

**Senate Committee on Governmental Organization**  
**Informational Hearing**  
**Tribal-State Gaming Compact between the State of California and the Yocha Dehe Wintun Nation**  
**August 9, 2016 – 9:30 a.m.**  
**Room 4203 State Capitol**

**Compact Overview**

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**SUMMARY**

The Tribal-State Gaming Compact (hereafter “Compact”) between the State of California and the Yocha Dehe Wintun Nation (hereafter “Tribe”) was executed on August 4, 2016. This Compact supersedes the Tribes 1999 compact and 2004 amended compact.

This Compact authorizes the Tribe to operate a maximum of 3,500 gaming devices (slot machines) on eligible Indian lands held in trust for the Tribe, located within the boundaries of the Tribe’s reservation (as described in Appendix A) in the Capay Valley, Yolo County, CA.

The Tribe’s 2004 amended compact, among other things, eliminated the cap on the number of slot machines that could be operated by the Tribe and required the Tribe to make annual payments to the State of \$25 million for 18 years, in addition to a \$2 million annual payment into the Revenue Sharing Trust Fund (RSTF), as well as, a graduated scale of progressively higher annual fees for additional slot machines above the existing limit of 2,000 slot machines, reaching up to \$25,000 per additional machine (4,500 machines and above). The fees represented approximately 15% of the net win of the additional machines on average.

With respect to this Compact, the Tribe has agreed to pay the State its pro rata share of costs the State incurs for the performance of its duties under the Compact plus an additional amount of \$1.6 million, capped at \$3 million, to insure the Special Distribution Fund (SDF) remains solvent and to cover a portion of the regulatory costs for small gaming tribes. The Tribe has also agreed to pay \$18 million annually into the RSTF or the Tribal Nation Grant Fund (TNGF), to be shared with tribes that are not gaming or that otherwise are not substantially benefiting from gaming. The Tribe may take an annual credit of up to \$9 million (out of the \$18 million) for various investments and infrastructure improvements that in part benefit county residents, landless northern California tribes, dis-enrolled Indians, fire, law enforcement, emergency medical services, public transit, education, tourism, and for facilities that provide health care services to tribal members and other members of the local community.

Also, under this Compact, the Tribe has agreed to pay the State annually, a revenue contribution of \$15 million and permits the Tribe to take an annual credit of up to \$9 million (out of the \$15

million) for the Tribe's payments covering state or local government services, mitigation of the gaming operation's impacts, and economic development or revitalization. This Compact also provides for an additional credit of up to \$6 million (out the \$15 million) for projects, initiatives or investments which mitigate the impacts of gaming or provide benefits to the State or tribes in California. The Tribe may also deposit annually up to \$2 million of that \$6 million into a scholarship fund created by the Tribe and the State (California Native American Education and Scholarship Fund) to provide scholarships for undergraduate, graduate and professional education that benefit students of non-gaming or limited-gaming tribes located in California.

Furthermore, the Compact: (a) provides a regulatory framework that respects the role of the tribal gaming agency as the primary regulator while also ensuring that state gaming regulators fulfill their responsibilities; (b) requires the Tribe to conduct its gaming activities pursuant to an internal control system that implements minimum internal controls that are no less stringent than those in federal regulations; (c) provides that the Tribe may retain its existing Tribal Labor Relations Ordinance (TLRO) which has been in effect for almost 20 years; and, (d) contains provisions to protect the health and safety of patrons, guests, and employees.

According to the Governor's Office, certain terms of the Compact are consistent with provisions of more recent compacts related to licensing, compliance enforcement, mitigation of off-reservation gaming impacts and protections for patrons and employees. The new Compact also strengthens government-to-government relations at the local level by providing incentives for tribal funding to local jurisdictions. The Governor's Office contends that the terms of the Compact reflect a continued commitment by the Tribe to revenue sharing with non-gaming and limited gaming tribes through the RSTF and TNGF so that the economic benefits of gaming reach tribal governments that have not chosen to operate a tribal casino. The Governor's Office also emphasizes that the Compact "recognizes that investment in educational programs and opportunities is essential to the overall health and welfare of all Californians, and is inspired by the belief that a college education not only improves the quality of an individual's life but also engenders broad social, economic and political benefits."

The Governor's Office notes that this Compact "affirms the Tribe's commitment to the residents of Yolo County and is intended to enable the tribal government to invest in worthy causes, such as providing needed funding, economic development and infrastructure for tribal and non-tribal governments; scholarships for Native American people and funding for schools dedicated to Native American education; capital to help local governments establish the machinery needed to protect cultural resources; and, housing and health care benefits for those in need.

The Compact's preamble also indicates that the State and the Tribe recognize that the exclusive rights the Tribe enjoys under this Compact provide a unique opportunity for the Tribe to continue to engage in the gaming activities in an economic environment free of competition from

the operation of slot machines and banked card games on non-Indian lands in California and that this unique economic environment is of great value to the Tribe.

Additionally, the Compact's preamble states that in consideration of the exclusive rights enjoyed by the Tribe to engage in the gaming activities and to operate the number of gaming devices as specified in this Compact, and the other meaningful concessions offered by the State in good faith negotiations, and pursuant to the Indian Gaming Regulatory Act (IGRA), the Tribe restates its commitment to provide to the State, on a sovereign-to-sovereign basis, and to local jurisdictions, fair cost reimbursement and mitigation from revenues derived from the gaming devices operated pursuant to this Compact on a payment schedule, as specified.

Once effective (legislative ratification and federal approval required), this Compact will be in full force and effect for twenty-five (25) years following the effective date. The vehicle identified for providing the constitutionally required legislative ratification of this Compact is SB 1426 (Hall).

