

California Compact Negotiations Revised In Light Of Rincon Ruling

28 Sep, 2011

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California Indian tribes will meet October 10 in San Diego to discuss "guiding principles" for future gambling compact negotiations with Governor Jerry Brown in the wake of last year's federal court ruling restricting casino payments to the state general fund.

The guidelines endorsed by the California Nations Indian Gaming Association (CNIGA), a coalition of 30 casino and non-gambling tribes, embrace 1999 compacts signed by 61 tribes and former Governor Gray Davis that do not include revenue sharing payments to the general fund.

The CNIGA principles, drafted as a template for future compacts, also call for an end to judicially enforceable agreements with county and municipal governments to mitigate traffic, law enforcement and other casino impacts.

Many tribes contend the agreements violate their sovereignty and require payments beyond the environmental impacts of casinos. They want the money paid directly to counties out of tribally managed escrow accounts, not from the state's Special Distribution Fund.

General fund payments and local government agreements were hallmarks of 17 new and renegotiated 1999 compacts tribes signed with former Governor Arnold Schwarzenegger that annually generate \$340m to state coffers.

The guidelines were drafted by an attorneys working group in the **wake of a 9th Circuit Court of Appeals ruling** that Schwarzenegger violated federal law by trying to extract gambling revenue from the Rincon Band of Luiseño Indians in exchange for additional slot machines.

The 9th Circuit said revenue paid into the state's general fund without a substantial benefit to the tribe constitutes a tax in violation of the Indian Gaming Regulatory Act. Monies should instead be channeled to a specific fund or to local governments to mitigate casino impacts.

The U.S. Supreme Court in June let the 9th Circuit ruling stand, jeopardizing \$340m in annual payments to the state and creating a **legal quandary for future compact negotiations**. The tribal leaders meeting will be held at the U.S. Grant, a San Diego hotel owned by the Sycuan Band of the Kumeyaay Nation. California's more than 60 gambling tribes gross nearly \$7bn a year, about a quarter of the revenue generated nationwide by some 400 Indian casinos.

"We'll be meeting to review the principles and, maybe, work out a combined group of [tribes] to meet with the governor and reopen negotiations," said a tribal consultant who requested anonymity.

The group would include representatives of tribes that negotiated 1999 compacts and signatories to Schwarzenegger agreements.

While CNIGA hails the principles as a guiding force in negotiations, many contend the guidelines are unrealistic and fail to recognize the state's economic needs.

"I wouldn't put much stock in them," tribal attorney Howard Dickstein said. "The principles and what ultimately is going to happen are two entirely different things."

Brown negotiator **Jacob Appelsmith** said he has seen the guidelines but declined to elaborate on what impact, if any, they will have on talks with the governor. Although the 9th Circuit said its ruling should not impact other compacts, some tribes that signed Schwarzenegger agreements hope to use the Rincon ruling in lawsuits or renegotiations to reduce general fund payments for additional machines over the 2,000 limit in the '99 agreements, which expire in 2020. "The legality of those payments going forward is questionable," said Dickstein. "If it violates IGRA for payments to go to the general fund, those provisions of the compact need to be re-examined and adjusted to conform to that decision." Some attorneys said casino money could be directed to transportation, law enforcement or fire prevention to ease the state deficit while avoiding the prohibition on general fund payments. California tribes are not expected to negotiate compacts as a group as was the case in 1999. "At the end of the day, most tribes are going to do their own thing, go their own way," said Sacramento lobbyist David Quintana. "I don't see any nucleus of tribes leading everybody."

Nor is it clear when negotiations will begin. Several tribes have met informally with Appelsmith.

Rincon is leading the pack because of the federal court ruling. A September 22 court-imposed deadline for the band and Brown to negotiate a compact was extended to October 22 at the request of Rincon, owing to Brown's preoccupation with budgetary matters.

If an agreement is not reached, the matter could go to a court-appointed mediator for binding arbitration.

Rincon Chairman Bo Mezzetti said he is not receptive to the terms of recent compacts negotiated by Brown and the Habematolel Pomo of Upper Lake and Pinoleville Pomo Nation of Ukiah.

Both compacts include judicially enforceable local government agreements

and demand 15 percent of the tribe's net win as mitigation payments to the county and municipalities.

Mezzetti and other tribal leaders may use compact negotiations to clarify tax laws regarding the collection of sales, tobacco and fuel taxes on sovereign Indian lands.

"What's generated on the reservation should stay there, for infrastructure," Mazzetti said. "To me that's strengthening sovereignty."

Although 1999 compacts do not expire for nine years, many tribes are hoping to negotiate extensions with Brown, who they **regard as empathetic to sovereign Native American interests**. Tribes with Schwarzenegger-era compacts also **hope to sit down with Brown** to ease revenue sharing requirements and onerous local government agreements. But Brown may not be receptive to fast-tracked negotiations with tribes that are currently paying millions to the state treasury.

"Anything he [Brown] does now would be a take-away," Quintana said. "It would mean less money to the state. Where's the rush for that?"

Tribes also may need to provide the state with an economic incentive to preserve their exclusive right to operate casinos, which is guaranteed in an amendment to the California state Constitution.

"Tribes are seeking ways to minimize payments to the state. I don't know if that's necessarily the best approach," said a tribal attorney who requested anonymity.

"Tribes need to partner with the state so it has a vested interest in keeping Indian gaming exclusive. If you want to maintain exclusivity you need to figure out a way to pay for it."