

Rincon Signs 'Historic' Gambling Compact

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[Dave Palermo, Gambling Compliance](#)

The American Indian tribe that last year won a landmark lawsuit against revenue sharing in tribal-state gambling agreements Friday became the third tribe in the 25-year history of Indian gambling law to get a compact through Bureau of Indian Affairs secretarial procedures.

"It's a historic act," Kevin Washburn, assistant secretary for Indian affairs, said an hour after notifying chairman Bo Mazzetti of the Rincon Band of Luiseño Indians that the tribe's compact was approved and signed into law.

"As it turns out, this happens about once a decade."

The only other two tribes that obtained tribal-state compacts through the secretarial process were the Mashantucket Pequots, owners of Foxwoods Casino Resort in Connecticut, and the Northern Arapahos, operators of the Wind River Hotel and Casino near Riverton, Wyoming.

Secretarial procedures can be utilized under the Indian Gaming Regulatory Act (IGRA) of 1988 for states found by the federal courts to engage in "bad faith" negotiations on tribal-state gambling agreements, or compacts.

Rincon turned to the process after it [won a federal lawsuit](#) against efforts by former Governor Arnold Schwarzenegger to force the tribe to pay shares of its casino revenues to the state general revenue fund in exchange for additional slot machines.

The case was turned over to the Bureau of Indian Affairs (BIA) last summer after federally-mandated compact negotiations between the tribe and Governor Jerry Brown got bogged down over the maximum annual increase the state could bill the tribe for regulatory expenses.

Rincon won a mediator ruling that the fees could only go up 3 percent a year. The state was seeking 7 percent.

"It's been a nine-year struggle," said a jubilant Mazzetti. "When we started down this road we didn't know where we were going to end up."

Mazzetti praised BIA officials, Brown and the state's negotiator Jacob Appelsmith.

"They were fair and honest with us all the way through, and reasonable," Mazzetti said. "That's all we wanted; someone who would sit down with us and be reasonable."

The Ninth District Court ruled in 2011 that Schwarzenegger acted in bad faith in demanding

Rincon pay a share of casino revenue to the state general fund in exchange for additional slot machines, which justices said violated IGRA tax prohibitions.

The U.S. Supreme Court **declined to hear the case on appeal**, upholding the ruling.

In renegotiating some 1999 compacts signed by 60 tribes and new agreements, Schwarzenegger had been demanding that tribes pay their "fair share" to help alleviate a state budget deficit.

Fifteen tribes pay \$360m a year into the general fund for the right to exceed the 2,000 machine limit in the 1999 compacts.

Ninth Circuit judges said monies should instead be diverted to local governments to offset the impact of casinos on counties and municipalities.

The court noted that tribal exclusivity to operate casino gambling is guaranteed in an amendment to the California constitution and cannot be used as leverage in compact negotiations.

The Rincon case is credited with forcing state officials throughout the country to abandon efforts to extract onerous revenue shares from Indian governments seeking tribal-state compacts necessary under IGRA to operate Class III, casino-style gambling.

"The federal definition of the goal of Indian gaming is to generate revenues to fund tribal government responsibilities and obligations to provide jobs, health care, social and safety services for tribal members, not to pad or fix a state's budget," Mazzetti said.

"Someone had to make the state own up to the fact its negotiations with tribes were illegal. It was obvious Governor Schwarzenegger was not interested in recognizing tribal sovereignty, or voluntarily abiding by laws governing tribal state compact negotiations.

"We didn't take on this case for Rincon alone; we did it for all the tribes."

It is not clear, however, what impact the ruling may have on the more than 40 California tribes still operating under the 1999 compacts, which expire in 2020.

Although the compacts have favored nation clauses in the event a tribe later negotiated a better agreement, the fact the Rincon compact was reached through secretarial procedures may not allow them to exercise that option.

Several tribes that negotiated Schwarzenegger agreements are asking Brown to restructure the compacts. But the Ninth Circuit Court said the Rincon case should not impact those tribes that willingly entered into the Schwarzenegger agreements.

Six compacts negotiated by Brown require tribes to pay about 15 percent of their revenues to reimburse the state for regulatory costs and mitigate impacts on local communities. The compacts do not require payments to the state general fund.

"I give credit to the Brown administration for being more reasonable than the Schwarzenegger

administration,” Rincon attorney Scott Crowell said.

“But a 15 percent rate is still a tax on Indian gaming. We will yet see whether this decision translates into more reasonable revenue sharing with California tribes.”

Brown’s office could not be reached Friday for comment.

The Rincon compact is similar to the 1999 compacts, which expire in 2020.

But the agreement allows the tribe to add 250 more machines to the 2,000 it operates at its Harrah’s Rincon Casino and hotel near San Diego. The agreement extends through 2037.

The tribe is in negotiations with San Diego County officials to mitigate environmental, public safety and other casino impacts.