### **EXISTING LAW**

Existing law provides, under the Indian Gaming Regulatory Act (IGRA), for the negotiation and conclusion of compacts between federally recognized Indian tribes and the state for the purpose of conducting Class III gaming activities on Indian lands within a state as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments. Existing law expressly authorizes a number of tribal-state gaming compacts between the State of California and specified Indian tribes. Existing law authorizes the conduct of Class III gaming activities to the extent such activities are permitted by state law, a gaming compact has been concluded by a federally recognized tribe and the state, and the compact has been approved by the Secretary of the Interior.

Existing law limits the operation of Class III gaming activities to Indian lands acquired on or before October 17, 1988. Existing law also provides for certain exceptions to conduct gaming activities on Indian lands acquired after October 17, 1988.

Existing law defines Indian lands to mean all lands within the limits of any Indian reservation, and any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

Existing law requires the state to negotiate to conclude a compact in good faith with an Indian tribe having jurisdiction over the Indian lands upon which the Class III gaming activity is to be conducted. Existing law also provides the United States district courts with jurisdiction over any cause of action initiated by a tribal government alleging that the state failed to negotiate in good faith to conclude a compact. Furthermore, existing law prescribes the remedy, mediation

supervised by the courts, if it is found that the state failed to negotiate in good faith to conclude a compact.

Existing law authorizes the Governor, under the California Constitution, to negotiate and conclude compacts, subject to ratification by the Legislature.

### **Brief History and Background – Yocha Dehe Wintun Nation**

Yocha Dehe Wintun Nation is a federally recognized Indian tribe located in northern Yolo County, about 45 miles northwest of Sacramento. In 1999, the Tribe and the State entered into a tribal-state gaming compact which was subsequently amended in 2004. Yocha Dehe means “home by the spring water” in the Tribe’s native Patwin language, and literally describes the lands upon which its people live, and have lived, since time immemorial. The Tribe’s relationship with the United States began in the 1900’s when its people were relocated to a barren, non-irrigable parcel in Rumsey, the town for which their government, and reservation, was once named, and thereafter, to a small parcel of land, in the Capay Valley, where they managed to cultivate small amounts of food, but nonetheless lived in poverty, depending on the United States government for survival.

In 1985, the Tribe opened its first facility, a bingo hall, which generated money to help support its government and provide for the health and welfare of its struggling people. Today, the Tribe owns and operates Cache Creek Casino Resort, which opened in 2004 and employs approximately 2,300 people, making it the largest private employer in Yolo County, and a major economic engine in the region. The casino/resort, located on State Highway 16 in Brooks, offers more than 2,000 slot machines, 122 table games, hotel rooms and suites, spa, restaurants, gift shop, mini mart, headliner concerts, an 18-hole golf course and other amenities.

The Tribe has 1,120 total acres of trust land but manages more than 13,000 acres of land, approximately 1,500 acres of which are farmed with 14 crops. Also, about 500 head of Angus cross cattle graze on the Tribe’s land. Additionally, the Tribe operates a state-of-the-art olive mill. The Tribe notes that its Fire Department recently received international accreditation for the second time and remains the only Indian fire department to ever earn such accreditation. The Tribe currently provides nearly \$6 million annually to Yolo County through an MOU. Since 2000, the Tribe has contributed more than \$25 million dollars to local partners in the community through their philanthropic Community Fund.

### **Key Provisions of the Compact**

Scope of Class III Gaming Authorized: The Tribe is authorized to operate a maximum of 3,500 gaming devices (slot machines), banking or percentage card games, and any devices or games that are authorized under state law to the California State Lottery, provided that the Tribe will

not offer such games through use of the Internet unless others in the state not affiliated with or licensed by the California State Lottery are permitted to do so under state and federal law. The Tribe shall not engage in Class III Gaming that is not expressly authorized in the Compact.

Authorized Gaming Facility: The Tribe may establish and operate not more than two (2) gaming facilities and engage in Class III Gaming only on eligible Indian lands held in trust for the Tribe, located within the boundaries of the Tribe's reservation and trust lands as those boundaries exist as of the execution date of this Compact, as legally described in the Compact (Appendix A).

Exclusivity: Provides that in the event the exclusive right of Indian tribes to operate Class III gaming in California pursuant to the California Constitution is nullified by the enactment, amendment, or repeal of a state statute or constitutional provision or the conclusive and dispositive judicial construction of a statute or the state Constitution by a California appellate court after the effective date of this Compact, that gaming devices may lawfully be operated by non-Indian entities, the Tribe shall have the right to: (1) terminate this Compact, in which case the Tribe will lose the right to operate Class III gaming authorized by this Compact or (2) continue under this Compact with entitlement to a reduction of the rates specified below following conclusion of negotiations, to provide for (a) compensation to the State for the costs of regulation, as defined; (b) reasonable payments to local governments impacted by tribal government gaming; (c) grants for programs designed to address gambling addiction; and, (d) such assessments as may be permissible at such time under federal law.

Payments to the Special Distribution Fund (SDF): The Tribe shall pay to the State, on a pro rata basis, the costs the State incurs for the performance of all its duties under this Compact, the administration and implementation of tribal-state gaming compacts, and funding for the Office of Problem Gambling, as determined by the monies appropriated in the annual Budget Act each fiscal year to carry out those purposes. The Tribe's pro rata share of the State's costs in any given year this Compact is in effect may not be increased more than 5% per year and shall be calculated using the following equation: *"The maximum number of gaming devices operated in the gaming facility for the previous fiscal year as determined by the State Gaming Agency, divided by the maximum number of gaming devices operated by all federally recognized tribes in California pursuant to tribal-state Class-III gaming compacts during the previous State fiscal year, multiplied by the Appropriation, equals the Tribe's pro rata share."*

The Tribe further agrees to pay an additional \$1.6 million into the SDF to ensure it remains solvent. In the event the pro rata funding for the SDF statewide has proven sufficient for three consecutive years, the parties agree to meet and confer for the purpose of making an appropriate reduction in the additional payment. The Tribe's payment into the SDF is capped at \$3 million unless the Tribe's pro rata share exceeds that amount. In the event the Tribe's pro rata share exceeds \$3 million, the Tribe's payment shall be capped at the pro rata share.

