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After seven years Rincon tribe has a new gaming compact

February 20, 2013

For the Rincon Band of Luiseño Indians, it took seven years of litigation, negotiations, and an unorthodox route of approval to get their 1999 tribal-state gaming compact renegotiated.



Gaming tribes in California operate casinos under their state tribal gaming compacts. Harrah's Rincon Casino is operated by the Rincon tribe under such a compact. It is undergoing an expansion that will result in two hotel towers, as shown in this artist's rendering.

Setting a legal and political precedent as the first California agreement negotiated through the federal courts, the Rincon secretarial procedures were approved by Kevin Washburn, Assistant Secretary-Indian Affairs, on Feb. 8, bypassing the California governor and legislature.

With the Rincon victory in the courts, the state was forced to end several illegal practices related to negotiating tribal state casino compacts and directed by the Southern District Federal Court to meet with the Band to negotiate a compact that complied with federal law.

Rincon and Governor Jerry Brown began negotiations in earnest over a year ago, after the U.S. Supreme Court refused to hear the state's appeal of the 2004 Rincon vs. Schwarzenegger lawsuit. The parties reached agreement on most issues within the deadline set by law and the court. However, some issues remained unresolved at the expiration of the court-ordered deadlines.

On April 11, 2012, both sides submitted final offers to a mediator.

On June 13, 2012, the court-appointed mediator selected the tribe's version as most consistent with the findings of the court and forwarded it to Interior for review. Brown had a 60-day window to approve the Rincon offer, or do nothing, leaving the final approval to the federal government in the form of secretarial compact procedures issued by DOI.

When Rincon sued Gov. Arnold Schwarzenegger for "illegal taxation" and "bad faith" in renegotiations for a gaming compact, seeking to add 900

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new machines to the tribe's gaming enterprise--Harrah's Rincon Casino and Resort--few expected the band to win. Especially, since California tribes had been unable to get the federal government to step in and force the state to comply with the rules of tribal state gaming compact negotiations, specifically bad faith remedies, beginning in 1990, when tribes were desperate to make gaming legal by negotiating a compact with a recalcitrant Gov. Pete Wilson. However, after seven years of litigation going from the federal District Court, twice to the 9th Circuit Court of Appeals, and a failed attempt by the state to involve the U.S. Supreme Court, the Rincon Band prevailed. The federal court stepped in, imposing oversight of compact negotiations between the state and the tribe making it the first time in California legal remedies for an impasse in negotiations between a tribe and the state under the federal Indian Gaming Regulatory Act (IGRA) were triggered.

Critical new terms of the compact include:

- Provides for an increase to 2,250 machines
- Current compact limit is 2,000 machines
- Extends term of compact through 2037
- Current compact set to expire in 2020
- Provides for payment of proportionate share of state's costs to regulate gaming directly to state
- Currently state regulatory costs are appropriated by the legislature out of the special distribution fund
- Nearly \$ 1 million per year is anticipated to be paid by Rincon under this provision
- Preserves existing obligations to revenue sharing trust fund
- Rincon currently pays in excess of \$ 3million per year into fund, the proceeds of which are distributed to non-gaming tribes
- Under new compact, RSTF would receive an additional \$ 1 million, with the total exceeding \$ 4 million if the band operates at 2,250 machine capacity

more

- Retains regulatory scheme of 1999 compacts

Unresolved issues that the band and state commit to pursue outside of compact litigation

Rincon/San Diego County Shared Benefits Fund

Rincon and county agreed upon preliminary statement of terms in September, 2011 and will continue discussions

Tribal/state compact(s) resolving issues of taxation

Substantial discussions occurred regarding unresolved issues of state-

imposed taxes of gasoline, tobacco products and other on-reservation sales. Those discussions set a foundation for negotiating government-to-government tax compacts

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