

**Senate Committee on Governmental Organization
Informational Hearing
Amendment to the Tribal-State Gaming Compact Between the State of California and the
Dry Creek Rancheria Band of Pomo Indians
August 14, 2018 – 9:30 a.m.
Room 4203, State Capitol**

Amended Compact Overview

SUMMARY

The Amendment to the Tribal-State Gaming Compact (hereafter “Amended Compact”) between the State of California and the Dry Creek Rancheria of Pomo Indians (hereafter “Tribe”) was executed on August 1, 2018. The Amended Compact includes a number of technical amendments to the Tribe’s 2017 Compact. Specifically, the Amended Compact includes a fix to an issue that arose after the wrong Tribal Labor Relations Ordinance (TLRO) was sent for final approval to the Department of Interior.

In 2017, the Tribe entered into a new tribal-state compact [ratified by SB 585 (McGuire and Mendoza, Chapter 464, Statutes of 2017)] that authorized the Tribe to operate up to 1,200 slot machines at no more than two gaming facilities located on eligible Indian lands held in trust for the Tribe, and located within the boundaries of the Tribe’s Reservation. If the tribe chooses to operate more than one gaming facility, then one of the two gaming facilities shall have no more than 500 slot machines and shall have a primary purpose other than gaming.

In recognition of the needs of the Tribe’s more than 1,000 tribal members and the existence of a binding and enforceable agreement with the County of Sonoma (County), the Compact did not include an obligation for the Tribe to pay any amount into the Revenue Sharing Trust Fund (RSTF) or the Tribal Nation Grant Fund (TNGF) if it operates less than 1,200 slot machines.

However, the Compact did include a provision that would allow the Tribe, after negotiations with the State, to increase the number of slot machines to no more than 1,500. If such an increase occurs, the Tribe shall be required to pay in to the RSTF or TNGF a specified amount, or a percentage of the Net Win from Class III slot machines not to exceed 2%.

The current Memorandum of Agreement (MOA) between the Dry Creek Rancheria and Sonoma County established a mutually agreeable process to identify and mitigate potential off-reservation environmental impacts of future Tribal economic development projects, including on-reservation gaming projects that meets or exceeds the processes required under the Compact. The MOA created a framework for building and maintaining a mutually beneficial government-to-government relationship between the

Tribe and the County and identified ways for the Tribe and the County to work together to provide services and benefits to the Tribal community and Sonoma County residents. The Tribe's MOA with the County is recognized in all areas where it would be applicable to the gaming facility.

Currently, the Tribe operates the River Rock Casino (Casino) located in the Alexander Valley region in the heart of Sonoma County. The 62,000 square-foot facility, opened in September 2002, and includes approximately 34,000 square feet of gaming space. The Casino currently includes approximately 1,100 slot machines, and 18 table games. The property has three restaurants including a 248-seat buffet, a 64-seat full-service bar and grill, and a 24-seat "quick service" Asian-themed facility. According to the Tribe, of the 360 Team Members working for River Rock, over 40% have been with the Casino for over 10 years.

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 – Dry Creek Rancheria Band of Pomo Indians

The Dry Creek Rancheria Band of Pomo Indians is a federally-recognized Indian Tribe located in Sonoma County, California, approximately five miles from the city of Geyserville. The Tribe has a total enrolled population of approximately 1,070 members. Its reservation is comprised of 93 acres in Sonoma County.

According to the Tribe, ancestors of the Pomo people lived in the area of Sonoma, Mendocino, and Lake Counties thousands of years ago. Historically, the Tribe used regional plants and game for food, including clams, fish, and abalone collected on trips to the coast during the summer. But their primary food was acorns which were gathered, stored, and processed throughout the season.

Official recognition of the Tribe occurred in 1915, when the federal government created the Dry Creek Rancheria and named the Tribe the Dry Creek Rancheria Band of Pomo Indians. The Tribe is governed by its Articles of Association, amended September 22, 1979, which established a Board of Directors. The Tribe's current trust land, which includes the 75-acre Dry Creek Rancheria and contiguous tribal trust land, is comprised largely of land that is a hillside. In 2007, the Bureau of Indian Affairs approved an application to take 18-acres of contiguous lands (“the Dugan Parcel”) into trust on behalf of the Dry Creek Rancheria. The trust land acquisition became final in 2010, and the Dugan Parcel is held in trust for the benefit of the Tribe.

In 1999, the Tribe and dozens of other Tribes signed Compacts with the State of California. In 2002, the Tribe opened its interim facility. In 2017, the Tribe entered into a new tribal-state compact that authorized the Tribe to operate up to 1,200 slot machines.

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Details of the Amended Compact

Labor provisions fix: Last year, despite negotiating specific language in the TLRO that provided an exemption for all tribal member employees from the definition of “eligible employees” under the TLRO, and having a full agreement on that amendment with Unite HERE, the wrong TLRO

was attached to the Compact when it was sent for final approval to the Department of Interior. This amendment to the compact fixes that issue by incorporating the right TLRO.

Technical Amendments: In addition, this compact includes a technical fix to the gaming employee licensing provisions, and other technical amendments that bring this Compact into conformity with other recent compacts.

ADDITIONAL BACKGROUND INFORMATION

Indian Gaming Regulatory Act

In 1988, Congress enacted 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.

The Rincon Band 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

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 CGCC and 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.)

Current 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.

Revenue Sharing Trust Fund

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

This particular fund, established in the 2012 Graton Compact, 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.

SUPPORT

None received

OPPOSITION

None received

PRIOR AND CURRENT LEGISLATION

SB 6 (Hueso, Chapter 455, Statutes of 2017) ratified the tribal-state gaming compact entered into between the State of California and the Quechan Tribe of the Fort Yuma Indian Reservation, executed on August 31, 2017.

SB 585 (McGuire and Mendoza, Chapter 464, Statutes of 2017) ratified the tribal-state gaming compact entered into between the State of California and the Dry Creek Rancheria Band of Pomo Indians, executed on August 18, 2017.

SB 626 (Dodd, Chapter 465, Statutes of 2017) ratified the amendment to the tribal-state gaming compact entered into between the State of California and the Federated Indians of Graton Rancheria, executed on August 18, 2017.

AB 174 (Bigelow, Chapter 435, Statutes of 2017) ratified the tribal-state gaming compact entered into between the State of California and the United Auburn Indian Community, executed on August 18, 2017.

AB 253 (Bigelow, Chapter 437, Statutes of 2017) ratified the tribal-state gaming compact entered into between the State of California and the Tuolumne Band of Me-Wuk Indians, executed on August 18, 2017.

AB 394 (Mathis, Chapter 440, Statutes of 2017) ratified the tribal-state gaming compact entered into between the State of California and the Tule River Indian Tribe of California, executed on August 31, 2017.

AB 891 (Mayes, Chapter 447, Statutes 2017) ratified the tribal-state gaming compact entered into between the State of California and the Morongo Band of Mission Indians executed on September 6, 2017.

AB 1378 (Gray, Chapter 450, Statutes of 2017) ratified the amendment to the tribal-state gaming compact entered into between the State of California and the San Manuel Band of Mission Indians executed on August 18, 2017.

AB 1606 (Cooper, Chapter 453, Statutes of 2017) ratified the tribal-state gaming compact entered into between the State of California and the Wilton Rancheria, executed on July 19, 2017.

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.