

# State Poised to Lose Indian Casino Cash?

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As legislators ratified a new state budget last week, it's doubtful that many of them considered the dangers to that budget posed by the final legal smackdown of California's attempt to get a cut of millions of dollars in tribal gaming revenue.

Now, there are signs that legal defeat puts at least a reasonably sized question mark in a budget that, to pencil out, needs every dollar it can get. My story on this morning's edition of [The California Report](#) examines the early signs of financial fallout over the case known officially as [Brown v. Rincon Band of Luiseno Mission Indians](#).

That name, though, is a bit misleading; after all, the original case -- containing the crux of the matter -- was filed by [the San Diego area tribe](#), not the state. And it was a case sparked by the policies not of the current governor, but the former one.

But the bottom line is one Governor **Jerry Brown** now inherits: California's demand for a slice of the profits during negotiations with an Indian gaming tribe was illegal. And some say it could impact the deals that were actually consummated.

The final chapter in a fight dating back to the seeds of Rincon's anger in 2005 was written on June 27, when the U.S. Supreme Court [refused to hear](#) the state's appeal of a lawsuit won by the tribe. That lawsuit was sparked by the deal former Governor **Arnold Schwarzenegger** offered to renegotiate Rincon's original 1999 casino compact: a percentage of the profits for the general fund.

Rincon successfully argued that such a demand amounted to a tax, something states can't generally assess against tribes under federal law. In particular, the case highlighted the issue of tribal "exclusivity" to Nevada-style casino operations... something Schwarzenegger suggested was worth a cut of the action, but which Rincon argued it already possessed thanks to two [voter-approved ballot initiatives](#).

The real question -- the \$364 million question, in fact -- is whether the Rincon decision opens the door for the tribes that *did* sign [those revenue sharing deals](#) to stop sending money to Sacramento.

"I think we need to go in and reevaluate our situation," said **Robert Smith**, chairman of the [Pala Band of Mission Indians](#) near San Diego. In a phone interview on Wednesday, Smith said his tribe pays \$18 million a year to the state's general fund and would like Governor Brown to consider changing that agreement.

While exactly how many of the 15 tribes that pay into the general fund are thinking the same thing isn't known, several sources confirm there are others. One that did so on the record is the [United Auburn Indian Community](#) in Placer County, according to tribal attorney **Howard Dickstein**. Dickstein has also represented Pala and is one of the architects of California's original tribal compacts.

"I think tribes that continue to contribute [money] have serious questions," he said in a phone interview. "It's a new ballgame."

State finance officials say that in the 2009-10 fiscal year, the revenue sharing deals provided \$263.2 million in unrestricted cash to the general fund, plus another \$100.8 million linked to transportation funding. That's a marked increase from the first year of revenue sharing, the 2004-05 fiscal year, where the total was about \$19.3 million.

In the [budget signed into law last week](#), the state expects \$360.5 million (including the transportation portion). And given the severity of cuts made, that's a lot of cash.

But will some tribes seek to stop payment?

"They could simply refuse to honor those payment provisions, and dare the state to try to come in and seek compensation," said **Robert Whittlesey**, a Washington, D.C. attorney who specializes in Indian gaming law.

Whittlesey has worked with some state tribes, and also works with some California counties on tribal gaming issues.

That would be a bold position, and not one on which the Brown administration is likely to look kindly.

"Our view that the agreements we have in place are perfectly valid," said **Jacob Applesmith**, a senior adviser to Brown on Indian gaming issues.

And Indian gaming law attorney Whittlesey admits that not all of the revenue-sharing tribes are in the same position; he says those that have

significantly expanded their casino operations -- more slot machines -- under the Schwarzenegger compacts could then risk losing those machines. Only those that have been more conservative, still operating in a size relatively similar to pre-Schwarzenegger, could afford to try to break their deal.

Regardless, Governor Brown clearly seems intent on closing the book on the Schwarzenegger stance of tribal dollars to help balance the state's books. In March, [he signed the first and only compact \(so far\) of his new administration](#), a reworking of one of the Schwarzenegger agreements that the feds rejected after the Rincon tribe won its case. And adviser Applesmith says Brown's intention is to seek revenue sharing that benefits local communities, not the state.

Pala chairman Smith says that's the way he'd rather do things.

"I think we should still pay something," said Smith. "I'm a firm believer in paying the local governments, the economy we live in, road impacts, fire protection, law enforcement."

Governor Brown is, says his adviser, willing to consider new negotiations with some of these revenue-sharing tribes. But the question, it seems, may be what those tribes want in terms of profit sharing changes, and how fast they want it.

In the end, one thing's for sure: the Schwarzenegger era of Indian gaming... which was the longest under any governor since voters gave their blessing to the multi-billion dollar industry... is now officially over.