

**SANTA BARBARA COUNTY  
BOARD AGENDA LETTER**



Clerk of the Board of Supervisors  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101  
(805) 568-2240

**Agenda Number:**  
**Prepared on:** 8/6/02  
**Department Name:** Supervisor Marshall  
**Department No.:**  
**Agenda Date:** 8/13/02  
**Placement:** Departmental  
**Estimate Time:** 25 minutes  
**Continued Item:** NO  
**If Yes, date from:**

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**TO:** Board of Supervisors  
**FROM:** Gail Marshall, Third District Supervisor  
**STAFF CONTACT:** Jennifer Klein  
County Counsel's Office  
**SUBJECT:** Indian Gaming Special Distribution Fund

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**Recommendation(s):**

That the Board of Supervisors:

- A. Receive a status report on the Indian Gaming Special Distribution Fund, which was established in part to mitigate off-reservation impacts caused by gaming by the terms of the Tribal-State Compact, the document that authorizes tribal gaming in California.
- B. Authorize Chair to sign letter to the California Gambling Control Commission communicating County's concerns and policy recommendations regarding collection and distribution of funds in the Indian Gaming Special Distribution Fund.
- C. Direct appropriate staff or other County representative to attend the next meeting of the California Gambling Control Commission at which the timing and amount of tribal payments into the Fund will be discussed by the Commission, for the purpose of encouraging Commission action and policy consistent with the interests of local communities impacted by tribal gaming.

**Alignment with Board Strategic Plan:**

The recommendation(s) are primarily aligned with Goal No. 1. An Efficient Government Able to Respond Effectively to the Needs of the Community.

## **Executive Summary and Discussion:**

The Special Distribution Fund was created by the Tribal-State Compact and is a source of funds specifically intended to be available to local governments to address negative off-reservation impacts caused by tribal gaming operations. At the state level, key issues remain undetermined: (1) the amount of funds that will be paid into the Special Distribution Fund, (2) when those payments will begin, and (3) the amount that will ultimately be available to the County of Santa Barbara.

The California Gambling Control Commission plays an important role in addressing and resolving the first two issues. In the future, the Commission may also play a role in distributing the funds to local governments, such as Santa Barbara County. For these reasons, staff recommends that County communicate to the California Gambling Control Commission its various concerns and recommendations regarding the Special Distribution Fund and that it advocate for Commission policies favorable to local governmental and community interests.

### **A. Background and Purposes of the Special Distribution Fund**

The Special Distribution Fund (“SDF”) is one of two funds created by the Tribal-State Compact. The other fund is the Revenue Sharing Trust Fund (“RSTF”) which is designed to share gaming revenues with tribes that do not have Compacts with the Governor. Under Government Code §12012.85, the monies in the SDF shall be available for appropriation by the Legislature for the following purposes:

- (a) Grants, including any administrative costs, for programs designed to address gambling addiction.
- (b) Grants, including any administrative costs, for the support of state and local government agencies impacted by tribal government gaming.
- (c) Compensation for regulatory costs incurred by the State Gaming Agency and the Department of Justice in connection with the implementation and administration of tribal-state gaming compacts.
- (d) Disbursements for the purpose of implementing the terms of tribal labor relations ordinances promulgated in accordance with the Tribal-State Compact, subject to certain limitations.
- (e) Any other purpose specified by law.

The language of Government Code §12012.85 is not identical to the language of the Tribal-State Compact. In particular, the Compact explicitly states that money in the SDF shall be available to make up any shortfalls in the RSTF.

### **B. Tribal Contribution and State Collection of Special Distribution Fund Money**

Not every tribe with gaming and/or a signed compact contributes to the SDF. Under the Compact, only tribes that were operating gaming in violation of federal law on September 1, 1999 contribute to the SDF. The amount of a tribe’s contribution to the SDF is based on a percentage of the “net wins” for all current gaming machines multiplied by the number of gaming machines the tribe had in operation on September 1, 1999. The more machines in operation as of that date, the greater the percentage of net wins will be deposited into the SDF. Under the Compact, for the first 200 machines no percentage is taken, for the next 201-500 machines 7% is taken from those machines, for the next 501-1000 machines 10% is taken from those machines. For all machines beyond 1000, 13% is taken.