Additional Revenue Contribution: The Tribe shall pay to the State annually a revenue contribution of \$15 million and provides that the Tribe may take an annual credit of up to \$9 million (out of the \$15 million) for the Tribe's payments covering state or local government services, mitigation of the gaming operation's impacts, and financing infrastructure projects and economic development or revitalization, including, but not limited to, construction, repair, maintenance and improvements of structures, operations and facilities, on non-Indian lands in counties within the Tribe's ancestral territory (Colusa, Lake, Napa, Solano, Yolo counties) that benefit the Tribe, its gaming operation, and/or the governments and non-tribal communities within these counties. The Tribe may also take \$4.5 million in credits for its annual payments to Yolo County under the parties' existing and any subsequent MOUs.

Furthermore, the Compact provides that the Tribe may take additional credits totaling up to \$6 million (out of the \$15 million) for projects, initiatives or investments the parties agree on which mitigate the impacts of gaming or provide benefits to the State or tribes in California. The Tribe may also deposit annually up to \$2 million of that \$6 million for deposit into a scholarship fund created by the Tribe and the State (California Native American Education and Scholarship Fund) to provide scholarships for undergraduate, graduate and professional education that benefit students of non-gaming or limited-gaming tribes located in California.

Payments to the RSTF or the TNGF: The Tribe agrees to pay \$18 million annually to the California Gambling Control Commission (CGCC) for deposit into the RSTF or the TNGF.

Credits Applied to the RSTF or the TNGF: From its payments to the RSTF or the TNGF, the Tribe may take annual credits for up to \$9 million (out of the \$18 million) for the following purposes:

- 1) Payments by the Tribe to the County or local jurisdictions operating facilities or providing services within the County for fire, law enforcement, emergency medical services, public transit, education, tourism, or other services and infrastructure improvements intended to serve off-reservation needs of County residents as well as those of the Tribe – such payments shall be subject to approval by a special entity comprised of County, tribe and community representatives;
- 2) Payments to reimburse Yolo County for any loss of property tax revenues;
- 3) Non-gaming related capital investments and expenditure and economic development projects by the Tribe that provide mutual benefits to the Tribe and the State because, for instance, they have particular cultural, social or environmental value, or because they diversify the sources of revenue for the Tribe's general fund;

- 4) Payments to support operating expenses and capital improvements for non-tribal governmental agencies or facilities operating within the Counties of Colusa, Lake, Napa, Sacramento, Sonoma, Solano, Sutter, or Yolo;
- 5) Investments in, and any funds paid to the State in connection with, energy projects that, in part, serve the gaming facility, the County, or the local community. Allowable projects include projects that incorporate charging stations for electric or other zero-emission vehicles that are available to the Tribe's citizens, patrons and employees of the gaming facility, or non-tribal members of the public;
- 6) Payments to support capital improvements and operating expenses for facilities within California that provide health care services to tribal citizens, Indians, and non-Indians;
- 7) Investments or expenditures to preserve, revitalize, or enhance the Tribe's cultural values, practices and traditions, as well as, payments to any non-profit institutions providing education to Native American people, including the California Tribal College;
- 8) Payments for providing healthcare benefits, education or job training to persons who have been dis-enrolled from an Indian tribe in California; and,
- 9) Grants to Indians of Patwin or Wintun descent who are not enrolled citizens of the Tribe, for educational, cultural or vocational purposes, or to landless federally-recognized tribes from northern California, or federally-recognized tribes with Indian lands within the Counties of Colusa, Lake, Napa, Sacramento, Sonoma, Solano, Sutter, or Yolo, for economic development.

All excess authorized credits that cannot be applied in any one year may be applied as an annual credit in all following years that this Compact is in effect, up to a total of \$9 million, until completely exhausted.

#### **Additional Compact Components**

- Gaming Ordinance and Regulations – all gaming activities conducted under this Compact shall, at a minimum, comply with (1) a gaming ordinance duly adopted by the Tribe and approved in accordance with IGRA, (2) all rules, regulations, procedures, specifications, and standards duly adopted by the National Indian Gaming Commission (NIGC), the Tribal Gaming Agency, and the State Gaming Agency, and (3) the provisions of this Compact, as specified.

- Licensing Requirements and Procedures – all persons in any way connected with the gaming operation or gaming facility who are required to be licensed or to submit to a background investigation under IGRA, and any others required to be licensed under this Compact, including, without limitation, all gaming employees, gaming resource suppliers, financial sources, and any other person having a significant influence over the gaming operation, must be licensed by the Tribal Gaming Agency and cannot have had any determination of suitability denied or revoked by the CGCC. Also, every gaming employee must obtain, and thereafter maintain current, a valid tribal gaming license, as specified.
- Minimum Internal Control Standards (MICS) – the Tribe must conduct its gaming activities pursuant to an internal control system that implements MICS that are no less stringent than those contained in the MICS of the federal NIGC standards, as specified. It requires gaming to operate pursuant to a written internal control system that reasonably assures that assets are safeguarded and accountability over assets is maintained; liabilities are properly recorded and contingent liabilities are properly disclosed; financial records are accurate and reliable; transactions are performed in accordance with the Tribal Gaming Agency’s authorization; access to assets is permitted only in accordance with the Tribal Gaming Agency’s approved procedures; recorded accountability for assets is compared with actual assets; and, functions, duties and responsibilities are appropriately segregated and performed by qualified personnel. The Tribe is required to provide the CGCC, upon written request, a copy of the independent certified public accountant agreed-upon procedures report conducted annually for submission to the NIGC pursuant to federal law. This report verifies that the gaming operation is in compliance with the NIGC’s MICS.
- Patron Disputes – the Tribe (through its Tribal Gaming Agency) must attempt to resolve patron disputes pertaining to the play or operation of any game, including refusal to pay to a patron any alleged winnings from any gaming activities. A patron must make an oral or written complaint to personnel of the gaming operation over the play or operation of any game within 7 days of the play or operation at issue. The patron shall be given written notice by the gaming operation that the patron has the right to request, in writing, resolution of the complaint by the Tribal Gaming Agency which must be made within 15 days of receipt. If the patron is dissatisfied with the Tribal Gaming Agency’s resolution of the complaint, the patron may seek resolution in either the Tribe’s tribal court system, or through binding arbitration pursuant to the JAMS process. The Tribal Gaming Agency shall conduct an investigation and shall render a decision consistent with industry practice. The Tribal Gaming Agency’s decision shall be issued within 60 days. If still dissatisfied, the patron may request that the dispute be settled by binding arbitration before a single arbitrator, who shall be a retired judge, in accordance with the streamlined

