

California Compacts Challenged By Rincon Ruling

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Some American Indian tribes that negotiated gambling agreements with former California Gov. Arnold Schwarzenegger will seek new compacts after the U.S. Supreme Court decided to let stand a court ruling that Schwarzenegger acted in "bad faith" in dealings with a San Diego tribe.

The **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 will also impact future negotiations with the state's 60 gambling tribes, tribal attorneys predict. The U.S. Supreme Court **agreed Monday** that Schwarzenegger erred in demanding Rincon pay a portion of its revenues from Harrah's Rincon Casino and Resort to the state's general fund, which constitutes a tax in violation of the Indian Gaming Regulatory Act of 1988. After taking office in 2003, Schwarzenegger, in negotiating 15 new agreements and amended 1999 compacts, funneled large sums of casino revenue to the state's general fund to help offset a rising budget deficit. More than \$350m is generated annually from tribal casinos in California. Tribal revenues in future compact negotiations, according to the 9th Circuit ruling, should be directed to a specific category of state funding, to help defray the cost of gambling regulations and to mitigate the impacts of casinos on counties and municipalities. But tribes also will have leverage to negotiate other benefits from the state in exchange for casino revenue shares, such as sales tax exemptions or tax incentives for firms to do business on tribal lands. "This is an opportunity to set a new course for negotiations between tribes and the state, one that is not divisive politically, but demonstrates how a governor with vision can create a partnership between both governments," Rincon Chairman Bo Mazzetti said. "Revenue can be paid from the tribe to the state if the state is offering the tribe something of meaningful value outside of what it's obligated to do under IGRA," added Rincon attorney Scott Crowell.

"In that context the two governments can be greatly creative. This can be an avenue in which we can resolve such traditional tribal-state issues as taxation. We're open to any ideas outside of the box." Already, the Pala and Pauma bands of Luiseño Indians and United Auburn Indian Community have either filed lawsuits or requested meetings with Gov. Jerry Brown to renegotiate revenue components of the Schwarzenegger compacts. "Now

that the 9th Circuit decision is final the legality of those payments going forward is questionable," said Howard Dickstein, attorney for Pala and Auburn. "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." Other tribes that signed new or amended 1999 compacts with Schwarzenegger may use the Rincon court ruling in lawsuits or renegotiations to reduce revenue shares they pay for additional machines over the 2,000 limit in the 1999 agreement.

"At least a small number of the Schwarzenegger compacted tribes will be challenging the legality of those provisions," Crowell, the Rincon Band's attorney, said.

"It's fair to say this decision strengthens the legal argument they would have, but it's not inclusive."

The district and 9th Circuit courts said the ruling did not apply to compact provisions agreed to by the state and tribes.

Meanwhile, tribes will also attempt to avoid judicially enforceable intergovernmental agreements with counties and municipalities that Schwarzenegger demanded as part of his compacts. Tribes view the agreements as an erosion of sovereignty. The intergovernmental agreements were not part of the landmark 1999 compacts signed by 57 tribes and former Gov. Gray Davis and approved by voters in a 2000 ballot initiative amending the state constitution to allow gambling on Indian lands. Although the 1999 compacts do not expire until 2020, several tribes **hope to renegotiate the agreements with Brown**, who has been supportive of Indian issues. "I think the '99 compact is very respectful of sovereignty," tribal attorney George Foreman said.

"Schwarzenegger's approach to compacting was fundamentally disrespectful of tribes, willing to allow for some expansion but using tribes as a cash cow for the state. One would hope that policy left office along with Arnold."

The 1999 compacts require that tribes pay a portion of casino revenues into a Special Distribution Fund to mitigate the impact of casinos on surrounding communities.

No money goes to the general fund. It also requires tribes to make a "good

faith effort" to mitigate the impact from casinos. It allows the state to sue tribes that fail to do so.

"The 10-year history of the compact show the process has worked," Crowell said.

Rincon also would object to demands it enters into judicially enforceable agreements with local jurisdictions, he said.

"We've made it very clear we find that provision in the Schwarzenegger template to be highly offensive and objectionable," Crowell said.

The Supreme Court decision directs Rincon to enter into talks with the Brown administration. The parties have two months to hash out an agreement, after which the matter goes to binding arbitration.

But not all Californian tribes are seeking to take action to amend their compacts after the U.S. Supreme Court's decision Monday. Chairman Robert Martin of the Morongo Band of Mission Indians said the tribe intends to abide by its compact, which was renegotiated in 2006 to allow for up to 7,500 machines at the Morongo casino. "The compact we have has been working for the tribe and the state and at this time there is no immediate and direct impact from Rincon," added Bob Scheid, spokesman for the Viejas Band of Kumeyaay Indians, which renegotiated its gambling compact in 2004.