The Santa Ynez Band of Chumash Indians was operating 760 gaming machines on September 1, 1999. There has been some dispute between the tribes and the state over the definition of “net wins”, and thus over the amount the tribes must pay into the SDF. The California Control Commission appears to be leaning towards an interpretation of “net wins” that does not deduct tribal costs and expenses prior to calculation of the net-win. Tribes have advocated for a calculation of “net wins” after deduction of their costs and expenses. County staff recommends that County advocate for the former interpretation of “net wins” which maximizes the amount of funds being paid into the SDF.

The Governor’s Compact with the Santa Ynez Band was executed on September 10, 1999. Under Section 5.1.(b) of the Compact, tribes start to pay into the SDF at the end of the first calendar quarter following the second anniversary date of the effective date of the Compact. There has been some dispute between the Tribes and the State over the meaning of this section. Many tribes take the position that they have to pay in to the SDF starting in October 2002. The California Attorney General’s Office is of the opinion that the beginning pay in date was June 30, 2002. County staff recommends that County advocate that the California Gambling Control Commission follow the Attorney General’s opinion by enforcing the June 30, 2002 date.

### **C. Distribution of Special Distribution Fund Money**

The State Legislature has yet to pass legislation detailing how the SDF will be administered or distributed. According to various estimates the SDF is projected to contain between \$40-\$80 million. In April, 2002, the County of Santa Barbara was invited by the Tribal Alliance of Sovereign Indian Nations (TASIN) to participate, along with other local governments, in a local government committee that would develop a proposal for distribution of the SDF. In May, 2002, Supervisor Marshall was appointed by the Board to be the County’s representative to the Local Government Committee. In June 2002, the Committee developed a proposal for distribution of SDF monies. [Attachment 1] The Committee intends to present the proposal to TASIN and eventually to key state lawmakers in the coming weeks. It is unclear at this time whether TASIN will support the Committee’s proposal for distribution of the SDF. County staff recommends that County continue to monitor legislation regarding SDF distribution and to advocate for a distribution scheme that is consistent with the recommendations and proposal developed by the Local Government Committee and with County interests. [see Attachment 1]

### **Mandates and Service Levels:**

Development and promotion of policy recommendations to the California Gambling Control Commission concerning the administration of the Indian Gaming Special Distribution will allow staff to encourage state-level action that will expeditiously bring the maximum amount of funds to Santa Barbara County to assist in its mitigation of off-reservation impacts caused by tribal gaming. The County is not required by law to develop or promote policy recommendations concerning administration of the Indian Gaming Special Distribution Fund.

### **Fiscal and Facilities Impacts:**

Potentially substantial revenue increases depending on the nature of the action(s) taken by the California Gambling Control Commission, and on future development and passage of state legislation regarding allocation of money in the Indian Gaming Special Distribution Fund.

**Special Instructions:**

County Administrator's Office staff to obtain Chair's signature and send letter to California Gambling Control Commission and to copied addressees. [See Attachment 2]

**Concurrence:**

County Counsel

**Attachments:**

Attachment 1: Local Government Committee Proposal

Attachment 2: Address List

cc: Chairman Vincent Armenta, Santa Ynez Band of Chumash Indians

August 13, 2002

John Hensley, Chairman  
California Gambling Control Commission  
2399 Gateway Oaks Drive, Suite 100  
Sacramento, CA 95833-4231  
FAX: (916) 263-0499

Re: Tribal-State Compact Section 5.0 - Indian Gaming Special Distribution Fund

Dear Chairman Hensley,

The County of Santa Barbara, a political subdivision of the State of California, is interested in the California Gambling Control Commission's policies regarding implementation and interpretation of Section 5.0 of the Tribal-State Compact. Section 5.0 addresses tribal contributions to the Indian Gaming Special Distribution Fund, as well as the purposes for which monies in the Fund may be used and allocated, among other things.

County understands that the Commission will be monitoring both the timing and amount of tribal payments into the Special Distribution Fund, consistent with the terms of the Tribal-State Compact. It is County's position that the interpretation of the term, "net wins" that results in the maximum amount of money being deposited into the Special Distribution Fund should be utilized by the Commission.

It is County's further position that the required transfers of tribal gaming funds to the Special Distribution Fund were due on June 30, 2002, at the conclusion of the calendar quarter that included the second anniversary date of the effective date of the Compact, which was May 16, 2000. The California Attorney General's Office has also concluded

that June 30, 2002, was the date on which transfers were due, and not September 30, 2002, which has been advocated by some parties.