arbitration rules and procedures of JAMS. Any party dissatisfied with the award of the arbitrator may at the party's election invoke the JAMS Optional Arbitration Appeal Procedure, provided that the party making such election must bear all costs and expenses of JAMS and the arbitrators associated with the JAMS Optional Arbitration Appeal Procedure regardless of the outcome.

- Public and Workplace Liability – the Tribe is required to obtain and maintain a commercial general liability insurance policy which provides coverage of no less than \$10 million. Also, requires the Tribe to adopt a Tort Liability Ordinance containing provisions that are the same as California tort law to govern all claims of bodily injury, personal injury, or property damage arising out of, connected with, or relating to the casino. The Tribe must consent to jurisdiction in the Tribe's tribal court system, if a tribal court system is established, before a three-member tribal claims commission, or by arbitration before a single arbitrator who shall be retired judge, in accordance with the Comprehensive Arbitration Rules and Procedures of JAMS. Any party dissatisfied with the award of the tribal court, claims commission, or JAMS arbitration, may at the party's election invoke the JAMS Optional Arbitration Appeal Procedure. The JAMS appeal will take place in the County and shall use one arbitrator, agreed upon by the parties, and shall not be a de novo review, but shall be based solely on the record developed in the tribal court, claims commission, or JAMS arbitrator proceedings. The Tribe consents to the jurisdiction of the tribal court, claims commission, JAMS arbitration and JAMS appeal.
- Environmental Protections – the Tribe must prepare a Tribal Environmental Impact Report (TEIR) and negotiate mitigation of any off-reservation impacts, including an evaluation of energy consumption, prior to initiating the development of a Project for a facility. The Compact provides procedures regarding the (1) Notice of Preparation of Draft TEIR, (2) Notice of Completion of Draft TEIR, and (3) Issuance of Final TEIR. The Tribe's failure to prepare an adequate TEIR when required may warrant an injunction where appropriate. Before commencement of a Project, and no later than the issuance of the final TEIR, the Tribe shall negotiate an intergovernmental agreement with the California Department of transportation (Caltrans) if state roads are impacted. A completed TEIR must be filed with the County, the Department of Justice, the CGCC, and the State Clearinghouse. Also, before commencement of a Project, and no later than the issuance of the final TEIR, the Tribe shall offer to commence negotiations with the County to, amongst other things, provide for the timely mitigation of any significant effect on the off-reservation environment including provisions relating to compensation for law enforcement, fire protection, emergency medical services and any other public services to be provided by the County to the Tribe as a consequence of the Project.

- Enhanced Audit and Compliance Review Procedures – in addition to providing for an annual independent audit, the Compact allows the state to conduct its own annual audit and compact compliance review.
- Inspection and Testing of Slot Machines – slot machines will have to be tested, approved and certified by an independent gaming test laboratory or state governmental gaming test laboratory to ensure they are being operated according to specified technical standards. Also, requires the Tribal Gaming Agency to maintain adequate records that demonstrate compliance with software and hardware specifications. The State Gaming Agency would be authorized to annually conduct up to four random inspections of slot machines in operation to confirm that the slot machines are operating in conformance with these standards.
- Compliance Enforcement – it is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of this Compact, IGRA, any applicable NIGC and State Gaming Agency regulations, and the tribal gaming ordinance with respect to gaming operation and facility compliance, and to protect the integrity of the gaming activities, the reputation of the Tribe and the gaming operation for honesty and fairness, and the confidence of patrons that tribal government gaming in California meets the highest standards of regulation and internal controls. To meet those responsibilities, the tribal gaming agency shall adopt and enforce regulations, procedures, and practices.
- Labor Provisions – provides that the gaming activities authorized by this Compact must continue under the Tribal Labor Relations Ordinance (TRLO) previously adopted by the Tribe and referenced as Appendix C of this Compact. This Compact acknowledges that the parties may amend the existing TLRO. (UNITE-HERE has represented workers at the Cache Creek Casino for approximately 20 years)
- Workers' Compensation – the Tribe agrees to participate in the State's workers' compensation program with respect to employees at the casino. All disputes arising from the workers' compensation laws shall be heard by the State Workers' Compensation Appeals Board pursuant to the California Labor Code. The Tribe acknowledges the jurisdiction of the Board in such manners. In lieu of participation in the State's system, the Tribe may create and maintain a system through self-insurance, which includes specified provisions, including hearings before an independent tribunal. Furthermore, the Tribe agrees that it will participate in the State's unemployment compensation program for providing benefits and unemployment compensation disability benefits to employees at the casino. The Tribe shall withhold all taxes due to the State, except for Tribal members living on the Tribe's reservation, and forward such amounts to the State.

