

Courts Deal Second Blow To Schwarzenegger Casino Compacts

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Federal courts have dealt a second blow to casino compacts negotiated by former California Governor Arnold Schwarzenegger and American Indian tribes, ruling he exceeded his authority in demanding Big Lagoon Rancheria enter into environmental agreements with local authorities.

A federal mediator's ruling for Big Lagoon in its lawsuit against the state of California — coming in the wake of a 9th Circuit Court of Appeals decision for the Rincon Band of Luiseño Indians on revenue sharing issues — is expected to greatly impact **negotiations between Governor Jerry Brown and the state's more than 60 gambling tribes.**

"On the heels of the Rincon decision we hope this will be the death knell of Schwarzenegger's over-reaching," Rincon attorney Scott Crowell said of the September 22 decision by mediator and retired judge Eugene Lynch.

Lynch ruled that of two "last best offers" for tribal-state compacts submitted for consideration to the U.S. District Court by Big Lagoon and the state of California, the tribal version best complied with the federal Indian Gaming Regulatory Act (IGRA) of 1988.

The proposed Schwarzenegger compact required Big Lagoon enter into a judicially binding agreement with Humboldt County to mitigate traffic, law enforcement and other environmental effects of a proposed beachfront hotel-casino. The compact also required the tribe to comply with the Federal Coastal Zone Management Act. The Big Lagoon compact required the tribe to negotiate and "make good faith efforts" toward reaching a mitigation agreement with county officials. "A review of case law clearly indicates that Indian tribes are sovereign over Indian lands," Lynch wrote in his ruling, and the state and local governments have no right to extend jurisdiction over tribal communities. "We always thought we'd prevail," Big Lagoon Chairman Virgil Moorehead said of the decision, which now goes to the U.S. Department of Interior for a final determination. "We're not certain" what ruling Interior may make on the compact provisions, Moorehead said. Jacob Appelsmith, Brown's compact negotiator, could not be reached for comment. Judicially enforceable agreements with county and municipal officials and revenue sharing payments into the state's general fund were hallmarks of about 20 new and renegotiated 1999 casino compacts signed by Schwarzenegger during his term in office from 2003 to 2011. But the 9th Circuit Court of Appeals — in a ruling the U.S. Supreme Court **allowed to stand** — said Schwarzenegger violated federal law by trying to extract gambling revenue from Rincon in exchange for additional slot machines over

the 2,000 limit in 1999 compact agreements signed by former Governor Gray Davis and 61 California tribes. 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 IGRA. The court said monies should instead be channeled to a specific fund or to local governments to mitigate casino impacts.

The ruling jeopardizes \$340m in annual payments to the state from tribal signatories to Schwarzenegger agreements and creates a legal quandary for future compact negotiations.

Tribal leaders will meet October 10 in San Diego to discuss "principles" for new compacts that call for an end to judicially enforceable local government agreements and revenue sharing payments into the state general fund.

The Rincon and Big Lagoon decisions and Brown's more respectful attitude toward tribal governments is expected to result in improved efforts to renegotiate the 1999 compacts, which expire in 2020. Tribes **contributed nearly \$700,000 to Brown's gubernatorial campaign**. "The devil is in the details. I reserve final judgment until we have a completed compact," Crowell said of the Brown administration. The Rincon tribe and the state face an October 22 court-imposed deadline to reach a new agreement.

"That being said, I think this governor has demonstrated far greater sensitivity to the tribes and their governmental interests," Crowell said.

Tribal exclusivity for casino gambling is guaranteed in an amendment to the state constitution. But using tribal casino revenue to help alleviate the state's financial crunch would discourage lawmakers from promoting expanded commercial gambling as a means of generating additional taxes.

Tribes have shown a willingness to pay for additional slot machines over the 2,000-machine limit in the 1999 compacts, but they prefer the money go to local governments and not the state general fund.

In an effort to help alleviate a growing budget deficit and avoid the federal prohibition against revenue sharing payments to the general fund, some tribes have privately spoke of paying money to statewide funds for road improvements, law enforcement or fire protection.

"I do think that's the new direction we'll see in most gaming compacts," said a tribal attorney who requested anonymity.

Tribes and Appelsmith have discussed earmarking tribal casino revenue to specific state funds, tribal sources said. But it is not clear if Interior, which has trust responsibility for the tribes, and the Department of Justice will find the concept falls within the legal parameters of IGRA.