County would like to offer the following comments and recommendations to the Commission as it formulates and implements its own policies concerning administration of the Special Distribution Fund:

1. Availability of funds to address off-reservation impacts caused by gaming was one of the primary reasons for creation of the Special Distribution Fund under the Compact.
2. Due to jurisdictional constraints and concepts of tribal sovereignty, counties may not tax tribal gaming operations or lands; and thus do not have available the ordinary sources of revenue used to provided services to county residents impacted by tribal gaming operations.
3. Due to the rapid and extensive development of tribal casinos, typically in remote rural locations, counties have experienced unanticipated and significantly increased costs associated with providing services to and maintaining infrastructure for off-reservation areas surrounding tribal gaming operations. The types of impacts counties experience are myriad. Examples include impacts on law enforcement, fire and emergency services, affordable housing, environmental quality, land uses, traffic, roads, transportation, water quality, wastewater management, recreation, youth and senior services, childcare, and public health.
4. Funds in the Special Distribution Fund are specifically available to local governments to address negative off-reservation impacts of tribal gaming are contained in the Special Distribution Fund.
5. It is in the best interest of all citizens, tribal and non-tribal, residing in Counties in which tribal gaming operations are located, that the respective Counties receive the maximum amount of funding possible to address negative off-reservation impacts caused by tribal gaming.
6. It is in the best interest of all citizens, tribal and non-tribal, residing in Counties in which tribal gaming operations are located, that monies be expeditiously transferred into the Special Distribution Fund at the earliest designated date under the Tribal-State Compact, June 30, 2002.
7. In order to maximize the amount of money available to address off-reservation impacts, the Commission and other relevant entities should minimize costs associated with administration of the Special Distribution Fund.

8. In order to prevent abuses and fraud, financial reports and audits concerning average net wins for tribal gaming machines should be made available to the public by the Commission. Such an information-sharing requirement is consistent with the spirit of the Tribal-State Compact, and specifically with Section 5.0, to which the tribes voluntarily agreed.

The County of Santa Barbara respects tribal sovereignty, the interests of the State, and the Commission's expertise in the area of gaming regulation. County requests that the Commission give serious consideration to the aforementioned comments, concerns, and recommendations regarding the Special Distribution Fund and local government interests. If the Commission would like to discuss this letter, or would like further input or assistance from the County on issues related to the Special Distribution Fund now or in the future, please contact Deputy Chief Administrator Jim Laponis in the Office of the County Administrator at (805)568-3400.

Sincerely,

GAIL MARSHALL  
Chairperson  
Santa Barbara County Board of Supervisors

cc:

Governor Gray Davis, State of California  
Chairman Vincent Armenta, Santa Ynez Band of Chumash Indians  
State Senator Jack O'Connell  
State Assemblywoman Hanna-Beth Jackson  
DeAnn Baker, California State Association of Counties  
Chairperson Lynn Valbuena, Tribal Alliance of Sovereign Indian Nations

**ATTACHMENT 1**

June 28, 2002

**FINAL PROPOSAL**

**LOCAL GOVERNMENT COMMITTEE\***

\*Committee members include over 50 representatives from local governments in Santa Barbara, San Bernardino, and Riverside Counties

**Background:**

The Local Government Committee unanimously agreed to advocate for the division of the funds a Contributing Tribe pays into the Special Distribution Fund into the following percentages for the following purposes:

**40% for entitlement funds for local governments impacted by contributing tribes' gaming operations**

(EXAMPLE: IF the tribe contributes \$10 Million, then 40% is \$4 Million.)

**20% for grant funds for local government impacted by contributing tribes' gaming operations**

(EXAMPLE: IF the tribe contributes \$10 Million, then 20% is \$2 Million.)

**40% for remaining purposes specified by law:**

(EXAMPLE: IF the tribe contributes \$10 Million, then 40% is \$4 Million.)

- for grants to local governments impacted by non-contributing tribes' gaming operations
- for grants to gambling addiction programs
- for grants to state agencies impacted by tribal gaming
- for regulatory costs of the California Gambling Control Commission
- for costs associated with implementation of labor agreements as specified in the Compact
- for back-filling shortfalls in the Revenue Sharing Trust Fund
- for any other purpose specified by law – as long as it relates to mitigating the negative effects of tribal gaming in CA.