- Prohibitions Regarding Minors – the Tribe shall prohibit persons under the age of twenty-one (21) years from being present in any room or area in which gaming activities are being conducted unless the person is en route to a non-gaming area of the gaming facility, or is employed at the gaming facility in a capacity other than as a gaming employee.
- Alcohol Provisions – makes it explicit that the purchase, sale, and service of alcoholic beverages shall be subject to state law – the Alcoholic Beverage Control (ABC) Act.
- Tobacco Provisions – the Tribe agrees to provide a non-smoking area in the gaming facility and to maintain ventilation, filtration, purification or other technologies in the gaming facility, where reasonably feasible after consideration of engineering, economic and scientific factors, and further agrees not to offer or sell tobacco products, including but not limited to smokeless tobacco products or e-cigarettes, to anyone younger than the minimum age specified in state law to legally purchase tobacco products.
- Problem Gambling – the gaming operation must establish a program, approved by the Tribal Gaming Agency, to mitigate pathological and problem gaming by implementing specified measures.
- Health and Safety Standards – the Tribe has agreed to adopt and comply with tribal health standards for food and beverage handling that are no less stringent than State public health standards. Also, the Tribe has agreed to comply with federal water quality and safe drinking water standards applicable in California. The Tribe must also adopt and comply with federal and state laws forbidding harassment, including sexual harassment, discrimination and retaliation. Furthermore, the Tribe must maintain a \$3 million insurance policy for these purposes and adopt an ordinance that includes a dispute resolution process.
- Building Codes and Fire Safety – in order to assure the protection of the health and safety of all gaming facility patrons, guests, and employees, the Tribe shall adopt or has already adopted, and shall maintain throughout the term of this Compact, an ordinance that requires any covered gaming facility construction to meet or exceed the applicable codes. Gaming facility construction, expansion, improvement, modification or renovation must also comply with the federal Americans with Disabilities Act.
- Emergency Services Accessibility and Possession of Firearms – the Tribe must make reasonable provisions for adequate emergency fire, medical, and related relief and disaster services for patrons and employees. Also, prohibits the possession of firearms by any person in the gaming facility at all times except for federal, state, or local law enforcement personnel, or tribal law enforcement or security personnel, as authorized.

- Effective Date – this Compact shall not be effective unless and until all of the following have occurred: (a) The Compact is ratified by statute in accordance with state law and (b) Notice of approval or constructive approval is published in the Federal Register. Once effective, this Compact shall be in full force and effect for twenty-five (25) years following the effective date.
- Amendment by Agreement – the terms and conditions of this Compact may be amended at any time by the mutual and written agreement of both parties, provided that each party voluntarily consents to such negotiations in writing. Any amendments to this Compact shall be deemed to supersede, supplant and extinguish all previous understandings and agreements on the subject.

### **ADDITIONAL BACKGROUND INFORMATION**

#### **Indian Gaming Regulatory Act (IGRA)**

In 1988, Congress enacted the Indian Gaming Regulatory Act (IGRA) to provide a statutory basis for the operation and regulation of gaming on Indian lands. IGRA provides that an Indian tribe may conduct gaming activity on Indian lands if the activity “is not specifically prohibited by federal law and is conducted within a State which does not prohibit such gaming activity.”

IGRA distinguishes between three classes of gaming (Class I, Class II, and Class III) and provides for different forms of regulation for each class. Class I gaming includes “social games” for minor prizes or “traditional forms of Indian gaming.” Class II gaming is defined to include bingo and card games that are explicitly authorized by the laws of the state, or that are not explicitly prohibited by the laws of the state and are played at any location in the State, so long as the card games are played in conformity with those laws and regulations. Class III gaming includes such things as slot machines, casino games and banked card games such as black jack and baccarat. Class III gaming may only be conducted under terms of a compact negotiated between an Indian tribe and a State.

IGRA was enacted against a legal background in which Indian tribes and individuals generally are exempt from state taxation within their own territory. IGRA provides that with the exception of assessments permitted under the statute, to defray the State’s costs of regulating gaming activity, IGRA shall not be interpreted as conferring upon a State authority to impose any tax, fee, charge, or other assessment upon an Indian tribe to engage in Class III activity. Nor may a State refuse to enter into negotiations based on the lack of authority to impose such a tax, fee, charge, or other assessment.

When a tribe requests negotiations for a Class III compact, IGRA requires the State to negotiate with the Indian tribe in good faith. IGRA provides a comprehensive process to prevent an

impasse in compact negotiations, which is triggered when a tribe files suit alleging that the State has refused to negotiate or has failed to negotiate in good faith.

Before 2000, the California Constitution prohibited Class III gaming. In 2000, California voters approved Proposition 1A which had been proposed by the Governor and passed by the Legislature. Proposition 1A amended the California Constitution to permit the State to negotiate compacts with federally recognized Indian tribes for certain Class III gaming activities. Because non-Indian parties were still forbidden from operating gaming facilities, Proposition 1A granted Indian tribes a “constitutionally protected monopoly on most types of Class III games in California.”

### **Rincon Decision**

The U.S. Supreme Court in July 2011 refused to consider the decision of the Ninth Circuit Court of Appeals rejecting a Class III Tribal-State Gaming Compact negotiated by then Governor Schwarzenegger with the Rincon Band of Luiseno Mission Indians. The issue of this case's impact on Indian gaming throughout the country has been a topic of great debate.

As noted, IGRA authorizes states to receive compensation for costs related to tribal gaming such as regulation and gaming addiction, and to offset the effects of casinos on surrounding communities. However, states are prohibited from assessing taxes on tribal casino revenues, so unjustified payments to a state's General Fund are no longer permissible unless the tribes are getting something in return for the required payments, such as those authorized by IGRA.

Any payments to the State, above those needed to mitigate impacts of gaming must be in exchange for a benefit deemed "exclusive" to the tribe.

