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## California Tribal-State Gambling Compacts, 1999-2006

*By Charlene Wear Simmons, Ph.D.*  
*Assistant Director*

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C F O R N I A R E S E A R C H B U R E A U

# **California Tribal-State Gambling Compacts, 1999-2006**

*By Charlene Wear Simmons, Ph.D.*  
*Assistant Director*

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## INTRODUCTION

Since the enactment by California voters of Proposition 1A in March 2000, Indian casino gambling has expanded rapidly in the state and is now a \$7.2 billion industry.<sup>1</sup> Sixty one of California's 108 federally recognized tribes have signed the tribal-state compact negotiated by Governor Davis in 1999, in anticipation of the passage of Proposition 1A. Eight of those tribes have since negotiated amended 1999 compacts with the governor that have been ratified by the legislature, while five more tribes have negotiated amended 1999 compacts that have not been ratified. Another nine tribes have negotiated new tribal-state compacts; five of those compacts have been ratified by the legislature.

The purpose of this report is to examine the evolution of key provisions in California's tribal-state compacts. It does this by summarizing changes in major subjects such as revenue sharing and environmental standards, beginning with the 1999 compact, and then tracking major changes in subsequent compacts. The report is not intended to provide a detailed legal analysis or to cover all aspects of the compacts.\*

This information should be useful to state policymakers and other interested parties if, as seems likely, there are more successful negotiations to expand tribal gambling in the future. A number of tribes with tribal-state compacts appear to be interested in expanding their operations, while 23 non-compact tribes have applications to take land into trust for gaming purposes pending at the U.S. Department of the Interior.<sup>†</sup>

### A BRIEF TIME LINE

**1999** Governor Davis negotiated a 20-year tribal-state gaming compact with 57 federally recognized Indian tribes in California that was ratified by the legislature.<sup>‡</sup> The legislature also voted to place Proposition 1A, a legislative constitutional amendment, on the March 2000 ballot.<sup>§</sup>

**2000** Two-thirds of the state's voters voted in favor of Proposition 1A on the March ballot, which authorized the governor, with the approval of the legislature, to negotiate

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\* Text of the state's ratified tribal-state gaming compacts, and some unratified compacts, can be found at [www.cgcc.ca.gov/compacts.html](http://www.cgcc.ca.gov/compacts.html)

† See Charlene Wear Simmons, Ph.D., *Gambling in the Golden State, 1998 Forward*, California Research Bureau, 2006, for a detailed discussion of the process by which land is taken into trust for Indian gambling purposes, available at <http://www.library.ca.gov/HTML/statseg2a.cfm>

‡ AB 1385 (Battin), Chapter 875, Statutes of 1999, designated the governor as the state officer responsible for negotiating and executing compacts between the state and federally recognized Indian tribes located in California; the legislation also ratified 57 tribal-state compacts and other compacts identical in all material respects to those compacts.

§ Senate Constitutional Amendment 11, Resolution Chapter 142, Statutes of 1999.

and conclude compacts for the operation of slot machines, lottery games and banking\* and percentage card games (such as twenty one) by federally recognized Indian tribes in California on Indian lands. The 1999-negotiated compact was ultimately signed by 61 tribes† and approved by the federal government.

**2003** Governor Davis negotiated new tribal-state compacts that were ratified by the legislature with three tribes: the Torres-Martinez Desert Cahuilla Indians (SB 930, Ducheny, Chapter 802, Statutes of 2003), the La Posta Band of Mission Indians and the Santa Ysabel Band of Diegueño Mission Indians (SB 411, Ducheny, Chapter 740, Statutes of 2003).

**2004** Governor Schwarzenegger negotiated new tribal-state compacts with the Fort Mojave Indian Tribe and the Coyote Valley Band of Pomo Indians as well as amended 1999 compacts with seven tribes (the Buena Vista Rancheria of Me-Wuk Indians, Pala Band of Mission Indians, Pauma-Yuima Band of Mission Indians, Rumsey Band of Wintun Indians, United Auburn Indian Community, Viejas Band of Kumeyaay Indians and the Ewiiapaayp Band of Kumeyaay Indians). These new compacts and amended compacts were ratified by the legislature.‡ A new compact negotiated by the governor with the Lytton Rancheria was not ratified.

