their quarterly license fees on time.

Although the trust fund receipts generally consist of prepayments and quarterly license fees and the related interest earned on those deposits, for distributions for fiscal year 2002–03 the trust fund also received money from the Indian Gaming Special Distribution Fund (special distribution fund). Legislation in 2003, Assembly Bill 673 (AB 673), provided for the transfer of \$50.6 million from the special distribution fund to the trust fund for fiscal year 2002–03 so that each noncompact tribe received the maximum annual distribution it was allowed under the compact, generally \$1.1 million. Before the passage of AB 673,

noncompact tribes had not received the maximum annual distribution, but this legislation makes the payment of shortfalls in the trust fund the priority use of money in the special distribution fund.

According to the compact, the special distribution fund receives profit-based fees from tribes, and its disbursements are for grants for programs designed to address gambling addiction, support of state and local government agencies affected by tribal gaming, costs incurred by the Gambling Commission for the administration of the compact, and any other purpose specified by the Legislature, as well as shortfalls that may occur in the trust fund.

DISTRIBUTIONS TO NONCOMPACT TRIBES WERE GENERALLY CONSISTENT WITH THE GAMBLING COMMISSION'S POLICY, WITH THE POSSIBLE EXCEPTION OF ONE QUARTER'S DISTRIBUTION

The Gambling Commission's distributions to eligible tribes from the trust fund were timely and generally in accordance with its interpretation of the compact, for those distributions we reviewed. For its first two distributions, the Gambling Commission retained a balance in the trust fund, pending adoption of its interpretation of payment provisions of the compact and a full accounting from the Sides Accountancy Corporation (Sides), which collected trust fund fees before the Gambling Commission assumed responsibility for administering the trust fund. However, the Gambling Commission may have underpaid one tribe, Lower Lake Rancheria (Lower Lake), \$416,000 when it determined Lower Lake was ineligible to receive trust fund distributions during one quarter. As a result, it may have also overpaid \$5,100 to each of the other tribes eligible to receive funds during that quarter. In spite of this possible error, the Gambling Commission generally has an adequate system in place for monitoring the eligibility of tribes to receive distributions from the trust fund.

The Gambling Commission's Distributions to Eligible Tribes Were Generally Timely and Appropriate

The Gambling Commission calculates the amount of trust fund distributions by taking the license prepayments, quarterly license fees, interest earned, and donations that compact tribes pay, and allocating this money equally to eligible tribes each

quarter. The compact states that tribal eligibility consists of having federal recognition and operating fewer than 350 gaming devices. The Gambling Commission determines if a tribe meets the federal recognition criteria by reviewing the applicable Federal Register of Tribal Nations (federal register) and requires tribes that believe they are eligible to self-certify the number of gaming devices they operate. The Gambling Commission requires certifications only from tribes that signed the 1999 compact and operate fewer than 350 gaming devices. Based on these factors, the Gambling Commission generates a list of tribes that are to receive a trust fund disbursement.

The Gambling Commission approved its first distribution from the trust fund to noncompact tribes in May 2001. This distribution, totaling \$24.8 million, was to allocate money primarily collected by Sides. However, the Gambling Commission did not distribute all of the money in the trust fund because it had not yet received supporting documentation from Sides or individual tribes. As a result, it could not determine with certainty which tribes had paid into the trust fund and how many gaming devices each tribe was operating. According to the Gambling Commission, to help protect against incorrect disbursements, it held some money in the trust fund as a reserve and made a partial distribution of the fund's balance to noncompact tribes. The Gambling Commission made two partial distributions, which incorporated receipts for five quarters, until it reconciled the records Sides submitted. After reconciling Sides records, the Gambling Commission released its third distribution of money from the trust fund in August 2002. With this distribution, the Gambling Commission eliminated the related reserve and brought each noncompact tribe in line with what it calculated as the fair share of trust fund receipts.

Because it lacked the documentation to determine with certainty which tribes had paid into the trust fund and how many gaming devices each tribe was operating, the Gambling Commission initially made a partial distribution of the trust fund's balance to noncompact tribes.

The Gambling Commission May Have Underpaid Lower Lake on One of Its Quarterly Distributions From the Trust Fund

We reviewed the distributions to 25 tribes for the 13 quarters ending September 30, 2000, through September 30, 2003, and determined that the Gambling Commission made appropriate distributions for 12 of those quarters. However, it may have inappropriately underpaid Lower Lake by \$416,000 and overpaid by \$5,100 each of the other tribes eligible in the first partial distribution of receipts from Sides-issued licenses. Appendix D provides a listing of all distributions to tribes since the creation of the trust fund through September 2003.

The former chief counsel of the Gambling Commission indicated that the Gambling Commission did not distribute funds to Lower Lake for the quarter ending September 30, 2000, because the federal register did not list it as a federally recognized tribe. Although the federal Bureau of Indian Affairs (BIA) acknowledged that it erred in excluding Lower Lake from the register, the former chief counsel explained that the Gambling Commission bases eligibility for such payments from the date stated in written evidence of that recognition, and the BIA did not officially reaffirm the government-to-government relationship with the tribe until December 29, 2000. Consequently, the Gambling Commission concluded that Lower Lake was eligible to receive a share of trust fund receipts only beginning with the quarter ending December 31, 2000.

The Gambling Commission concluded Lower Lake was not eligible for one distribution because it was not listed in the federal register even though the federal government noted its error in excluding Lower Lake.

However, the BIA also stated in writing that the government-to-government relationship between the federal government and Lower Lake was never severed. Therefore, although Lower Lake did not appear on the register, the federal government acknowledged that the tribe had consistently retained its status as a federally recognized tribe. Furthermore, only an act of Congress can terminate a tribe's federal recognition, and to date no act has terminated Lower Lake's federal recognition. Finally, the Gambling Commission was made aware of the BIA error when it received a letter of protest from the tribe's attorney 11 months before it made the adjustment distribution in question. However, because it chose to focus on the date that Lower Lake's status as a federally recognized tribe was reaffirmed, the Gambling Commission concluded that Lower Lake was ineligible for distributions prior to that date and, consequently, it did not adjust its first quarterly allocation to include Lower Lake. In August 2003, the Gambling Commission asked the BIA whether Lower Lake had received federal funds uninterrupted from the time of its recognition through the present. The BIA did not directly answer the question, stating only that federal recognition is the "green light" for tribes to receive funds.

Although we recognize that the register is a convenient, efficient, and generally reliable tool for determining a tribe's eligibility, we question the Gambling Commission's decision not to adjust payments to Lower Lake once it became clear that only an administrative error kept it from being listed in the register. We believe it would be appropriate for the Gambling Commission to discuss this issue further with the federal government. Specifically, the Gambling Commission should ask the federal government first whether it is required to pay Lower Lake and, if not, whether anything in federal law prohibits the Gambling Commission from paying Lower Lake retroactive

If nothing prohibits the payment, we believe the equitable course of action would be to pay Lower Lake \$416,000.

payments from the trust fund. If nothing prohibits the payment, we believe the equitable course of action for the Gambling Commission would be to pay Lower Lake \$416,000 and either reduce future payments by \$5,100 to each tribe that received the first distribution or bill the tribes.

The Gambling Commission Has Begun Monitoring to Ensure That Tribes Receiving Trust Fund Distributions Meet the Necessary Requirements

In addition to determining whether a tribe is federally recognized, the Gambling Commission has conducted some monitoring to determine whether gaming tribes that receive trust fund distributions have satisfied the other eligibility requirement—that they operate fewer than 350 gaming devices. Although the Gambling Commission has not formally adopted any policies for the eligibility monitoring that it performs, the monitoring it has conducted appears reasonable to ensure that gaming tribes receiving trust fund distributions meet the compact requirements. The Gambling Commission determines whether tribes operate fewer than 350 gaming devices through self-certifications from the tribes and periodic, on-site gaming device counts, as well as reviews of usage records. During reviews of 21 tribes, the Gambling Commission identified one tribe—the Augustine Band of Cahuilla Indians (Augustine)—that was operating more than 350 gaming devices but that certified it was eligible to receive trust fund distributions. As we discussed more fully in Chapter 1, Augustine was operating a multiterminal gaming device that the tribe counted as one device. The Gambling Commission, however, counted each of the 10 terminals as a gaming device, resulting in a count that exceeded the maximum for eligibility to receive trust fund distributions. Consequently, the Gambling Commission withheld \$275,000 of the tribe's distributions for fiscal year 2002–03.