The Rincon Band challenged the legality of California's "second generation" compacts pursuant to which the signatory tribes would be entitled to increase their slot machine count in return for paying percentages of the new slot machine revenue to the state's General Fund. The Ninth Circuit had affirmed a lower court decision that the new financial concessions were nothing more than a state tax on tribal casino revenues which is prohibited by IGRA.

Rincon refused to sign the amended compact which had already been executed by several other tribes choosing instead to demand that it be given the expanded gaming opportunity without making the new financial concessions. The Ninth Circuit Court of Appeals concluded that a “non-negotiable, mandatory payment of 10% of net win into the State treasury for unrestricted use yields public revenue, and is [therefore] a tax, and that the court was therefore required to consider the State’s demand as evidence of bad faith under IGRA’s statutes.”

The court noted that “the State could rebut the presumption of bad faith by demonstrating that the revenue demanded was to be used for the public interest, public safety, criminality, financial

integrity, and adverse economic impacts on existing activities, but the State's need for general tax revenue was insufficient to demonstrate good faith."

### **Special Distribution Fund (SDF)**

Existing law creates the SDF in the State Treasury for the receipt of revenue contributions made by tribal governments pursuant to the terms of the 1999 model Tribal-State Gaming Compacts and authorizes the Legislature to appropriate money from the SDF for the following purposes: (a) grants for programs designed to address gambling addiction; (b) grants for the support of state and local government agencies impacted by tribal government gaming; (c) compensation for regulatory costs incurred by the California Gambling Control Commission (CGCC) and the Department of Justice (DOJ) in connection with the implementation and administration of compacts; (d) payment of shortfalls that may occur in the RSTF; (e) disbursements for the purpose of implementing the terms of tribal labor relations ordinances promulgated in accordance with the terms of the 1999 compacts; and, (f) any other purpose specified by law. (Pursuant to compact renegotiations that took place with several of the larger gaming tribes during the Schwarzenegger administration, revenue from those tribes is directed into the state General Fund, instead of the SDF.)

The law establishes a method of calculating the distribution of appropriations from the SDF for grants to local government agencies impacted by tribal gaming. This method includes a requirement that the State Controller, in consultation with the CGCC, deposit funds into County Tribal Casino Accounts and Individual Tribal Casino Accounts based upon a process that takes into consideration whether the county has tribes that pay, or do not pay, into the SDF. The distribution formula "sunsets" on January 1, 2021.

Existing law also establishes an Indian Gaming Local Community Benefit Committee in each county in which gaming is conducted, specifies the composition and responsibilities of that committee, and requires that committee to make the selection of grants from the casino accounts. Among other things, the committee is responsible for establishing all application policies and procedures for grants from the casino accounts. Additionally, existing law requires the State Auditor to conduct an audit every three years and report its findings to the Legislature regarding the allocation and use of SDF grant monies.

### **Revenue Sharing Trust Fund (RSTF)**

Existing law creates in the State Treasury the RSTF for the receipt and deposit of moneys derived from gaming device license fees that are paid into the RSTF pursuant to the terms of specified tribal-state gaming compacts for the purpose of making distributions to non-compacted California tribes (e.g., federally-recognized non-gaming tribes and tribes that operate casinos with fewer than 350 slot machines). Revenue in the RSTF is available to CGCC, upon appropriation by the Legislature, for making distributions of \$1.1 million annually to non-

compact tribes. The RSTF was created as part of the 1999 compacts, which, in conjunction with the passage of Proposition 1A, created gaming compacts with approximately 60 California tribes. Non-compact tribes are considered third-party beneficiaries of the 1999 compacts.

### **Tribal Nation Grant Fund (TNGF)**

This particular fund (referenced in recent compacts) was created to complement the RSTF and provides for the distribution of funds to non-gaming tribes, upon application of such tribes for purposes related to effective self-governance, self-determined community, and economic development. Payments from this fund are intended to be made to non-gaming tribes on a “need” basis, upon application.

### **Prior Related Informational Hearing**

In 2004, the Legislature ratified amendments to five Indian gaming compacts (AB 687 – Nuñez, Chapter 91, pertaining to the Pala Band of Mission Indians; the Pauma Band of Luiseno Mission Indians; the Rumsey Band of Wintun Indians; the United Auburn Indian Communities; and, the Viejas Band of Kumeyaay Indians) which eliminated the cap on the number of slot machines that could be operated by any of the compacted tribes. Under these compacts, the tribes agreed to make payments directly to the State in exchange for the exclusive right to conduct class III gaming from non-tribal interests. The amended compacts also provided for a payment of up to \$1.5 billion to the state for transportation improvement projects, to be financed by a bond securitized by gaming revenues which would be repaid over 18 years. Additionally, the amended compacts provided a graduated scale of progressively higher annual fees for additional slot machines above the existing limit of 2,000 machines, reaching up to \$25,000 per additional machine. The fees represented approximately 15% of the net win of the additional machines on average and were estimated to provide as much as \$150-\$200 million in annual revenue to the state over time from these tribes alone.

Furthermore, under the 2004 amended compacts, among other things, the tribes agreed: (1) to make annual payments in the amount of \$2 million per tribe for a total of \$10 million annually to the RSTF; (2) to allow the state to inspect the slot machines and submit patron disputes to binding arbitration; (3) to prepare an Environmental Impact Report for new projects and to negotiate mitigation of off-reservation impact and increased demand for services with local governments, with binding arbitration if negotiations reach impasse; (4) to meet or exceed California Building Code and Public Safety Code on new construction and to allow the state to inspect construction in progress; and, (5) to modify their Tribal Labor Relations Ordinance to provide workers with enhanced organizing rights in exchange for a no-strike clause.