**2005** Governor Schwarzenegger negotiated new tribal-state gaming compacts with three tribes (the Big Lagoon Rancheria, Los Coyotes Band of Cahuilla and Cupeño Indians, and the Yurok Tribe of the Yurok Reservation), and an amended 1999 compact with the Quechan Tribe of the Fort Yuma Reservation. Only the amended 1999 Quechan compact has been ratified by the legislature (in August 2006).§

**2006** Governor Schwarzenegger negotiated amended tribal-state compacts with the Agua Caliente Band of Cahuilla Indians, the Pechanga Band of Luiseño Indians, the Morongo Band of Mission Indians, the San Manuel Band of Mission Indians, and the Sycuan Band of the Kumeyaay Nation. These amended 1999 compacts were submitted to the

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\* In house-banked card games, players wager money against the gaming establishment, which has a stake in the game and takes a percentage of the wager. In California, these games can only be played in Indians casinos authorized by a tribal-state gaming compact.

† The 61 tribes that signed the 1999 tribal-state compact are listed in Appendix A. The ratifying legislation also ratified all compacts that were “identical in all material respects.” Government Code 12012.5(b).

‡ SB 1117, Burton (Chapter 856, Statutes of 2004) ratified new and amended tribal-state compacts with the Coyote Valley Band of Pomo Indians, Fort Mojave Indian Tribe, Buena Vista Rancheria of Me-Wuk Indians, and Ewiiapaayp Band of Kumeyaay Indians. SB 678, Nuñez (Chapter 91, Statutes of 2004), ratified amended compacts with the Pala Band of Mission Indians, the Pauma Band of Luiseño Indians, the Rumsey Band of Wintun Indians, the United Auburn Indian Community, and the Viejas Band of Kumeyaay Indians.

§ SB 470, Ducheny (Chapter 527, Statutes of 2006) ratified the compact with the Quechan Tribe of the Fort Yuma Reservation.

legislature during the last week of the 2005-2006 legislative session and were not ratified.\* They may be resubmitted by the governor during the 2007-2008 session.

## **KEY PROVISIONS IN CALIFORNIA TRIBAL-STATE COMPACTS**

Each chapter of this report examines the evolution of a major provision of California's tribal-state gaming compacts from 1999 through 2006. The analysis first examines the state's 1999 tribal-state compact and then highlights key changes in more recent compacts. These changes generally address issues raised during implementation of the 1999 compact.

For purposes of analysis, we have grouped compact provisions into the following subject areas, each of which is analyzed in a separate chapter:

- **Facilities and Gaming Devices:** key issues include the number of gambling devices (slot machines) and allowable games.
- **Building Standards:** key issues include the extent of conformity with local, state and federal building and safety codes, particularly for fire suppression, the number, scope and source of inspections, and required corrective actions.
- **Consumer Protection Standards:** key issues include patron rights in the event of a dispute, the extent of legal liability, and dispute resolution processes and standards.
- **Environmental Standards:** key issues include standards for preparation and review of environmental impacts, local and state government involvement, and the extent of required mitigation and enforcement.
- **Labor Standards:** key issues include how unions are certified (submission of cards signed by over half of eligible employees versus a secret ballot conducted by the tribe), health and safety standards, and dispute resolution processes.
- **Local Government Agreements/Mitigation:** key issues include whether binding and enforceable agreements are required and the extent of required mitigation.
- **Problem and Pathological Gambling:** key issues include the minimum gambling age (18 or 21), business practices (such as advertising standards and exclusion programs), and information provided to assist problem and pathological gamblers.
- **Regulation and Enforcement:** key issues include the roles of tribes, the state and the federal government in establishing and enforcing licensing standards, the state and federal governments' ability to enact regulations, audit and inspect records and premises, and the testing and certification of games.

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\* AB 2549, Blakeslee, proposed ratifying six compacts, five of which were amended 1999 compacts-- Agua Caliente Band of Cahuilla Indians, San Manuel Band of Mission Indians, Pechanga Band of Luiseño Indians, Morongo Band of Mission Indians, Sycuan Band of the Kumeyaay Nation-- as well as a new compact with the Yurok Tribe of the Yurok Reservation that was first submitted in 2005.

- Revenue Sharing: Key issues include the definition of “net win” revenues on which payments to the state are based, the amount of payments to special funds, and revenue sharing with the state.
- Term of Compact

Tables 1 and 2 below summarize key provisions of the ratified and unratified compacts. The reader is advised to read the appropriate subject area for more detail.