THE GAMBLING COMMISSION DID NOT ALWAYS FOLLOW ITS LICENSE DRAW PROCEDURES

Although staff developed procedures for allocating gaming device licenses, they did not follow these procedures when the Gambling Commission conducted its first gaming device license draw in September 2002 or when it held its second draw in July 2003. As a result, some tribes received licenses that should have been allocated to other tribes under the Gambling Commission's established procedures.

As we discussed in Chapter 1, the compact requires gaming device licenses to be awarded to tribes through a priority mechanism with five categories. Under the Gambling Commission's established procedures, a tribe's priority for each draw is based on the priority it was placed in when it last drew licenses, with each tribe automatically moved to a lower priority category for each draw, and on the total number of gaming devices it has. In addition, the compact limits the number of licenses a tribe can draw in each of the first four priorities (150, 500, 750, and 500, respectively). For the fifth priority, the only limit in compact language is the number of licenses that would bring a tribe's total gaming devices, licensed and unlicensed, to 2,000.

The Gambling Commission followed these procedures for only one of its three gaming device license draws. When it conducted its first draw in September 2002, it did not take into account the number of Sides draws a tribe had participated in when it determined the participating tribes' priority categories even though in June 2002 it ratified the Sides allocations. According to a summary the Gambling Commission provided us, Sides conducted eight draws, issuing most licenses during the first draw.

Had the Gambling Commission considered Sides draw information when determining which priority category to assign tribes for its first draw, 282 gaming device licenses would have been awarded differently to five tribes.

Had the Gambling Commission considered the Sides draw information when determining which priority category to assign the tribes to for the first draw, 282 gaming device licenses would have been awarded differently to five tribes. Specifically, based on their participation in the Sides draws, the Rumsey Indian Rancheria of Wintun Indians (Rumsey) and Cabazon Band of Cahuilla Mission Indians (Cabazon) would have been placed in the fifth priority for the Gambling Commission's first draw. Rumsey and Cabazon would then have received more licenses because, according to the draw process established by the compact, for the fifth priority, tribes are allowed to draw an unlimited number of additional licenses up to the total authorization to operate of 2,000 gaming devices. However, according to the Gambling Commission's interpretation of the compact, tribes in the fifth priority are only entitled to draw up to 500 licenses, the difference between the maximum of 2,000 and the 1,500 gaming devices the compact indicates is the number for placement in the fifth category. In fact, because the Gambling Commission's policy is to move a tribe to a lower priority if it participated in a previous draw, regardless of the number of gaming devices it operates, a tribe could be moved to the fifth priority and operate significantly fewer than 1,500 gaming devices. Consequently, the 500-license limit established by the Gambling Commission is not appropriate, as well as not justified by the compact language. Had it been

placed in the fifth priority and had the Gambling Commission not imposed the 500-license limit for this priority, the Rumsey tribe would have received 238 more licenses than it was actually awarded during the Gambling Commission's draw. Similarly, Cabazon would have received 44 more licenses than it actually received. Conversely, the number of gaming device licenses allocated to the Shingle Springs Band of Miwok Indians (Shingle Springs), Jackson Rancheria Band of Me-Wuk Indians, and United Auburn Indian Community would have been reduced by 51, 75, and 156, respectively.

The Gambling Commission's reluctance to use Sides draw data for its first distribution comes from its belief that Sides did not conduct its draws in accordance with the compact. Moreover, the Gambling Commission indicated that when Sides entered into agreements with tribes for the allocation of licenses, it failed to include any provision for limiting the pool of gaming device licenses in accordance with the statewide limit defined in the compact. It also did not appropriately conduct the draw rounds by cycling through the priority categories, as required in the compact. The attorney representing Sides acknowledged that Sides' duties did not include ensuring that the allocation of gaming devices did not exceed the available number of devices as provided in the compact or certifying that the draws complied with the compact. However, because the Gambling Commission ultimately ratified the allocation of gaming device licenses derived from the Sides draws, we believe it is reasonable to expect the Gambling Commission to consider the number of Sides draws the tribes received licenses in previously when assigning priority categories for the tribes applying for licenses.

Because the Gambling Commission ratified the allocation of gaming device licenses derived from the Sides draws, it is reasonable to expect the Gambling Commission to consider these draws when assigning priority categories for tribes applying for licenses.

In the Gambling Commission's second draw, it did not lower the priority of the Paskenta Band of Nomlaki Indians (Paskenta) to the fourth priority even though that tribe had been in the third priority in the first draw and had received licenses. This resulted in the tribe receiving 25 licenses that should have been awarded to the Shingle Springs and Tuolumne Band of Me-Wuk Indians tribes. The Gambling Commission, which identified and corrected the error by placing Paskenta in the fifth priority for its third draw, stated that this error resulted because of an administrative oversight. Overall, for the two draws for which it did not follow its procedures, the Gambling Commission did not award 307 gaming device licenses to the appropriate tribes according to its official allocation process.

THE GAMBLING COMMISSION HAS NOT CANCELED LICENSES THAT TRIBES FAILED TO PLACE INTO COMMERCIAL OPERATION WITHIN THE REQUIRED 12 MONTHS

The Gambling Commission determined that seven tribes did not put their licensed gaming devices into operation within 12 months as required.

The Gambling Commission conducts reviews to ensure that tribes placed their licensed gaming devices into commercial operation within 12 months after receiving their licenses. It schedules its visits with the tribes near the end of this 12-month period. In June 2002, the Gambling Commission issued its first licenses to 35 tribes, based on the previous Sides allocation of licenses. At that time it gave notice that these tribes had until June 2003 to put their licenses into commercial operation. In June 2003, the Gambling Commission reviewed 20 of these tribes to determine their compliance, but the manager of the Compliance Section indicated that because of its limited staff resources, it was not able to complete its review of the remaining 15 tribes.

During the 20 reviews it did complete, the Gambling Commission found that four tribes had not put some of their licensed gaming devices into commercial operation by June 2003. Furthermore, the Gambling Commission has conducted three of its own draws, which were held in September 2002, July 2003, and December 2003. At the time of our review, only the September 2002 draw was due for a 12-month rule compliance review. The Gambling Commission conducted its review in September 2003 and determined that three tribes did not comply.

Two of the seven tribes—Shingle Springs and the Cahuilla Band of Mission Indians—that the Gambling Commission identified as noncompliant during its June and September 2003 reviews did not contest the cancellation of their unused licenses. These licenses were subsequently reallocated during the December 2003 draw. However, because the finding of noncompliance is based partly on the Gambling Commission's proposed definition of commercial operation and at least three tribes dispute the finding of noncompliance and the definition, as of April 2004 the Gambling Commission had not taken actions to cancel the noncompliant licenses. The Gambling Commission stated that it is planning to hold town-hall meetings with all tribes to help finalize the definition of commercial operation. We discuss the proposed definition of commercial operation more fully in Chapter 1.

THE GAMBLING COMMISSION DOES NOT HAVE A THOROUGH SYSTEM FOR AVOIDING POTENTIAL CONFLICT-OF-INTEREST ISSUES

Although the Gambling Commission has a conflict-of-interest policy, it has not adequately communicated the policy to designated staff. For example, key staff we interviewed stated that they were not aware of any formal, written conflict-of-interest policy. In fact, after repeated requests for a copy of its conflict-of-interest policy, the Gambling Commission finally provided us with a copy, two months after our initial request. Additionally, a former commissioner had to file an amended statement of economic interest because he was not fully aware of the requirements for completing the form. By not ensuring that the commissioners and its staff are aware of its conflict-of-interest policy, the Gambling Commission runs the risk that affected employees will not understand their obligations under the Government Code (code).

The Gambling Commission's conflict-of-interest policy includes by reference the following provisions of the code:

- An enumeration of the positions within the agency that involve making or influencing decisions that may foreseeably have a material effect on the financial interests of those holding the positions and the types of investments and other economic interests that are reportable.
- A requirement that each designated employee file an annual statement disclosing his or her reportable investments, business positions, interests in real property, and income held during specified times.
- A description of the circumstances under which designated employees must disqualify themselves from making or participating in the making of a decision or using their official positions to influence a decision.

The commissioners themselves are bound by the provisions of the Business and Professions Code, Section 19814, which states that during their terms of office, the "members of the commission shall not engage in any other business, vocation, or employment." Further, upon entering the duties of the commissioner's office, a commissioner must "swear that he or she is not, and during his or her term of office shall not be, pecuniarily interested in, or doing business with, any person, business, or organization holding a gambling license." Thus, the law has a very broad application to the commissioners'

outside compensation and financial interests. Under the law, the commissioners receive a salary in compensation for meeting their responsibilities. The law does not explicitly state that commissioners are full-time employees, and the Gambling Commission also has not clarified its expectations as to what activity is allowed to commissioners under the law.