The accuracy of the Schwarzenegger Administration’s predicted and actual revenues and expenditures, as they related to the new revenue stream from gaming, and issues raised by litigation (*Glendon B. Craig, et al. v. Schwarzenegger, et al.*) challenging the validity of the

bonds and the source of repayment led the Chairman of the Senate Committee on Governmental Organization to convene an informational hearing in February of 2005 entitled, “*Forecasting Revenues: A Look at Indian Gaming Compacts and State Budget Revenue Estimates*” to give the members of the Legislature and the general public a better understanding of this complex matter and related issues that essentially stalled the issuance of the bonds and the transportation projects they were meant to finance.

Witnesses at this hearing included state finance and gambling officials, the State Treasurer, representatives of the Governor, as well state gaming interests. In general, the witnesses agreed that without a swift resolution of the issues discussed, the bonds would unlikely be sold in a timely manner and construction of the transportation projects would be jeopardized. (It should be noted that the transportation bonds in question were never issued by the Treasurer’s Office.)

### **SUPPORT**

Yocha Dehe Wintun Nation; California Labor Federation; and, UNITE-HERE, AFL-CIO

### **OPPOSITION**

None received

### **PRIOR and CURRENT LEGISLATION**

SB 1426 (Hall, 2016) would ratify the tribal-state gaming compact entered into between the State of California and the Yocha Dehe Wintun Nation, executed on August 4, 2016. (Pending referral to Assembly floor)

SB 404 (De León, 2016) would ratify the tribal-state gaming compact entered into between the State of California and the Viejas Band of Kumeyaay Indians, executed on June 22, 2016. (Pending referral to Assembly floor)

SB 187 (Hall, 2016) would ratify the tribal-state gaming compact entered into between the State of California and the Jamul Indian Village, executed August 4, 2016. (Pending referral to Assembly floor)

AB 2358 (Waldron/Gonzalez, 2016) would ratify the tribal-state gaming compact entered into between the State of California and the Pechanga Band of Luiseno Indians, executed August 4, 2016. (Pending referral to Senate floor)

AB 1977 (Wood, 2016) would ratify the first amendment to the 2006 tribal-state gaming compact entered into between the State of California and the Yurok Tribe, executed August 4, 2016. (Pending referral to Senate floor)

AB 1767 (Bigelow, 2016) would ratify the first amendment to the 2015 tribal-state gaming compact entered into between the State of California and the Jackson Rancheria Band of Miwuk Indians, executed on June 22, 2016. (Pending referral to Senate floor)

AB 1282 (Gray, 2016) would ratify the tribal-state gaming compact entered into between the State of California and the Buena Vista Rancheria of Me-Wuk Indians, executed on June 28, 2016. (Pending referral to Senate floor)

AB 629 (Gonzalez/Waldron, 2016) would ratify the tribal-state gaming compact entered into between the State of California and the Pala Band of Mission Indians, executed on May 6, 2016. (Pending on Assembly floor)

AB 291 (Atkins/Gonzalez, 2016) would ratify the tribal-state gaming compact entered into between the State of California and the Barona Band of Mission Indians, executed on June 22, 2016. (Pending referral to Senate floor)

AB 795 (Atkins, Chapter 520, Statutes of 2015) ratified the tribal-state gaming compact entered into between the State of California and the Sycuan Band of Kumeyaay Nation, executed on September 2, 2015.

AB 1540 (Gray, Chapter 531, Statutes of 2015) ratified the tribal-state gaming compact entered into between the State of California and the Santa Ynez Band of Chumash Indians, executed on August 26, 2015.

AB 315 (Bigelow, Chapter 512, Statutes of 2015) ratified the amended and restated tribal-state gaming compact entered into between the State of California and the United Auburn Indian Community, executed on August 14, 2015.

AB 475 (Bigelow, Chapter 8, Statutes of 2015) ratified the tribal-state gaming compact entered into between the State of California and Jackson Rancheria Band of Miwuk Indians, executed on February 1, 2015.

SB 1356 (De León, Chapter 314, Statutes of 2014) ratified the amendment to the tribal-state gaming compact entered into between the State of California and the Viejas Band of Kumeyaay Indians, executed on August 12, 2014.

SB 1224 (Correa, Chapter 300, Statutes of 2014) ratified the tribal-state gaming compact entered into between the State of California and the Karuk Tribe, executed on December 4, 2013.

AB 1245 (V. Manuel Perez, Chapter 462, Statutes of 2013) ratified the tribal-state gaming compact entered into between the State of California and the Ramona Band of Cahuilla Indians located in Riverside County, executed on June 10, 2013.

AB 277 (Hall, Chapter 51, Statutes of 2013) ratified two new compacts entered into between the State of California and the following tribes: North Fork Rancheria, executed on August 31, 2012 and the Wiyot Tribe, executed on March 20, 2013.

AB 1267 (Hall, Chapter 6, Statutes of 2013) ratified the amended tribal-state gaming compact entered into between the State of California and the Shingle Springs Band of Miwok Indians, executed on November 15, 2012.

SB 668 (Fuller, Chapter 67, Statutes of 2013) ratified the tribal-state gaming compact entered into between the State of California and the Fort Independence Indian Community of Paiute Indians, executed on February 28, 2013.

AB 517 (Hall, Chapter 12, Statutes of 2012) ratified the tribal-state gaming compact entered into between the State of California and the Federated Indians of Graton Rancheria of Sonoma County, executed on March 27, 2012.

AB 787 (Chesbro, Chapter 340, Statutes of 2012) ratified the amendment to the tribal-state gaming compact entered into between the State of California and the Coyote Valley Band of Pomo Indians, executed on July 25, 2012.

AB 1418 (Hall, Chapter 412, Statutes of 2011) repealed those provisions ratifying the tribal-state gaming compact entered into between the State of California and Pinoleville Pomo Nation, executed on March 9, 2009 and instead ratified the tribal-state gaming compact entered into between the State of California and the Pinoleville Pomo Nation, executed on August 8, 2011. Ratification of this revised compact authorized the Tribe to operate up to 900 slot machines with up to 15% of the casino's net win from the slots designated for local communities, gambling mitigation and regulation, instead of requiring revenue contributions be made to the General Fund as provided by the 2009 compact.