**TABLE 1****COMPARISON OF KEY PROVISIONS IN RATIFIED INDIAN GAMING COMPACTS**

<i>Tribe</i>	<i>Facilities, Games</i>	<i>Building Standards</i>	<i>Consumer Protection</i>	<i>Environment</i>	<i>Labor</i>	<i>Local Govt</i>	<i>Problem Gambling</i>	<i>Regulation</i>	<i>Revenue Sharing</i>	<i>Term</i>
<b>1999 Compact</b> <b>61 tribes</b>	Per tribe: 2 facilities, 350 slots and up to 2,000 slots with more licenses, also card and lottery games	Uniform Building Code; tribal license/inspection	Tribal ordinance for patron disputes, \$5 million liability insurance	Tribal ordinance—good faith efforts and consultation	Tribe agrees to adopt model ordinance providing for union access and secret ballot certification with appeal to tribal forum. Tribe agrees to conform to federal OSHA standards, participate in state unemployment insurance program and may self-insure for workers compensation	Local consultation	No person under 18 or 21 if alcohol served	Licensing, state regs. to be approved by tribes, conditional state inspection, arbitration	Payments to RSTF and SDF*; none directly to state	2020
<b>Torres-Martinez (new 2003)</b>	2 facilities, 2,000 slots, card games, lottery games	To include uniform fire, plumbing, electrical, mechanical and related codes	Waives sovereign immunity for damages up to \$5 million liability insurance limit	Written mitigation agreements with city and county		Binding agreements with the city and county to mitigate off-reservation impacts; dispute resolution	No person under 21	Must send annual audit and tribal ordinances to state gaming agency; otherwise similar to 1999 compact	% annual net win to state General Fund, payments to RSTF but not the SDF	2024, possible extension to June 30, 2026
<b>La Posta (new 2003)</b>	1 facility, 350 slots, card games, lottery games			Written mitigation agreements with local governments and binding arbitration			No person under 21; mitigation for problem gambling			
<b>Santa Ysabel (new 2003)</b>	1 facility, 350 slots, cards, lottery games									

\* The Revenue Sharing Trust Fund (RSTF) is funded by quarterly payments from tribes based on the number of licensed slot machines over 350. The Special Distribution Fund (SPF) is funded with fees assessed on slot machines in operation as of September 1, 1999.

<i>Tribe</i>	<i>Facilities, Games</i>	<i>Building Standards</i>	<i>Consumer Protection</i>	<i>Environment</i>	<i>Labor</i>	<i>Local Govt.</i>	<i>Problem Gambling</i>	<i>Regulation</i>	<i>Revenue Sharing</i>	<i>Term</i>
<b>Coyote Valley</b>  <b>(new 2004)</b>	1 facility, 2,000 slots, card and lottery games	Annual certification, must meet or exceed California Building Code and the Public Safety Code; tribes must ensure fire suppression services, make a good faith effort to correct deficiencies	Tribal ordinance, binding arbitration, \$5 million in liability insurance	Defines <i>project</i> and <i>significant environmental effect</i> ; requires a TEIR (Tribal Environmental Impact Report) and local agreements, provides for binding arbitration	New model labor ordinance provides for union recognition upon submission of signatures of 50% of employees (no election required) along with labor organization’s written no-strike agreement, and provides for outside binding arbitration  Excluding United Auburn and Pauma, tribes agree to state OSHA and worker’s compensation,	Local agreements to compensate for public safety costs and effects on public health	Mitigation, posting of notices, limits access to under 18 & problem gamblers	State adopts regulations; requires testing and approval of gaming devices	% annual net win to state	Dec. 31, 2025
<b>Fort Mojave</b> <b>(new 2004)</b>	1 facility, 1,500 slots, card and lottery games		\$10 million in liability insurance, binding arbitration				Similar to Coyote Valley, applies to projects undertaken after effective date of amendments	Same except age 21 limit	Tribal assn. approval of state regs. required, new section on licensure of financial sources, otherwise similar to Coyote Valley compact	% payment to state varies with # of members
<b>United Auburn</b> <b>amended 2004</b>	2 facilities, unlimited slots, card and lottery games			Agreements with local governments to include reasonable payments for programs designed to address problem gambling		Fees to state for new machines vary by tribe (see text for detailed description), bond payments, payments to the RSTF				
<b>Buena Vista</b> <b>amended 2004</b>	2 facilities, unlimited slots; card and lottery games									
<b>Pauma Band</b> <b>amended 2004</b>	2 facilities, unlimited slots, card and lottery games									
<b>Ewiiapaayp</b> <b>amended 2004</b>	2 facilities, unlimited slots; card and lottery games									