Nevertheless, we believe a reasonable implication of the law is that the commissioners will be full-time employees, and we have potential concerns about the outside activities of a current commissioner and a former commissioner. For example, a former commissioner was employed by an outside security firm for two months when he was still on the Gambling Commission's payroll. Further, he did not initially disclose the additional employment on the statement of financial interest he filed. He subsequently filed an amended form and claimed that the oversight resulted from his using the previous year's form as a guide.

RECOMMENDATIONS

The Gambling Commission should confer with the federal BIA and determine whether there is any federal requirement that it pay Lower Lake for the quarter ending September 30, 2000, and, if not, whether anything prohibits it from paying Lower Lake. Barring any prohibition, we believe it is appropriate for the Gambling Commission to provide Lower Lake a share of the funds allocated that quarter and to deduct that amount from distributions to tribes that received distributions in that quarter. If any one of these tribes is no longer eligible to receive trust fund distributions, the Gambling Commission should either bill the tribe for the overpayment or seek other remedies to recover the overpayment.

To ensure that all tribes applying for gaming device licenses are provided the appropriate opportunity to obtain the number of licenses they are applying for, the Gambling Commission should consistently follow the license allocation procedures it has adopted. Further, it should change its current policy of limiting to 500 the number of licenses a tribe in the fifth priority may draw, allowing tribes instead to draw up to their maximum total authorization to operate up to 2,000 gaming devices.

The Gambling Commission should ensure that all staff are informed of the conflict-of-interest policy. Additionally, the Gambling Commission should seek clarification of the law governing the outside financial activities which commissioners may engage in.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,

A handwritten signature in black ink that reads "Elaine M. Howle". The signature is written in a cursive style with a large, prominent "E" and "H".

ELAINE M. HOWLE
State Auditor

Date: June 22, 2004

Staff: Lois Benson, CPA, Audit Principal
Steven A. Cummins, CPA
Jerry A. Lewis
Rafael Garcia
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APPENDIX A

Number of Gaming Devices Operated by Federally Recognized Indian Tribes in California as of April 2004

The 1999 Tribal-State Gaming Compacts (compact) require tribes to obtain licenses for gaming devices they plan to operate in excess of the number of grandfathered and entitlement devices that the compact authorizes them to operate.

Table A.1 identifies the total number of gaming device licenses each of the 1999 compact tribes have obtained and indicates which entity issued the licenses. The Sides Accountancy Corporation (Sides) issued gaming licenses from May 2000 until the Gambling Commission was given authority by the governor in March 2001 to issue licenses.

TABLE A.1

Federally Recognized Indian Tribe	Tribes With a Compact*	Tribes Operating a Casino	Applicable to the 61 Compacts Entered Into in 1999					
			Grand-fathered Gaming Devices [†]	Entitlement Gaming Devices [†]	Licensed Gaming Devices [‡]	Total Gaming Devices [§]	Gaming Device Licenses Originally Issued by Sides	Gaming Device Licenses Issued by Gambling Commission
Agua Caliente Band of Cahuilla Indians	X	X*	1,153		847	2,000	847	
Alturas Indian Rancheria	X	X		350	150	500		150
Augustine Band of Cahuilla Indians	X	X		350	350	700	350	
Bear River Band of the Rohnerville Rancheria	X			350		350		
Berry Creek Rancheria of Maidu Indians	X	X	406		494	900	350	144
Big Lagoon Rancheria						0		
Big Pine Band of Owens Valley Paiute Indians						0		
Big Sandy Rancheria of Mono Indians	X	X	239	111		350		
Big Valley Band of Pomo Indians	X	X	353		400	753	400	
Blue Lake Rancheria	X	X		350	350	700		350
Bridgeport Paiute Indian Colony						0		
Buena Vista Rancheria of Me-Wuk Indians	X			350		350		
Cabazon Band of Cahuilla Mission Indians	X	X	741		1,215	1,956	559	656
Cahto Indian Tribe of the Laytonville Rancheria	X	X	125	225		350		
Cahuilla Band of Mission Indians	X	X	207	143		350		
California Valley Miwok Tribe						0		
Campo Band of Diegueno Mission Indians	X	X		350	400	750	400	
Capitan Grande Band of Diegueno Mission Indians:**								
Barona Group of Capitan Grande	X	X	1,057		943	2,000	943	

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Federally Recognized Indian Tribe	Tribes With a Compact*	Tribes Operating a Casino	Applicable to the 61 Compacts Entered Into in 1999				Gaming Device Licenses Originally Issued by Sides ^{ll}	Gaming Device Licenses Issued by Gambling Commission
			Grand-fathered Gaming Devices ^f	Entitlement Gaming Devices ^f	Licensed Gaming Devices ^z	Total Gaming Devices ^z		
Viejas Group of Capitan Grande	X	X	1,132		868	2,000	868	
Cedarville Rancheria						0		
Chemehuevi Indian Tribe	X	X	100	250		350		
Cher-Ae Heights Indian Community Trinidad Rancheria	X	X	196	154		350		
Chicken Ranch Rancheria of Me-Wuk Indians	X	X	224	126		350		
Cloverdale Rancheria of Pomo Indians						0		
Cold Springs Rancheria of Mono Indians						0		
Colorado River Indian Tribes						0		
Colusa Indian Community of the Colusa Rancheria	X	X	523		250	773		250
Cortina Indian Rancheria of Wintun Indians						0		
Coyote Valley Band of Pomo Indians		X ^{tt}				0 ^{tt}		
Ewiiapaayp Band of Kumeeyaay Indians	X			350		350		
Death Valley Timba-sha Shoshone Band						0		
Dry Creek Rancheria of Pomo Indians	X	X		350	1,250	1,600	1,250	
Elem Indian Colony of Pomo Indians	X			350		350		
Elk Valley Rancheria	X	X	167	183		350		
Enterprise Rancheria of Maidu Indians						0		
Fort Bidwell Indian Community						0		
Fort Independence Indian Community of Paiute Indians						0		
Fort Mojave Indian Tribe of Arizona, California, Nevada						0		
Graton Rancheria						0		
Greenville Rancheria of Maidu Indians						0		
Grindstone Indian Rancheria of Wintun Wailaki Indians						0		
Guidville Rancheria						0		
Hoopa Valley Tribe	X	X	85	265		350		
Hopland Band of Pomo Indians	X	X	307	43	925	1,275	450	475
Inaja Band of Diegueno Mission Indians						0		
Ione Band of Miwok Indians						0		
Jackson Rancheria Band of Me-Wuk Indians	X	X	435		1,065	1,500	490	575
Jamul Indian Village	X			350		350		
Karuk Tribe of California						0		
Kashia Band of Pomo Indians						0		
La Jolla Band of Luiseno Mission Indians	X	X		350		350		
La Posta Band of Diegueno Mission Indians*	X					0		
Los Coyotes Band of Cahuilla Mission Indians						0		
Lower Lake Rancheria						0		
Lytton Rancheria						0		
Manchester Band of Pomo Indians	X			350		350		