AB 1020 (Chesbro, Chapter 27, Statutes of 2011) repealed the ratification of the tribal-state gaming compact entered into between the State of California and the Habematolel Pomo of Upper Lake, executed on September 2, 2009, and instead ratified a new tribal-state gaming compact entered into between the State of California and the Habematolel Pomo of Upper Lake, executed on March 17, 2011. Ratification of this revised compact authorized the Tribe to operate up to 750 slot machines with up to 15 percent of the net-win from those gaming devices being paid to the SDF and the RSTF, instead of requiring revenue contributions be made to the General Fund as provided by the 2009 compact.

SB 89 (Budget Committee, Chapter 1, Statutes of 2010) ratified the tribal-state gaming compact entered into between the State of California and the Habematolel Pomo of Upper Lake, executed on September 2, 2009.

AB 122 (Coto, Chapter 3, Statutes of 2009) ratified the tribal-state gaming compact entered into between the State of California and the Pinoleville Pomo Nation, executed on March 10, 2009.

AB 3072 (Price, Chapter 334, Statutes of 2008) ratified the first amendment to a tribal-state gaming compact entered into between the State of California and the Shingle Springs Band of Miwok Indians, executed on June 30, 2008.

SB 106 (Wiggins, Chapter 37, Statutes of 2007) ratified a new compact between the State of California and the Yurok Tribe of the Yurok Reservation (Yurok).

SB 174 (Ducheny, Chapter 39, Statutes of 2007) ratified the first compact amendment to the compact between the State of California and Sycuan.

SB 175 (Ducheny, Chapter 38, Statutes of 2007) ratified the first compact amendment to the compact between the State of California and Morongo.

SB 903 (Padilla, Chapter 40, Statutes of 2007) ratified the first compact amendment to the compact between the State of California and Pechanga.

SB 941 (Padilla, Chapter 226, Statutes of 2007) ratified the first compact amendment to the compact between the State of California and San Manuel.

SB 957 (Torlakson, Chapter 41, Statutes of 2007) ratified the first compact amendment to the compact between the State of California and Agua Caliente.

SB 470 (Ducheny, Chapter 527, Statutes of 2006) ratified the first amendment to the compact between the State and the Quechan Tribe of the Fort Yuma Reservation (Quechan).

SB 1117 (Burton, Chapter 856, Statutes of 2004) ratified two new and two amended compacts entered into between the State and the following tribes: Coyote Valley Band of Pomo Indians (new compact); Fort Mojave Indian Tribe (new compact); Buena Vista Rancheria of Me-Wuk Indians (amended compact); and, Ewiiapaayp Band of Kumeyaay Indians (amended compact).

AB 687 (Nuñez, Chapter 91, Statutes of 2004) ratified amendments to five compacts entered into between the State and the following tribes: Pala Band of Mission Indians; Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation; Rumsey Band of Wintun Indians; United Auburn Indian Communities; and, Viejas Group of Kumeyaay Indians. Also, provided for the issuance of bonds in an amount not to exceed \$1.5 billion by the California Infrastructure and Economic Development Bank and required the net proceeds of the sale of the compact assets to be deposited in the Traffic Congestion Relief Fund and the Transportation Deferred Investment Fund.

SB 930 (Burton, Chapter 802, Statutes of 2003) ratified a compact between the State of California and the Torres-Martinez Desert Cahuilla Indians.

SB 411 (Ducheny, Chapter 790, Statutes of 2003) ratified compacts between the State of California and the La Posta Band of Diegueno Mission Indians and the Santa Ysabel Band of Diegueno Mission Indians in San Diego County.

Proposition 1A (Adopted by the People of California on March 7, 2000) modified the prohibition against casinos and lotteries in the California Constitution to authorize the Governor to negotiate compacts, subject to legislative ratification, for the operation of slot machines, lottery games, and banking and percentage card games by federally recognized Indian tribes on Indian lands in California, in accordance with federal law. Authorized slot machines, lottery games, and banking and percentage card games to be conducted and operated on Indian lands subject to the compacts.

AB 1385 (Battin, Chapter 874, Statutes of 1999) designated the Governor as the state officer responsible for negotiating and executing compacts between the state and federally recognized Indian tribes located in the state. Also, ratified 57 compacts and created two special funds in the State Treasury (SDF and RSTF), as specified.

Proposition 5 (Adopted by the People of California on November 3, 1998) specified the terms and conditions of mandatory compacts between the State and tribal governments for class III gambling on Indian lands; amended California law to allow slot machines and banked card games at tribal casinos; provided for contributions to trust funds benefiting non-gaming tribes, statewide emergency medical care programs, and programs benefiting communities near tribes; and, allowed tribes to retain a monopoly on authorized gambling. Proposition 5 was found to be unconstitutional because it amended a provision of the Government Code and did not amend the Constitution. The proposition was invalidated in its entirety, save the final sentence of Government Code Section 98005, containing the state's consent to federal suits brought by California tribes pursuant to IGRA.

SB 287 (Burton, Chapter 409, Statutes of 1998) ratified 11 compacts negotiated between the State of California and Indian tribes that permitted class III video gaming devices on tribal lands and established a process for ratifying other compacts.

SB 8 (Lockyer, Chapter 867, Statutes of 1997) repealed the Gaming Regulation Act and enacted the Gambling Control Act of 1997. Established CGCC and charged it with, among other things, the authority to issue, deny, revoke, suspend, or impose conditions, restrictions, or limitations on licenses, permits, or approvals to ensure that unsuitable or unqualified persons are not involved in the operation of gambling. Established the Bureau of Gambling Control (formerly known as the Division of Gambling Control) within the Department of Justice and charged it with specified investigative and enforcement duties.