<i><b>Tribe</b></i>	<i><b>Facilities, Games</b></i>	<i><b>Building Standards</b></i>	<i><b>Consumer Protection</b></i>	<i><b>Environment</b></i>	<i><b>Labor</b></i>	<i><b>Local Govt.</b></i>	<i><b>Problem Gambling</b></i>	<i><b>Regulation</b></i>	<i><b>Revenue Sharing</b></i>	<i><b>Term</b></i>
<b>Pala Band amended 2004</b>	2 facilities, unlimited slots, card and lottery games	Annual certification, must meet or exceed California Building Code and the Public Safety Code, must ensure fire suppression services and make a good faith effort to correct deficiencies		Similar to Coyote Valley compact, applies to projects undertaken after effective date of amendments	Tribal MOU with union prevails	Similar to Coyote Valley compact, includes existing local agreements	Agreements with local governments to include reasonable payments for programs designed to address problem gambling	Tribal assn. approval of state regulations, otherwise similar to Coyote Valley compact	Fees to state for new machines, broader definition of net win, bond payments, payments to the RSTF	Dec. 31, 2030
<b>Viejas amended 2004</b>	2 facilities, unlimited slots, card and lottery games				Tribes' labor relations ordinances and union agreements prevail					
<b>Rumsey Band amended 2004</b>	2 facilities, unlimited slots, card and lottery games									
<b>Quechan amended 2006</b>	1 facility, 1,100 slot machines, card and lottery games				1999 compact model ordinance, state OSHA and inspections	Similar to 2004 compacts, also a mitigation agreement with state transport. department	New provisions for problem gambling signage, self- exclusion, responsible marketing	Similar to Coyote Valley compact	% net win to state varies with # members; payments to the RSTF	Dec. 31, 2025

Source: California Research Bureau from California tribal-state gaming compacts

**TABLE 2****COMPARISON OF KEY PROVISIONS IN UNRATIFIED INDIAN GAMING COMPACTS**

<i><b>Tribe</b></i>	<i><b>Facilities, Games</b></i>	<i><b>Building Standards</b></i>	<i><b>Consumer Protection</b></i>	<i><b>Environment</b></i>	<i><b>Labor</b></i>	<i><b>Local Govt.</b></i>	<i><b>Problem Gambling</b></i>	<i><b>Regulation</b></i>	<i><b>Revenue Sharing</b></i>	<i><b>Term</b></i>
<b>Lytton new 2004</b>	1 facility, 2,500 slots, card and lottery games	Building already meets local codes	Same as the 2004 ratified compacts	Similar to the 2004 ratified compacts	As in 1999 compact, requires an employee election to certify a labor organization; dispute resolution provisions are similar to those in the 2004 Coyote Valley compact	Similar to 2004 Coyote Valley compact	Signage, self- exclusion, age 21 limit, staff training, \$ for local programs	Similar to the Coyote Valley compact	25% net win to state minus \$ to city, county and state Dept. of Transport.	Dec. 31, 2025
<b>Yurok new 2005</b>	2 facilities, 99 slots, card and lottery games	Meet CA Building Code and the Public Safety Code and ensure fire suppression services; requires inspections	Tribal ordinance, binding arbitration, \$5 million liability insurance				Signage, self- exclusion, age 21, staff training, advertising code, \$ for programs	Similar to the Coyote Valley compact	10-25% net win to state based on number of slot machines, minus local govt. payments	

<b><i>Tribe</i></b>	<b><i>Facilities, Games</i></b>	<b><i>Building Standards</i></b>	<b><i>Consumer Protection</i></b>	<b><i>Environment</i></b>	<b><i>Labor</i></b>	<b><i>Local Govt.</i></b>	<b><i>Problem Gambling</i></b>	<b><i>Regulation</i></b>	<b><i>Revenue Sharing</i></b>	<b><i>Term</i></b>
<b>Los Coyotes new 2005</b>	1 facility, 2,250 slots, card and lottery games	Meet local and state building codes and applicable Public Safety Codes; ensure fire suppression services; inspections	Tribal ordinance, binding arbitration, \$10 million liability insurance	Similar to 2004 compacts, defines <i>project</i> and <i>significant environmental effect</i> ; requires a TEIR, local agreements, binding arbitration	Similar to 2004 Coyote Valley compact; also self-funded unemployment insurance	Similar to 2004 compacts, also specifies a methodology to sample community support	Expands on Yurok compact, adds an involuntary exclusion program	Similar to Yurok compact	Annual 10- 25% net win from slots to state, minus payments to local govts. & state Dept. of Transportation, payments to RSTF after 6 years	Dec. 31, 2025
<b>Big Lagoon new 2005</b>	1 facility, 2,250 slots, card and lottery games									
<b>Morongo amended 2006</b>	2 facilities, 7,500 slot, card and lottery games	Meet local and Uniform Building Codes; requires inspections and sufficient fire suppression services		Requires a TEIR and binding arbitration that provides for feasible mitigation without unduly interfering with the project	Retains 1999 compact requirements such as elections to certify a union. May create own workers' comp system	As in 2004 compacts, requires enforceable local agreements that compensate for public safety costs and effects on public health	When appropriate, tribes agree to provide local compensation for programs that address gambling addiction	As in 1999 compact with new sections on licensure of financial sources and testing and approval of gaming devices	Annual payments to state of \$36.7 million and 15%-25% net win from new slots, \$2 million to RSTF	Dec. 31, 2030
<b>Sycuan amended 2006</b>	2 facilities, 5,000 slots, card and lottery games								Annual payments to state of \$20 million and 15% net win from new slots to state, \$3 million to RSTF	