Federally Recognized Indian Tribe	Tribes With a Compact*	Tribes Operating a Casino	Applicable to the 61 Compacts Entered Into in 1999					Gaming Device Licenses Originally Issued by Sides ^{ll}	Gaming Device Licenses Issued by Gambling Commission
			Grand-fathered Gaming Devices [†]	Entitlement Gaming Devices [†]	Licensed Gaming Devices [‡]	Total Gaming Devices [§]			
Manzanita Band of Diegueno Mission Indians	X			350			350		
Mechoopda Indian Tribe of Chico Rancheria							0		
Mesa Grande Band of Diegueno Mission Indians							0		
Middletown Rancheria of Pomo Indians	X	X	150	200	150	500	150		
Mooretown Rancheria of Maidu Indians	X	X	500		500	1,000	500		
Morongongo Band of Cahuilla Mission Indians	X	X	1,627		373	2,000	373		
North Fork Rancheria of Mono Indians							0		
Paiute-Shoshone Indians of the Bishop Community	X	X	273	77		350			
Paiute-Shoshone Indians of the Lone Pine Community							0		
Pala Band of Luiseno Mission Indians	X	X		350	1,650	2,000	1,650		
Paskenta Band of Nomelaki Indians	X	X		350	350	700	300		50
Pauma Band of Luiseno Mission Indians	X	X		350	700	1,050	500		200
Pechanga Band of Luiseno Mission Indians	X	X	1,333		667	2,000	667		
Picayune Rancheria of Chukchansi Indians	X	X		350	1,450	1,800	1,250		200
Pinoleville Rancheria of Pomo Indians							0		
Pit River Tribe	X	X	129	221		350			
Potter Valley Rancheria of Pomo Indians							0		
Quartz Valley Indian Community							0		
Quechan Tribe of the Fort Yuma Reservation	X	X		350		350			
Ramona Band or Village of Cahuilla Mission Indians							0		
Redding Rancheria	X	X	401		550	951	350		200
Redwood Valley Rancheria of Pomo Indians							0		
Resighini Rancheria	X		135	215		350			
Rincon Band of Luiseno Mission Indians	X	X		350	1,250	1,600	1,250		
Robinson Rancheria of Pomo Indians	X	X	380		220	600			220
Round Valley Indian Tribes							0		
Rumsey Indian Rancheria of Wintun Indians	X	X	416		1,346	1,762	690		656
San Manuel Band of Serrano Mission Indians	X	X	974		1,026	2,000	1,026		
San Pasqual Band of Diegueno Mission Indians	X	X		350	1,150	1,500	1,150		
Santa Rosa Band of Cahuilla Mission Indians							0		
Santa Rosa Indian Community	X	X	472		1,528	2,000	1,528		
Santa Ynez Band of Chumash Mission Indians	X	X	760		1,240	2,000	1,240		
Santa Ysabel Band of Diegueno Mission Indians*	X						0		

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Federally Recognized Indian Tribe	Applicable to the 61 Compacts Entered Into in 1999							Gaming Device Licenses Originally Issued by Sides ^{ll}	Gaming Device Licenses Issued by Gambling Commission
	Tribes With a Compact [*]	Tribes Operating a Casino	Grandfathered Gaming Devices [†]	Entitlement Gaming Devices [†]	Licensed Gaming Devices [‡]	Total Gaming Devices [§]	Gaming Device Licenses Originally Issued by Sides ^{ll}		
Scotts Valley Band of Pomo Indians						0			
Sherwood Valley Rancheria of Pomo Indians	X	X	127	223		350			
Shingle Springs Band of Miwok Indians	X			350	341	691		341	
Smith River Rancheria	X	X	235	115		350			
Soboba Band of Luiseno Mission Indians	X	X	991		1,009	2,000	1,009		
Susanville Indian Rancheria	X	X	150	200		350			
Sycuan Band of Diegueno Mission Indians	X	X	519		1,481	2,000	1,481		
Table Bluff Reservation-Wiyot Tribe						0			
Table Mountain Rancheria	X	X	835		1,165	2,000	1,165		
Torres-Martinez Band of Cahuilla Mission Indians*	X					0			
Tule River Indian Tribe of the Tule River Reservation	X	X	408		1,092	1,500	342	750	
Tuolumne Band of Me-Wuk Indians	X	X		350	590	940	250	340	
Twenty-Nine Palms Band of Luiseno Mission Indians	X	X	740		1,260	2,000	1,260		
United Auburn Indian Community	X	X		350	1,556	1,906	650	906	
Upper Lake Band of Pomo Indians						0			
Utu Utu Gwaitu Paiute Tribe						0			
Washoe Tribe of Nevada and California						0			
Yurok Tribe of the Yurok Reservation						0			
Totals	64	54	19,005	10,801	32,151	61,957	25,688	6,463	

Source: California Gambling Control Commission.

* In 2003, the State entered a compact with the La Posta, Santa Ysabel, and Torres-Martinez tribes, which received final approval by the federal government in 2003 and 2004. These three compacts do not require the tribes to pay any fees to the trust fund.

† Grandfathered devices are those the tribe had in operation on September 1, 1999, and the 1999 compact limits entitlement devices to 350. The combination of grandfathered and entitlement devices is referred to in the compact as authorized gaming devices, and no licenses are required to operate them.

‡ Tribes are required to obtain licenses and pay fees for the licenses to operate gaming devices in excess of their authorized gaming devices, according to the 1999 compact.

§ The 1999 compact limits a tribe to a total of 2,000 gaming devices.

ll Sides issued a total of 29,398 licenses. However, after the Gambling Commission ratified the allocation of these licenses, it reissued 3,710 of the licenses because they were either canceled or surrendered.

The Agua Caliente tribe operates two casinos, so there are 54 casinos operated by 53 Indian tribes statewide.

** The Capitan Grande tribe is a federally recognized tribe consisting of the Barona and Viejas groups. See related discussion in Chapter 1.

†† Until a regulatory dispute forced its closure in June 2004, the Coyote Valley tribe was operating more than 400 slot machines, but it was gaming without a compact.

APPENDIX B

Indian Gaming Revenue Sharing Trust Fund Receipts From May 2000 to January 2004

As a condition of acquiring licenses to operate gaming devices, the 1999 Tribal-State Gaming Compacts (compact) require tribes to pay a nonrefundable one-time prepayment fee of \$1,250 per gaming device license. See Appendix A for the number of licensed gaming devices each federally recognized Indian tribe in California owns. The compact also specifies that in order to acquire and maintain a gaming device license, tribes must make payments into the Indian Gaming Revenue Sharing Trust Fund (trust fund) on a quarterly basis. The amount that each tribe pays every quarter varies based on the number of licenses it has. Table B.1 shows all tribal contributions made to the trust fund, and the interest earned on those contributions prior to disbursement, from May 2000 to January 2004. See Appendix D for details regarding trust fund distributions.

TABLE B.1

Federally Recognized Indian Tribe	Fiscal Year				
	1999–2000*	2000–01	2001–02	2002–03	2003–04†
Agua Caliente Band of Cahuilla Indians	\$ 1,058,750	\$480,506	\$549,150	\$ 549,150	\$ 411,863
Alturas Indian Rancheria	0	0	0	0	187,500
Augustine Band of Cahuilla Indians	437,500	0	0	0	0
Berry Creek Rancheria of Maidu Indians	437,500	0	0	0	180,000
Big Sandy Rancheria of Mono Indians	250,000	0	0	0	0
Big Valley Band of Pomo Indians	500,000	0	0	0	0
Blue Lake Rancheria	0	0	0	0	437,500
Buena Vista Rancheria of Me-Wuk Indians	1,812,500	0	0	0	0
Cabazon Band of Cahuilla Mission Indians	125,000	584,775	66,000	820,000	412,855
Cahuilla Band of Mission Indians	0	125,000	0	0	0
Campo Band of Diegueno Mission Indians	500,000	0	0	0	0
Capitan Grande Band of Diegueno Mission Indians:‡					
Barona Group of Capitan Grande	1,178,750	432,770	0	506,243	368,175
Viejas Group of Capitan Grande	1,085,000	442,575	590,100	0	23,660
Chemehuevi Indian Tribe	75,000	0	0	0	0
Colusa Indian Community of the Colusa Rancheria	0	0	0	312,500	0
Dry Creek Rancheria of Pomo Indians	1,562,500	0	0	2,610,747	667,500
Ewiiapaayp Band of Kumeyaay Indians	1,250,000	0	0	509,372	678,061

