

# High court ruling against California boosts Indian tribes' power

[mdoyle@mcclatchydc.com](mailto:mdoyle@mcclatchydc.com)

PUBLISHED TUESDAY, JUN. 28, 2011

WASHINGTON – The U.S. Supreme Court on Monday undercut states' negotiating clout with Indian tribes, effectively upholding a decision that the state of California overreached when it sought to compel general fund payments in exchange for casino approvals.

The court's decision not to hear California's appeal is an immediate victory for the San Diego-area Rincon Band of Luiseño Indians. The tribe wants to add hundreds of slot machines to its existing Harrah's Rincon Casino & Resort, north of Escondido.

More broadly, the court's decision not to hear the case leaves intact a 9th U.S. Circuit Court of Appeals opinion that makes it harder for states to demand certain payments from tribes.

"We are mindful that many states, and especially California, are currently writhing in (a) financial maw," the lower appellate court noted last year.

"However, we are also keenly aware of our nation's too-frequent

breach of its trust obligations to Native Americans when some of its politically and economically powerful citizens and states have lusted after what little the Native Americans have possessed."

California officials were seeking a cut of the action amounting to tens of millions of dollars in exchange for approving the new slot machines at the Rincon casino.

State finance officials said the decision would not affect \$360.5 million in general fund payments next fiscal year from Indian tribes that have previously reached gambling compacts with the state.

The Supreme Court, as is customary, didn't offer either a written or verbal explanation for its decision not to hear California's appeal. At least four of the nine justices must agree for an appeal to be heard.

The fate of California's appeal, though, may have been sealed on May 24, when the Obama administration formally urged the court not to disturb the 9th Circuit's decision.

The solicitor general's office weighed in at the request of the court, whose members wanted to know what the administration's top lawyer thought.

The Rincon Band operates its casino under a compact negotiated with the state. In 2003, tribal leaders advised state officials that they wanted to renegotiate the compact. California first offered to allow 900 additional slot machines, to join the casino's existing 1,600 machines. In return, state officials asked for 15

percent of the casino's annual net revenue, as well as 15 percent of the net revenue from the new machines.

Negotiators eventually reached an impasse, and a lawsuit ensued. Judges, in time, concluded that the state's demand for a fee paid into the general fund amounted to a tax on the tribe, and that, in turn, was deemed to be bad-faith negotiating.

The court's decision means the state and tribal officials can now be compelled to have their differences settled through mediation.