<i>Tribe</i>	<i>Facilities, Games</i>	<i>Building Standards</i>	<i>Consumer Protection</i>	<i>Environment</i>	<i>Labor</i>	<i>Local Govt.</i>	<i>Problem Gambling</i>	<i>Regulation</i>	<i>Revenue Sharing</i>	<i>Term</i>
<b>San Manuel amended 2006</b>	2 facilities, 5,500 slots, card and lottery games	Meet CA Building Code and the Public Safety Code and ensure fire suppression services; requires inspections	Tribal ordinance, binding arbitration, \$10 million liability insurance	Requires a TEIR and binding arbitration that provides for feasible mitigation without unduly interfering with the project	Retains 1999 compact requirements such as elections to certify a union. May create own workers' comp system	As in 2004 compacts, requires enforceable local agreements that compensate for public safety costs and effects on public health	When appropriate, tribes agree to provide compensation for local programs that address gambling addiction	As in 1999 compact, with new sections on licensing financial source and testing and approval of gaming devices	Annual payments to state of \$45 million and 15%-25% of net win from new slots, \$2 million to RSTF	Dec. 31, 2030
<b>Pechanga amended 2006</b>	2 facilities, 7,500 slots, card and lottery games								Annual payments to state of \$42.5 million and 15-25% net win from new slots, \$2 million to RSTF	
<b>Agua Caliente amended 2006</b>	3 facilities, 5,000 slots, card and lottery games								Annual payments to state of \$23.4 million and 15-25% net win from new slots, \$2 million to RSTF	
Source: California Research Bureau from California tribal-state gaming compacts										

## FACILITIES AND GAMING DEVICES

### RATIFIED COMPACTS

#### *1999 Tribal-State Compact*

- Number** Limited to the number of gaming devices (slot machines) in operation on Sept. 1, 1999, or 350 gaming devices, with the ability to acquire licenses for up to 2,000 devices.\* No more than two gaming facilities per tribe on Indian lands.
- Games** Authorizes slot machines, any house-banked<sup>†</sup> or percentage card game, and any devices or games authorized under state law to the California State Lottery (except over the Internet unless generally allowed under state and federal law).<sup>‡</sup>

#### *2003 Tribal-State Compacts*

The three new compacts negotiated by Governor Davis in 2003 are similar to the 1999 tribal-state compact, with the following major differences.

##### *Torres-Martinez Desert Cahuilla Indians*

- Number** The tribe is authorized to offer a maximum of 2,000 Class III gaming devices (slot machines); no more than 350 at a designated Imperial Valley location and 1,650 at a Riverside County site when that land is taken into trust.
- If a later compact authorizes a tribe to have more than 2,000 gaming devices, the state agrees to negotiate for a similar increase at a tribe's request.

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\* Section 4.3.2.2 of the 1999 tribal-state compact describes a complex process for allocating licenses through a series of "draws" that was undertaken following the ratification of Proposition 1A. The tribes were required to place licensed gaming devices in commercial operation within 12 months of issuance or the license(s) would be canceled.

<sup>†</sup> As noted above, in house-banked or banking card games, players wager money against the gaming establishment, which has a stake in the game and takes a percentage of the wager. In California, these card games can only be played in Indians casinos authorized by a tribal-state gaming compact.

<sup>‡</sup> Dice games and roulette were not authorized by Proposition 1A and are prohibited to all persons, entities and organizations by Penal Code section 330.

**Games** Same as the 1999 compact.

***La Posta Band of Mission Indians and Santa Ysabel Band of Diegueño Mission Indians***

**Number** The tribes are authorized to have one gaming facility each with no more than 350 slot machines, and may enter into negotiations for a second facility containing additional gaming devices.