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Federally Recognized Indian Tribe	Fiscal Year				
	1999–2000*	2000–01	2001–02	2002–03	2003–04†
Hopland Band of Pomo Indians	562,500	0	0	593,750	0
Jackson Rancheria Band of Me-Wuk Indians	581,250	31,250	0	718,750	234,252
Middletown Rancheria of Pomo Indians	187,500	0	0	0	0
Mooretown Rancheria of Maidu Indians	625,000	0	0	0	0
Morongo Band of Cahuilla Mission Indians	466,250	20,700	10,350	0	0
Pala Band of Luiseno Mission Indians	2,062,500	0	1,396,875	6,153,159	1,537,500
Paskenta Band of Nomelaki Indians	187,500	187,500	0	31,250	31,250
Pauma Band of Luiseno Mission Indians	625,000	0	0	0	250,000
Pechanga Band of Luiseno Mission Indians	833,750	0	0	58,106	142,650
Picayune Rancheria of Chukchansi Indians	1,562,500	0	0	2,773,969	1,102,500
Redding Rancheria	437,500	0	0	0	250,000
Rincon Band of Luiseno Mission Indians	2,062,500	0	3,028,125	0	0
Robinson Rancheria of Pomo Indians	0	0	0	275,000	0
Rumsey Indian Rancheria of Wintun Indians	312,500	550,000	0	820,000	1,118,612
San Manuel Band of Serrano Mission Indians	1,282,500	0	0	1,300,748	449,100
San Pasqual Band of Diegueno Mission Indians	2,062,500	0	0	1,501,171	570,000
Santa Rosa Band of Cahuilla Mission Indians	1,910,000	635,363	1,903,163	3,505,027	1,272,150
Santa Ynez Band of Chumash Mission Indians	1,550,000	0	1,315,500	917,914	986,625
Shingle Springs Band of Miwok Indians	0	0	0	812,500	426,250
Soboba Band of Luiseno Mission Indians	625,000	636,250	0	651,118	432,525
Sycuan Band of Diegueno Mission Indians	1,851,250	1,459,192	1,754,888	1,079,181	1,754,888
Table Mountain Rancheria	1,456,250	1,589,250	1,191,938	0	2,295
Tule River Indian Tribe of the Tule River Reservation	427,500	0	0	937,500	0
Tuolumne Band of Me-Wuk Indians	312,500	0	0	0	425,000
Twenty-Nine Palms Band of Luiseno Mission Indians	1,575,000	1,035,563	0	1,698,666	689,250
United Auburn Indian Community	0	812,500	0	1,187,402	1,999,575
Subtotals	33,831,250	9,023,193	11,806,088	30,323,223	17,041,535
Total Interests	207,688	820,525	1,758,003	514,707	54,730
Adjustments [§]	0	(100)	100	0	0
Subtotals	207,688	820,425	1,758,103	514,707	54,730
Grand Totals	\$34,038,938	\$9,843,618	\$13,564,191	\$30,837,930	\$17,096,266

Source: California Gambling Control Commission's cash receipts journals.

* Includes license fees collected from May 2000 to June 2000 when Sides issued 27,065 licenses.

† Includes license fees collected for only half of fiscal year 2003–04, through January 2004.

‡ The Capitan Grande tribe is a federally recognized tribe consisting of the Barona and Viejas subgroups.

§ Amount held in account and remitted on February 4, 2002.

APPENDIX C

Time Line of Significant Events Related to the 1999 Tribal-State Gaming Compacts and to the Indian Gaming Revenue Sharing Trust Fund

October 17, 1988	Federal Indian Gaming Regulatory Act is passed.
October 11, 1997	California Gambling Control Act of 1997 created the California Gambling Control Commission (Gambling Commission) and a comprehensive scheme for statewide regulation of legal gambling.
September 10, 1999	Fifty-five Tribal-State Gaming Compacts (compact) entered to permit Class III gaming and to require tribes to pay gaming device license fees to the Indian Gaming Revenue Sharing Trust Fund. Also, by the end of 2000, six more compacts that are generally identical to those entered on September 10, 1999, are entered by the State and approved by the federal government.
October 10, 1999	Indian Gaming Revenue Sharing Trust Fund is created by the State.
March 20, 2000	Proposition 1A passed by California voters, which put the compact into effect.
Before May 8, 2000	A majority of tribes with compacts agree on the procedures for drawing gaming device licenses and select a "pool trustee," Sides Accountancy Corporation (Sides), to administer the drawing of licenses from the pool.
May 9, 2000	Letter from Governor's Office to Sides that states that the Governor's Office commends tribes for reaching an agreement on procedures for drawing licenses; tells Sides that the compact allows it to issue up to 15,400 gaming device licenses statewide and provides specific instructions for determining this aggregate number of licenses.
May 15, 2000	Sides conducts its first draw and issues 26,915 gaming device licenses to 35 tribes.
May 16, 2000	Fifty-nine of the 61 compacts are published in the Federal Register of Tribal Nations, which is the final step to make compacts official.
August 7, 2000	Sides remits more than \$34 million to the Gambling Commission for license draws it has conducted.
August 29, 2000	Executive Order D-29-01 appoints a quorum of board members to the Gambling Commission, and according to the Gambling Control Act, makes the Gambling Commission operative.
March 13, 2001	Executive Order D-31-01 grants formal authority for the Gambling Commission to administer gaming device license draws.
May 29, 2001	The Gambling Commission submitted to the Legislature for approval the first distribution from the trust fund.
May 29, 2002	The Gambling Commission staff get board approval for their interpretation of compact's license fee and license distribution provisions.
June 12, 2002	The Gambling Commission board ratifies the Sides allocation of licenses.
June 19, 2002	The Gambling Commission board approves refund or credit of fees tribes paid for unused Sides licenses if they are surrendered within 30 days of notification from the Gambling Commission.
August 27, 2002	The Gambling Commission submitted to the Legislature for approval the first full, complete disbursement, eliminating the trust fund reserve.
September 5, 2002	The Gambling Commission conducts its first gaming device license draw.

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APPENDIX D

Indian Gaming Revenue Sharing Trust Fund Distributions From May 2001 to September 2003

The 1999 Tribal-State Gaming Compact (compact) designated the California Gambling Control Commission (Gambling Commission) as the trustee of the Indian Gaming Revenue Sharing Trust Fund (trust fund) making it responsible for distributing moneys in the trust fund to eligible tribes. The moneys in the trust fund are primarily comprised of nonrefundable one-time prepayment fees and quarterly license fees submitted by gaming tribes. (See Appendix B for details regarding trust fund receipts.) Every quarter the Gambling Commission distributes the fees collected during the quarter to California's federally recognized "noncompact" Indian tribes. The compact defines a noncompact tribe as one that operates fewer than 350 gaming devices, which includes some tribes with a compact and all nongaming tribes. The first distribution was approved on May 29, 2001, and included 84 tribes. Table D.1 on the following pages chronicle the distributions from the trust fund by the Gambling Commission.

Indian Gaming Revenue Sharing Trust Fund Distributions

	First Distribution*	Second Distribution†	Third Distribution†	Fourth Distribution 9/30/02‡	Fifth Distribution 12/31/02§	Sixth Distribution 3/31/03¶	Seventh Distribution 6/30/2003§	AB 673 Shortfall Distribution Fiscal Year 2002-03**	Eighth Distribution 9/30/03‡	Totals
Gambling Commission approval date	5/30/01	12/19/01	8/27/02	11/21/02	2/5/03	4/23/03	7/24/03	8/25/03	10/22/03	
Number of eligible tribes	84	77	82	75	75	75	71	75	70	
Federally Recognized Indian Tribe										
Alturas Indian Rancheria	\$300,000	\$200,000	\$188,385	\$159,394	\$111,234	\$50,359	\$95,172	\$683,161	\$120,655	\$1,908,360
Augustine Band of Cahuilla Indians [†]	300,000	200,000	188,385	159,394	111,234	50,359	0	229,013	0	1,238,385
Bear River Band of the Rohnerville Rancheria	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Big Lagoon Rancheria	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Big Pine Band of Owens Valley Paiute Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Big Sandy Rancheria of Mono Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Blue Lake Rancheria	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	0	1,787,705
Bridgeport Paiute Indian Colony	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Buena Vista Rancheria of Me-Wuk Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Cahto Indian Tribe of the Laytonville Rancheria	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Cahuilla Band of Mission Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
California Valley Miwok Tribe	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Campo Band of Diegueno Mission Indians	300,000	100,000	138,034	0	0	0	0	0	0	538,034
Cedarville Rancheria	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Chemehuevi Indian Tribe	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Cher-Ae Heights Indian Community Trinidad Rancheria	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Chicken Ranch Rancheria of Me-Wuk Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Cloverdale Rancheria of Pomo Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Cold Springs Rancheria of Mono Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Colorado River Indian Tribes	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Cortina Indian Rancheria of Wintun Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Death Valley Timba-sha Shoshone Band	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Dry Creek Rancheria of Pomo Indians	300,000	200,000	188,385	159,394	111,234	50,359	0	503,333	0	1,512,705
Elem Indian Colony of Pomo Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Elk Valley Rancheria	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360