**Committee's Task: Develop Objective Formula for determining (A) which cities and/or counties are entitled to receive reoccurring payments from the money contributed to the SDF by a tribe located in the impacted County in which an impacted city or cities are also located; and (B) how much each entitled city and/or county will receive from the money contributed to the SDF by a tribe located in the impacted County in which an impacted city or cities are also located.**



## Committee's Proposal:

Funds contributed to the SDF by a contributing tribe will be segregated and placed in "Individual Tribal Casino Area Account". 40% of the Individual Tribal Casino Area Account shall be distributed to entitled local governments according to the following provisions<sup>1</sup>:

**A. Entitled Local Government.** To be an Entitled Local Government, at least two of the following criteria must be met:

#1. City or County territory borders tribal land on which a tribal casino is located on all sides or only one city or county territory borders said tribal land and the balance of said tribal land is bordered by lands of another tribe or governmental entity other than a city or a county.

#2. City or county territory partially borders tribal land on which tribal casino located.

[If a local government meets #1, it automatically meets #2. If no local government meets #1, multiple local governments may meet criteria #2, because multiple local governments may border the same reservation.]

#3. Street, road, or highway that provides predominant vehicular access to the tribal casino runs through any portion of the boundaries of a city or county.

[This criteria is intended to capture a variety of impacts felt by a local government: traffic, air pollution, stress on infrastructure, emergency response, fire, law enforcement, affordable housing, and land use planning.]

#4. All or a portion of the territory of a city or a county is located within a three (3) mile radius of a tribal casino. ... (If a local government satisfies #1 or #2, it automatically meets #4.)

**B. Distribution.** The following formula shall be used by the County for determining how much each entitled local government will receive the Individual Tribal Casino Area Account

Entitlement Funds (i.e. 40% of the Individual Tribal Casino Area Account ) shall be distributed equally among each class according to the following breakdown:

1. If it satisfies all four criteria – Class A (If local government fall into Class A, then it automatically falls into Classes B and C as well.)  
(50% of entitlement funds split equally among all qualifying Class A local governments.)
2. If it satisfies three criteria – Class B (If local government fall into Class B, then it automatically falls into Classes C as well.)

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<sup>1</sup> Total 100%: 40% for entitlement funds for qualifying local cities and counties; 40% to general fund for state, local, and other listed purposes; 20% for grant allocation to local cities and counties.

(30% of entitlement funds split equally among all qualifying Class B local governments.)

3. If it satisfies two criteria -- Class C  
(20% of entitlement funds split equally among all qualifying Class C local governments)

If no local government qualifies under Class A, money in the Class A category is added to the Class B category. If no local government qualifies under Class B, money in the Class B category is added to the Class C category. If no city or county qualifies under Class C, money in Class C category is transferred to grant money for the County in which the contributing casino is located.

## **2. Develop Criteria for determining which local governments qualify to receive grant funds from the Special Distribution Fund.**

### List of Impacts for which grants may be made: (in no particular order)

- law enforcement/ district attorney costs
- fire/ emergency response
- affordable housing
- environmental impacts
- sewer/water
- behavioral health
- planning/ adjacent land uses
- public health
- roads
- transportation services
- waste management
- recreation/ youth programs
- child care

### **20% of the Individual Tribal Casino Area Account shall be distributed to impacted local governments, as grants, according to the following process:**

A. **Grant Qualification.** To qualify for a grant a local government must demonstrate that is impacted by tribal gaming activity in one of the area of impacts listed above.

#### **B. Grant Decision Maker**

1. County is decision maker
2. Procedure for appeal to the California Gambling Control Commission.

#### **C. Administrative Costs:**

1. County will receive 2% of the amount to be distributed in entitlements and grants the first year of grant program administration.
2. For each year subsequent to the first year of grant program administration, County will receive demonstrated administration costs, not to exceed 1% of the amount to be distributed in entitlements and grants.

**3. Grant Priorities** – see above list of impacts for which grants may be available.

#### **4. Entitlement Priorities – NONE**

Once a city and/or county qualifies to receive entitlement funds, it is free to determine its own spending priorities.

**ATTACHMENT 2**

*Copy List Addresses for 8/13/02 Letter to California Gaming Commission*

**California State Association of Counties**

1100 K Street, Suite 101  
Sacramento, CA 95814

**Tribal Alliance of Sovereign Indian Nations**

P.O. Box 3137  
Patton, CA 92369

**Governor Gray Davis**

State Capitol  
Sacramento, CA 95814

**Vincent Armenta, Chair**

**Santa Ynez Band of Chumash Indians**

P.O. Box 517  
Santa Ynez, CA 93460

**Senator Jack O'Connell**

228 W. Carrillo Street, Suite F  
Santa Barbara, CA 93101

**Assemblywoman Hanna Beth Jackson**

101 W. Anapamu Street, Suite A  
Santa Barbara, CA 93101