**Games** Same as the 1999 compact.

***2004 Tribal-State Compacts***

Governor Schwarzenegger signed new compacts with three tribes (the Coyote Valley Band of Pomo Indians, the Fort Mojave Indian Tribe and the Lytton Rancheria) that have many provisions similar to those in the 1999 tribal-state compact. The Lytton compact was not ratified by the legislature while the Coyote Valley and Fort Mojave compacts were ratified. The governor also negotiated amended 1999 compacts with seven tribes, all of which were ratified. Key provisions are summarized below.

***Coyote Valley Band of Pomo Indians***

**Number** The tribe is authorized to operate one gaming facility with up to 2,000 gaming devices. The definition of “gaming facility” excludes convenience stores and fuel stations not designed to substantially cater to gaming patrons. Section 15.3 of the compact provides the tribe certain rights and options in the event that persons other than federally recognized Indian tribes offer slot machines in the counties of Marin, Mendocino or Sonoma.

**Games** “Gaming device” means any slot machine, and each player station of a multi-player device is deemed to be as a separate gaming device.\* Authorized games also include, but are not limited to, video poker and instant lottery devices, banking and percentage card games, and devices and games authorized under state law to the California Lottery.

***Fort Mojave Indian Tribe***

**Number** The tribe is authorized to offer up to 1,500 gaming devices (slot machines) at one gaming facility to be built on a 300-acre parcel near the city of Needles. The compact provides the tribe certain rights and options in the event that persons other than federally recognized Indian tribes offer slot machines within 50 miles of the gaming facility. (The land for the

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\* This provision addresses an issue raised under the 1999 tribal-state compact, as to whether each multi-player gaming device hooked to a central controller counts as one or multiple slot machines. See Charlene Wear Simmons, *Gambling in the Golden State*, California Research Bureau, California State Library, May 2006, p. 36. (<http://www.library.ca.gov/HTML/statseg2a.cfm>)

proposed facility is in trust but has not been authorized by the Secretary of the Interior for gaming purposes, requiring approval through the “Section 20” process.\* Approvals are also required from San Bernardino County and the city of Needles along with a favorable advisory vote by the residents of Needles.)

**Games** The compact authorizes slot machines (“gaming devices”), banking or percentage card games, and devices or games authorized to the California State Lottery (except over the Internet unless permitted by state and federal law). Each player station of a multi-player gaming device is deemed to be a separate gaming device.

***Rumsey Band of Wintun Indians—amended 1999 compact***

**Number** The tribe may operate an unlimited number of gaming devices (slot machines) by paying specified fees (see chapter on “Revenue Sharing”). The amended compact provides the tribe certain rights and options in the event that persons other than federally recognized Indian tribes offer slot machines in the counties of Alameda, Contra Costa, San Francisco, San Mateo, Santa Clara, Sacramento, Yolo and Marin.

**Games** Same as in the 1999 compact.

***Buena Vista Rancheria of Me-Wuk Indians of California—amended 1999 compact***

**Number** The tribe may operate an unlimited number of gaming devices by making specified payments. Section 15.3 of the compact provides the tribe certain rights and options in the event that persons other than federally recognized Indian tribes offer slot machines within a 63-mile radius of the tribe’s gaming facility.

**Games** The compact authorizes slot machines (“gaming devices”), instant lottery games, banking and percentage card games and other games specified in the 1999 compact. Each player station of multi-player gaming device is deemed a separate gaming device.

***Pala Band of Mission Indians—amended 1999 compact***

**Number** The tribe may operate an unlimited number of gaming devices by making specified payments. The amended compact provides the tribe certain

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\* Under “Section 20,” the Secretary of the Interior must find, after consultation with state and local officials, that (1) the gaming is in the best interest of the tribe and (2) is not detrimental to the local community. Finally, the state’s governor must concur. See Charlene Wear Simmons, *Gambling in the Golden State*, California Research Bureau, California State Library, May 2006, p. 26 (<http://www.library.ca.gov/HTML/statseg2a.cfm>)

rights and options in the event that persons other than federally recognized Indian tribes offer slot machines in the counties of San Diego, Riverside, Orange and Los Angeles.

**Games** Same as in the 1999 compact.

***Ewiiaapaayp Band of Kumeyaay Indians—amended 1999 compact***

**Number** The tribe may operate an unlimited number of gaming devices, subject to making specified payments. The amended compact provides the tribe certain rights and options in the event that persons other than federally recognized Indian tribes offer slot machines in San Diego County.

**Games** The compact authorizes slot machines (“gaming devices”), instant lottery game devices, video poker devices and other games allowed in the 1999 compact.

***Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation—amended 1999 compact***

**Number** The tribe may operate an unlimited number of gaming devices (slot machines) provided it makes specified payments. The amended compact provides the tribe certain rights and options in the event that persons other than federally recognized Indian tribes offer slot machines in the counties of San Diego, Riverside, Orange, and Los Angeles.