Federally Recognized Indian Tribe	First Distribution*	Second Distribution†	Third Distribution‡	Fourth Distribution 9/30/02§	Fifth Distribution 12/31/02¶	Sixth Distribution 3/31/03§	Seventh Distribution 6/30/2003§	AB 673 Shortfall Distribution Fiscal Year 2002-03**	Eighth Distribution 9/30/03§	Totals
Enterprise Rancheria of Maidu Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Ewiaapaayp Band of Kumevaay Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Fort Bidwell Indian Community	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Fort Independence Indian Community of Paiute Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Fort Mojave Indian Tribe of Arizona, California, Nevada	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Graton Rancheria	200,000	200,000	0	26,988	111,234	50,359	95,172	683,161	120,655	1,487,568
Greenville Rancheria of Maidu Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Grindstone Indian Rancheria of Wintun-Wailaki Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Guidiville Rancheria	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Hoopa Valley Tribe	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Hopland Band of Pomo Indians	200,000	0	241,307	0	0	0	0	0	0	441,307
Inaja Band of Diegueno Mission Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Ione Band of Miwok Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Jamul Indian Village	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Karuk Tribe of California	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Kashia Band of Pomo Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
La Jolla Band of Luiseno Mission Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
La Posta Band of Diegueno Mission Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Los Coyotes Band of Cahuilla Mission Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Lower Lake Rancheria	200,000	200,000	0	26,988	111,234	50,359	95,172	683,161	120,655	1,487,568
Lytton Rancheria	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Manchester Band of Pomo Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Manzanita Band of Diegueno Mission Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Mechoopda Indian Tribe of Chico Rancheria	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Mesa Grande Band of Diegueno Mission Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Middletown Rancheria of Pomo Indians	300,000	0	182,578	0	0	0	0	0	0	482,578
North Fork Rancheria of Mono Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Paiute-Shoshone Indians of the Bishop Community	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Pala Band of Luiseno Mission Indians	300,000	0	182,578	0	0	0	0	0	0	482,578
Paskenta Band of Nomelaki Indians	300,000	200,000	188,385	0	0	0	0	0	0	688,385

continued on next page

Federally Recognized Indian Tribe	First Distribution*	Second Distribution†	Third Distribution‡	Fourth Distribution 9/30/02§	Fifth Distribution 12/31/02¶	Sixth Distribution 3/31/03§	Seventh Distribution 6/30/2003§	AB 673 Shortfall Distribution Fiscal Year 2002-03**	Eighth Distribution 9/30/03§	Totals
Pauite-Shoshone Indians of the Lone Community	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Pauma Band of Luiseno Mission Indians	300,000	0	182,578	0	0	0	0	0	0	482,578
Picayune Rancheria of Chukchansi Indians	300,000	200,000	188,385	159,394	111,234	50,359	0	503,333	0	1,512,705
Pinoleville Rancheria of Pomo Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Pit River Tribe	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Potter Valley Rancheria of Pomo Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Quartz Valley Indian Community	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Quechan Tribe of the Fort Yuma Reservation	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Ramona Band or Village of Cahuilla Mission Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Redwood Valley Rancheria of Pomo Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Resighini Rancheria	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Rincon Band of Luiseno Mission Indians	200,000	0	241,307	0	0	0	0	0	0	441,307
Round Valley Indian Tribes	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
San Pasqual Band of Diegueno Mission Indians	300,000	0	182,578	0	0	0	0	0	0	482,578
Santa Rosa Band of Cahuilla Mission Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Santa Ysabel Band of Diegueno Mission Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Scotts Valley Band of Pomo Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Sherwood Valley Rancheria of Pomo Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Shingle Springs Band of Miwok Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Smith River Rancheria	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Susanville Indian Rancheria	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Table Bluff Reservation - Wiyot Tribe	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Torres-Martinez Band of Cahuilla Mission Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Tuolumne Band of Me-Wuk Indians	300,000	0	182,578	0	0	0	0	0	0	482,578
United Auburn Indian Community	300,000	200,000	188,385	159,394	111,234	50,359	0	503,333	0	1,512,705
Upper Lake Band of Pomo Indians	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360

Federally Recognized Indian Tribe	First Distribution*	Second Distribution†	Third Distribution‡	Fourth Distribution 9/30/02§	Fifth Distribution 12/31/02¶	Sixth Distribution 3/31/03§	Seventh Distribution 6/30/2003§	AB 673 Shortfall Distribution Fiscal Year 2002-03**	Eighth Distribution 9/30/03§	Totals
Utu Gwaitu Paiute Tribe	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Washoe Tribe of Nevada and California	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Yurok Tribe of the Yurok Reservation	300,000	200,000	188,385	159,394	111,234	50,359	95,172	683,161	120,655	1,908,360
Total Funds Awarded*	\$24,800,000	\$15,300,000	\$15,474,059	\$11,689,737	\$8,342,550	\$3,776,897	\$6,757,216	\$50,243,429	\$8,445,832	\$144,829,720

Source: California Gambling Control Commission Trust Fund Distribution Analysis.

* This distribution is for quarters ending 9-30-00, 12-31-00, and 3-31-01. This was a partial distribution of the money in the fund. See page 48 for a discussion regarding the trust fund reserve.

† This distribution is for quarters ending 6-30-01 and 9-30-01. This was also a partial distribution.

‡ This distribution is for quarters ending 12-31-01, 3-31-02, and 6-30-02. The Gambling Commission also used this distribution to adjust for the previous partial distributions and it eliminated the trust fund reserve by distributing all moneys in the fund.

§ Quarter ending dates.

¶ The Gambling Commission overpaid this tribe during the sixth distribution, which it recouped from the Assembly Bill 673 (AB 673) August shortfall distribution to the tribe.

These quarterly distribution totals reflect the tribal award amounts. However, due to withholdings and offsets, the total amount distributed may differ.

** See page 46 for a discussion of AB 673.

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Agency's comments provided as text only.

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

June 9, 2004

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

Subject: Audit Report - California Gambling Control Commission

Dear Ms. Howle:

Thank you for the opportunity to review and comment upon the draft audit report prepared by the Bureau of State Audits (BSA) for the Joint Legislative Audit Committee (JLAC).

As you know many of the recommendations proposed by the BSA have been under the careful consideration of the California Gambling Control Commission (Commission). Moreover, we appreciate that as a result of its audit the BSA recognized the difficulties the Commission confronted, and continues to face, due in large part to the ambiguities in the provisions of the Tribal-State Compacts (Compacts).

In fact, the BSA aptly describes many important provisions of the Compacts as "not always clear", "confusing", "flawed" and "murky." Obviously, when key provisions of the Compacts are ambiguous this has made it difficult for both the Commission and the Tribes. Despite these significant barriers, the BSA audit report characterizes the Commission's interpretations of the Tribal-State Compacts as both "defensible" and "justifiable."

The primary purpose of the JLAC's audit request to the BSA was to examine the Commission's administration of the Indian Gaming Revenue Sharing Trust Fund (trust fund). The Commission is pleased with the BSA finding that the Commission's administration of the trust fund is generally consistent with its interpretation of the Compact provisions. Further, the BSA reports that the Commission generally ensured that the prepayment and quarterly license fees submitted by the Compact Tribes were consistent with its policies; and that the Commission properly distributed trust fund receipts to the Non-Compact Tribes.

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

It has to be recognized that the Commission is still a relatively new and growing organization. Although the 1997 Gambling Control Act established the Commission, the Governor did not appoint Commissioners to the Commission until August 2000. Furthermore, a fifth Commissioner has never been appointed and only recently has a permanent Executive Director been appointed. The Commission had only nine staff, including its four Commissioners, at the end of the 2000/2001 fiscal year. In the last few years the Commission has grown to 43 authorized positions, a small number of staff considering the breadth of its statewide responsibility.

It is important to also note that the Commission's responsibilities go beyond the Compacts and the 61 Tribes that entered into those Compacts. The Commission is also responsible for the administration of three additional Compacts entered into in 2003, the Gambling Control Act (Business and Professions Code Section 19800, et. seq.) and non-tribal gaming throughout the State of California. This includes cardrooms, manufacturers and distributors of gaming devices, and third-party proposition players, all of who come within the licensing and regulatory authority of the Commission.

As reported by the BSA, the Commission has faced little litigation concerning our interpretations of the Compacts. This is a significant accomplishment considering that many key Compact provisions suffer from tremendous ambiguities. The Commission views the small amount of litigation brought against it as substantial evidence supporting the validity and consistency of its previous interpretations and decisions. Moreover, Tribes have supported the Commission in some of its decisions concerning its interpretation of the Compacts.

The Commission encourages the Tribes to renegotiate the ambiguous provisions of the Compacts so that clarity can be brought to their interpretation. This would serve to benefit not only the Compact Tribes and the Commission, but potentially the Non-Compact Tribes as well.

Following are specific comments to the report and recommendations:

Summary

Results in Brief

In the *Results in Brief* section, the BSA states that the Commission is not required under the Tribal-State Compacts to maximize benefits to the Non-Compact Tribes.

However, it is important to note that the Commission's administration of the trust fund has in fact maximized benefits to the extent that it is permitted to do so. Specifically, the Commission distributes interest earnings on monies deposited into the trust fund on a quarterly basis, thus benefiting the recipient Non-Compact Tribes.