**Games** Same as in the 1999 compact.

***United Auburn Indian Community—amended 1999 compact***

**Number** The tribe may operate an unlimited number of gaming devices (slot machines) by paying specified fees. The amended compact provides the tribe certain rights and options in the event that persons other than federally recognized Indian tribes offer slot machines in the counties of Alameda, Contra Costa, El Dorado, Placer, Sacramento, San Francisco, San Mateo, Solano and Sutter.

**Games** Same as in the 1999 compact.

***Viejas Band of Kumeyaay Indians—amended 1999 compact***

**Number** The tribe may operate an unlimited number of gaming devices (slot machines) by paying specified fees. The amended compact provides the tribe certain rights and options in the event that persons other than federally recognized Indian tribes offer slot machines in the county of San Diego.

**Games** Same as in the 1999 compact.



## ***2006 Tribal-State Compacts***

The governor negotiated an amended 1999 tribal-state compact with the Quechan Tribe in 2005, which was ratified by the legislature in August 2006, and signed by the governor on September 28, 2006.\*

### ***Quechan Tribe of the Fort Yuma Indian Reservation--amended 1999 compact***

- Number** The tribe is authorized to operate up to 1,100 gaming devices. The tribe may operate one gaming facility at its existing location or at a new specified site. Ancillary structures may be located on contiguous lands the tribe owns, but only if the tribe's activities there are subject to the jurisdiction of state law and state courts.<sup>†</sup> The amended compact provides the tribe certain rights and options in the event that persons other than federally recognized Indian tribes offer slot machines in Imperial County.
- Games** The compact authorizes slot machines, instant lottery games, video poker devices and banking and percentage card games. Each player station of a multi-player device is deemed to be a separate gaming device.

## **UNRATIFIED COMPACTS**

### ***2004 Unratified Tribal-State Compact***

#### ***Lytton Rancheria of California***

- Number** The tribe is authorized to operate up to 2,500 gaming devices at an *existing gaming facility. On or after January 1, 2008, at the request of the* tribe, the state agrees to renegotiate the maximum number of gaming devices, taking into account market conditions and off-reservation effects. The compact provides the tribe certain rights and options in the event that persons other than federally recognized Indian tribes offer slot machines within a 35 miles radius of its San Pablo gaming facility.
- Games** Authorized games include slot machines, instant lottery game devices, video poker devices, banking and percentage card games and any device or game authorized to the California State Lottery. Each player station of a multi-player slot machine is deemed to be a separate gaming device.

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\* SB 470 (Ducheny), Statutes of 2006, chapter 527.

<sup>†</sup> Due to the checkerboard pattern of land ownership on Indian reservations, different governing authorities--such as county, state, federal, and tribal governments -- may claim the authority to regulate, tax, or perform various activities within reservation borders based on whether a piece of land is Indian or non-Indian owned. These different claims to jurisdictional authority often conflict, and the case law is complex and on some points inconsistent. See Indian Land Tenure Foundatio, at <http://www.indianlandtenure.org>.

The tribe agrees to relinquish the right to operate bingo during the term of the compact.

### ***2005 Unratified Tribal-State Compacts***

In 2005, Governor Schwarzenegger negotiated new tribal-state compacts with the Yurok Tribe of the Yurok Reservation, the Big Lagoon Rancheria and the Los Coyotes Band of Cahuilla and Cupeño Indians that were not ratified by the legislature.

#### ***Yurok Tribe of the Yurok Reservation***

- Number*** Two gaming facilities, with not more than 99 gaming devices in total, with up to 20 at a fuel mart on the reservation and the rest at a future on-reservation casino.
- Games*** Authorized games include slot machines ("gaming devices"), instant lottery games, video poker, banking and percentage card games and devices authorized to the California State Lottery (except over the Internet). Each player station of a multi-player slot machine is deemed to be a separate gaming device.