Also, the Commission has considered the positions of the Non-Compact Tribes concerning provisions of the Compacts, including those that may have had any impact on them.

Chapter 1

Chapter Summary

In the *Summary to Chapter 1*, the BSA states, "The State and federal government signed two compacts with one federally recognized tribe." The Commission points out that the federal government does not enter into Compacts with any Tribe; rather, it is the State of California that does so. The Compacts have been ratified by the State Legislature, which is a requirement under the Compacts.

Sides-issued Licenses

The BSA believes that the Commission was inconsistent in the application of its principles in one instance - that the Commission should have "started counting the 12-month period from the time Sides issued the licenses." The Compacts state that the license for any gaming device shall be canceled if it is not placed in commercial operation within twelve months of "issuance of the license."

As we have explained previously, the Commission did not ratify Sides Accountancy Corporation's issuance of its (Sides) licenses. Rather, the Commission ratified the allocation of licenses issued by Sides to those Tribes participating in Sides' distribution of gaming device licenses.¹ This is an important distinction that governed the application of the starting period of the 12-month period in which the commercial operation provision of the Compacts would become effective.

At the end of June 2002, the Commission notified the Tribes that it was going to issue its licenses and that the 12-month period to have the licensed gaming devices in commercial operation would begin to run when the licenses were issued by the Commission.

As the BSA report noted, the Commission did not issue its licenses until June 26, 2002. The Commission was recognized by both the California Attorney General and the Governor as the only entity with the authority to issue licenses under the Tribal-State Compacts. In fact, Sides' counsel admitted that Sides had limited duties in its contract with Tribes when it issued licenses and those duties did not include certifying that it complied with the Compacts.

Therefore, it was appropriate to begin the 12-month period in June 2002 when the Commission issued its licenses.

¹ Only 39 of the Tribes that entered into Compacts with the State had contracted with Sides for the allocation of licenses.

Moreover, the BSA correctly points out that the Commission was cognizant that Sides' allocation of licenses to Tribes created a state of confusion in the licensing process. The Commission recognized that tribes had relied upon the Sides license issuance process, despite the fact that Sides failed to comply with the Compacts. As a consequence, the Commission felt strongly that, in fairness to the tribes, the 12-month time period should commence at the time the Commission notified the tribes that its licenses would be issued to replace the Sides-issued licenses.

The BSA's suggestion to enforce the 12-month rule retroactively, i.e., commencing from the date of the Sides-issued licenses, would have created a hardship upon the Tribes and cause the type of inequity and mass confusion that the Commission was concerned about.

The Commission's position continues to be that it would have been patently unfair to have made the 12-month time period retroactive to the date Sides issued its licenses. This would have exacerbated an already confusing process created by Sides because the time period in question had expired two years prior.

Non-refundable One-time Pre-payment Fee

The BSA presents the coalition's interpretation of this provision of the Tribal-State Compact. It is by no means the consensus among those who have been involved in the interpretation of the Compacts. Obviously, the coalition's position is one that would have generated additional revenues for the trust fund from which they would have derived a substantial sum.

The Commission considered this provision in its entirety, including the term "nonrefundable". The provision was discussed at a number of workshops held with the Tribes and Commission staff's presentation and meeting notes were made available to the BSA. Although it could have very well been that the probable intent of the compact drafters was to establish a separate, one-time fee, this was not clearly specified by the Compact language.

Interestingly, there was even disagreement between the Tribes when this Compact provision was discussed at the various workshops. In fact, with respect to this provision of the Tribal-State Compacts the conclusion of the BSA audit is that the Compact language has "...again...confused, rather than clarified, the intent of the drafters of the compact..."

The Commission agrees that this is yet another example of a provision of the Compacts that is ambiguous and has been subject to multiple interpretations.

Commercial Operation

The Commission concurs that the definition of the phrase "in commercial operation" must be finalized. As with other provisions of the Compacts there are differing viewpoints concerning this language. Commission staff presented a preliminary discussion concerning this phrase to

Elaine M. Howle
State Auditor
June 9, 2004
Page 5

Commissioners at their June 9, 2004 public meeting. The Commissioners unanimously directed staff to develop a schedule and plan that includes Tribal input at workshops, so that a definition of “in commercial operation” can be presented for the approval and adoption by the Commission. Commission staff will present a proposed workshop schedule at the next meeting of the Commission.

Multi-terminal Gaming Devices

Although the Commission has not yet formally adopted a position on multi-terminal gaming devices, the Office of the Attorney General has opined that each station of a multi-terminal gaming device should be counted as a separate gaming device. In fact, the Attorney General’s Division of Gambling Control recently issued an Advisory in which this position has been communicated to the Tribes. A copy of the Advisory is included with this letter as *Attachment A*.

At its June 9, 2004 meeting, the Commissioners directed staff to develop a plan that would include the Tribes’ input concerning multi-terminal gaming devices. The Commissioners will then address a formal adoption of its position on multi-terminal gaming devices at a future Commission meeting.

Chapter 2

Lower Lake Rancheria

Commission staff has previously communicated with various federal authorities concerning Lower Lake Rancheria. The Commission bases a Tribe’s eligibility to receive trust fund monies upon the federal Bureau of Indian Affairs’ (BIA) recognition of that Tribe. Lower Lake Rancheria was excluded from BIA’s list of federally recognized Tribes in 1958. As pointed out by the BSA audit, the BIA did not re-establish their recognition of Lower Lake Rancheria until December 29, 2000 – more than forty years later.

Commission staff will continue its dialog with the BIA and make recommendations to the Commissioners concerning Lower Lake Rancheria. Any recommendations will include the BSA’s suggestions concerning retroactive payments from the trust fund and reducing future payments or billing Tribes that received the first distribution.

License Draw Procedures

The BSA believes that the Commission should have considered Sides’ initial allocation of licenses in determining the priority given to Tribes in the Commission’s first gaming device license draw in September 2002.

Although the Commission understands the position of the BSA, it cannot agree that it was governed by the Sides issuance of licenses. As we have previously stated, the Sides draws and the licenses issued as a result were invalid.

It is not simply the Commission's "belief" that Sides did not conduct its license draws in accordance with the Compacts; Sides admitted that it did not follow the provisions of the Compacts. In fact, Sides entered into contracts to allocate licenses with only certain Tribes and those contracts were executed before the effective date of the Compacts. Moreover, Sides began allocating their licenses before the effective date of the Compacts.

The Office of the Attorney General issued an opinion that the Commission was vested with the responsibility of issuing licenses under the Compacts. The Attorney General opined that, "... *the Compact contemplates that the authority to issue gaming device licenses under Section 4.3.2.2 resides in the Gambling Control Commission.*" Moreover, the Governor's Executive Order D-31-01 recognized the Commission as the sole licensing authority.

The BSA is aware that Sides' counsel responded to the Commission in a letter dated February 6, 2001 that Sides had very limited duties when it issued licenses to the Tribes. In fact, the response indicated that Sides' duties did not even "... *include ensuring "that the allocation of machines did not exceed the available number of machines as provided in the Compacts" or certifying "that the draw complies with the Compacts."*" Additionally, the Commission had to seek a preliminary injunction against Sides after it refused to desist from continuing to allocate its licenses.

Consequently, the Commission remains convinced in its position that because its September 2002 license draw was the first that could be legally recognized under the Compacts, the Sides' invalid draws and resulting licenses could not be considered when assigning priority categories. It would have been inconsistent with the Commission's position concerning the Sides' draws and licenses to do otherwise. Moreover, it would have been contrary to the opinion of the Attorney General and the Governor's Executive Order, both of which recognized the Commission's licensing authority.

As we have explained previously, the Commission only ratified Sides' allocation or number of licenses issued, and did not ratify or approve the Sides' draw process or the licenses it issued. Consequently, the priority given to Tribes in the Commission's September 2002 license draw was appropriate pursuant to the Compacts.

The Commission agrees that there should be no 500-license limitation on Tribes that are placed in the fifth priority. Pursuant to the Compact provisions a fifth priority placement includes any Tribes that have acquired licenses in the fourth priority. The Commission's license draw policy will be amended to accurately reflect this component of the Compacts' provision. However, it should be noted that no Tribe was impacted by an application of the 500-license limitation language of the Commission's current policy.

Elaine M. Howle
State Auditor
June 9, 2004
Page 8

Cancellation of Licenses

The BSA report noted that Commission staff completed its review of 20 Tribes that were issued licenses by the Commission in June 2002 to determine whether there has been compliance with the 12-month, in commercial operation provision of the Compacts. The remaining Tribes will be reviewed for compliance to this same Compact provision.

Conflict of Interest Policies

The Commission wants to make clear that it adopted a written Conflict of Interest Code that was approved by the Fair Political Practices Commission (FPPC) in June 2001. The Commission's Conflict of Interest Code (Code) is applicable to a number of Commission staff, including the Commissioners.

Pursuant to the existing Code the Commission specifies those positions that are involved in making decisions that may foreseeably have a material effect on financial interests. That same Code specifies and requires designated employees to file an annual statement with the FPPC disclosing his/her reportable investments, interests in real property, business positions held and income received during specified times. Moreover, the Commission's Code does specify those circumstances under which designated employees are disqualified from making, participating in making, or using their position to influence the making of any decision.

Furthermore, California Government Code section 19990 specifies the general conflict of interest standard applicable to all State employees. Finally, the Commission is reviewing a separate Incompatible Activities and Conflict of Interest Policy that is intended to further supplement its current Code.

We appreciate the opportunity to review and respond to the BSA's draft audit report concerning the California Gambling Control Commission. If you should have any questions regarding this response, please contact Eugene Balonon, Executive Director, or myself at (916) 263-0493.

Sincerely,

(Signed by: Dean Shelton)

DEAN SHELTON
Chairman

Attachment



DIVISION OF GAMBLING CONTROL

BILL LOCKYER
Attorney General

ROBERT LYTLE
Director

MULTIPLE PLAYER STATIONS AS “GAMING DEVICE”

In furtherance of the Government-to-Government relationship existing between the State and the Indian Tribes of California that are authorized by the Tribal State Gaming Compacts now in force to conduct Class III gaming, the Division of Gambling Control, as a component of the State Gaming Agency identified in those Compacts, will from time to time provide information in the form of advisories concerning its practices on matters within the scope of its responsibility under those Compacts. The purpose of an advisory is informational. An advisory does not constitute legal advice.

Cyberview Technology is offering an on-line gaming central server system which has the capacity to service thousands of Gaming Devices. This product is currently being tested at Gaming Laboratories International in Las Vegas, Nevada, for use in the United States. This multi-player station gaming system has the capacity to operate the play of potentially thousands of player-station terminals connected to a single random number generator (RNG).

The Division of Gambling Control considers each separate player station terminal to be a Gaming Device for purposes of determining the Tribe's Gaming Device Allotment. In effect, each terminal of these gaming systems is considered to be one Gaming Device.

For more information regarding this advisory, contact the California Department of Justice, Division of Gambling Control, at (916) 263-3408.

DGC-Adm. 012 (New 5-4-99)

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 margin of the Gambling Commission's response.

- According to the federal Indian Gaming Regulatory Act, the federal government must approve compacts entered into between states and Indian tribes. We have modified the text to clarify that the federal government approved, rather than signed, the compacts.
- Our discussion on pages 25 and 52 reflects the Gambling Commission's position on this issue and notes that the Gambling Commission ratified the allocation of Sides Accountancy Corporation (Sides)-issued licenses.
- The Gambling Commission's characterization of the report text is inaccurate. It was the Gambling Commission, not our audit, that concluded the Sides allocation of licenses created a state of confusion. On page 29, we state that the Gambling Commission made the decision to begin the 12-month period when it notified tribes the replacement licenses would be issued because *it* believed this was both a practical and equitable solution to what had been an extremely confusing process.
- On page 29, we describe the Gambling Commission's position on the enforcement of the 12-month rule for the Sides-issued licenses, repeated in its response. Nevertheless, all tribes that signed compacts with the State should have been aware that gaming devices had to be put into commercial operation within 12 months of the issuance of the license since it was a provision of the 1999 Tribal-State Gaming Compacts (compact). Our concern is that the Gambling Commission has retroactively enforced some compact provisions while prospectively enforcing another.

- We were aware of the attorney general’s opinion on multi-terminal gaming devices. However, upon the Gambling Commission’s request, we did not refer to the opinion in our report.
- The Gambling Commission has incorrectly summarized the report text. We do not point out that the Federal Bureau of Indian Affairs (BIA) did not “re-establish” its recognition of Lower Lake Rancheria (Lower Lake) until December 29, 2000. Rather, in our discussion on page 49, we state that the Gambling Commission’s former chief counsel asserted that the BIA did not officially “reaffirm” the government-to-government relationship with the tribe until this time. Further, we note that the BIA stated in writing that the government-to-government relationship between the federal government and Lower Lake was never severed. Moreover, we state that the federal government acknowledged that the tribe has consistently retained its status as a federally recognized tribe.
- We discuss the Gambling Commission’s position on the issuance of licenses by Sides on pages 24 through 29. We noted in Chapter 1 (page 29) that the Sides counsel believed Sides had very limited duties when it issued licenses to the tribes that did not even include certifying that the draw complied with the compact. We have modified the text on page 52 in Chapter 2 to reiterate that the Sides counsel believed Sides had very limited duties.
- We discuss the attorney general’s opinion and the executive order regarding the authority to issue gaming device licenses on page 24.
- We believe the Gambling Commission’s statements are inconsistent with its policy for allocating gaming device licenses, as well as its decision to ratify the Sides allocation of licenses. As discussed on pages 37 and 38 of the report, under the Gambling Commission’s established procedures, a tribe’s priority for each draw is based on the priority it was placed in when it last drew licenses, with each tribe automatically moved to a lower priority category for each draw, and on the total number of gaming devices it has. The end result of any gaming device license draw is the allocation of licenses to certain tribes. Therefore, because it elected to ratify the Sides allocation of licenses, we believe in order to be consistent with its own policy and ensure that all tribes are treated equitably, the Gambling Commission should have considered the license draws conducted by Sides. Furthermore, as the Gambling Commission points out in its response, Sides entered into contracts to allocate licenses with only certain tribes. Thus, it is reasonable to conclude

that these tribes should be moved to a lower priority as a result of their participation in the Sides draws to ensure that tribes that did not participate in these draws have an increased chance of receiving gaming device licenses in future draws.

- If the Gambling Commission had taken Sides draw information into account for its first draw, two tribes would have been affected by the Gambling Commission's policy limiting to 500 the number of licenses a tribe in the fifth category can draw. As we discuss on page 51, had the Gambling Commission considered the Sides draw information when determining which priority category to assign the tribes for its first draw, the Rumsey Indian Rancheria of Wintun Indians (Rumsey) and Cabazon Band of Cahuilla Mission Indians (Cabazon) would have been placed in the fifth priority and therefore subject to the Gambling Commission's 500-license limit for this priority. However, according to the compact, tribes in this priority are allowed to draw an unlimited number of licenses up to a total authorization to operate 2,000 gaming devices. Consequently, because each applied for more than 500 licenses, had Rumsey and Cabazon been appropriately placed in the fifth priority and not been subject to the Gambling Commission's 500-license limit, they would have received more licenses.
- We have modified our report to acknowledge that the Gambling Commission has a formal conflict-of-interest policy. However, we are puzzled by the Gambling Commission's failure to disclose to us earlier that the policy existed. On numerous occasions we asked Gambling Commission staff if a conflict-of-interest policy existed and, if so, to provide a copy of the policy or, if not, to provide a written attestation that one did not exist. At no time did anyone indicate that the Gambling Commission had adopted a policy in 2001. During the course of our audit, had anyone indicated to us that the Gambling Commission had an approved conflict-of-interest policy, we most assuredly would have included that information in the audit report.

For more than two months we solicited information about the conflict-of-interest policy from Gambling Commission staff, some of whom were at the highest levels of the organization. Our inquiries were clear and frequent, verbal and written. Thus, we are surprised to learn from the Gambling Commission's formal response to our audit, on June 9, 2004, that the commissioners had adopted a written conflict-of-interest policy three years earlier.

Finally, the Gambling Commission has asserted in its response that it is “currently reviewing a separate Incompatible Activities and Conflict of Interest Policy that is intended to further supplement its current code.” Gambling Commission staff provided us a copy of this draft document on May 26, 2004, after we had indicated to them that we would report the Gambling Commission’s failure to have a conflict-of-interest policy. At the time, the Gambling Commission’s audit liaison characterized the document as the Gambling Commission’s “Conflict of Interest Policy,” indicating the policy had not yet been adopted, but was under review. Again, his written communication gave no indication that this document was to be a supplement to an existing policy.

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