#### ***Los Coyotes Band of Cahuilla and Cupeño Indians***

- Number*** One gaming facility to be located in the city of Barstow (not on tribal reservation lands) on a specified parcel, along with a second gaming facility operated by the Big Lagoon Rancheria, with shared support facilities. The Department of the Interior must take the parcel into trust for gaming purposes. The tribes have requested that the U.S. Secretary of the Interior take the land into trust for their benefit and the governor anticipates concurring in the Secretary's decision in specified circumstances. The tribe is entitled to operate up to 2,250 gaming devices.
- Games*** The compact authorizes slot machines ("gaming devices"), video poker, banking or percentage card games, and devices or games authorized to the California State Lottery (although not over the Internet unless others are permitted by state and federal law to do so). Each player station or terminal is deemed to be a separate gaming device. The tribe agrees to not conduct Class II gaming except on the Indian lands subject to this compact

#### ***Big Lagoon Rancheria***

- Number*** One gaming facility to be located in the city of Barstow (not on tribal reservation lands) on a specified parcel and shared with a second gaming facility operated by the Los Coyotes Band of Cahuilla and Cupeño Indians. The parcel must be taken into trust by the Department of the Interior for gaming purposes. The tribes have requested that the U.S. Secretary of the Interior take the land into trust for their benefit and the

governor anticipates concurring in the Secretary's decision in specified circumstances. The tribe is entitled to operate up to 2,250 gaming devices.

**Games** The compact authorizes slot machines ("gaming devices"), video poker, banking or percentage card games, and devices or games authorized to the California State Lottery (although not over the Internet unless others are permitted by state and federal law to do so). Each player station or terminal is deemed to be a separate gaming device.

### ***2006 Unratified Tribal-State Compacts***

In August 2006, the governor submitted six tribal-state amended 1999 compacts to the legislature for ratification. An amended compact with the Quechan Tribe of the Fort Yuma Reservation, which had been negotiated in 2005, was ratified. The other five newly negotiated amended 1999 compacts were not ratified. These were with the Morongo Band of Mission Indians, the Pechanga Band of Luiseño Indians, the San Manuel Band of Mission Indians, the Agua Caliente Band of Cahuilla Indians, and the Sycuan Band of the Kumeyaay Nation.

#### ***Morongo Band of Mission Indians—amended 1999 compact***

**Number** The tribe may operate two gaming facilities and an auxiliary gaming facility with no more than 25 gaming devices. The number of gaming devices is not to exceed 7,500, 5,500 more than currently authorized (1,627 were in operation on September 1, 1999, and 373 more were licensed under the 1999 compact).

**Games** The amended compact authorizes slot machines, video poker and all forms of gambling permitted by law, the 1999 compact and the tribe's gaming ordinance. Each player station is deemed to constitute a separate gaming device.

#### ***Pechanga Band of Luiseño Indians—amended 1999 compact***

**Number** The tribe may operate two gaming facilities on its reservation with up to 7,500 gaming devices, 5,500 more than currently authorized (1,333 were in operation on September 1, 1999, and 667 more were licensed under the 1999 compact).

**Games** The amended compact allows all forms of gambling permitted by law, the 1999 compact and the tribe's gaming ordinance. Each player station is deemed to constitute a separate gaming device.

#### ***Agua Caliente Band of Cahuilla Indians—amended 1999 compact***

**Number** The tribe may operate three gaming facilities within the boundaries of its reservation, two of which already exist (Rancho Mirage and Palm Springs). The third facility may be located on reservation lands in

Riverside County. There may be up to 5,000 gaming devices in these facilities (3,000 more than currently authorized), 2,000 in each existing facility and 1,000 in the new facility.

**Games** The tribe may operate video poker and all games authorized by the 1999 compact including slot machines (“gaming devices”). Each player station is deemed to constitute a separate gaming device.

***San Manuel Band of Mission Indians—amended 1999 compact***

**Number** The tribe may operate two gaming facilities on its reservation, with up to 7,500 gaming devices, 5,500 more than currently authorized (974 were in operation on September 1, 1999, and 1,096 more are licensed under the 1999 compact).

**Games** The tribe is authorized to operate video poker and all games authorized by the 1999 compact including slot machines (“gaming devices”). Each player station is deemed to constitute a separate gaming device.

***Sycuan Band of the Kumeyaay Nation—amended 1999 compact***

**Number** The tribe may operate two gaming facilities on its reservation, including land that may be added to the reservation after the effective date of this amended compact, with no more than 5,000 gaming devices, 3,000 more than currently authorized (519 were in operation on September 1, 1999, and 1,481 more are licensed under the 1999 compact).

**Games** The tribe is authorized to operate video poker and all games authorized by the 1999 compact including slot machines (“gaming devices”). Each player station is deemed to constitute a separate gaming device.

## BUILDING STANDARDS

### RATIFIED COMPACTS

#### *1999 Tribal-State Compact*

- The tribe agrees to adopt regulations specifying minimum standards for the operation and management of its gaming operations and facilities.
- All construction must meet the building and safety codes of the tribe, which are to meet the standards of the local county or the Uniform Building Codes and to comply with the Americans with Disabilities Act.
- The tribe agrees to certify and license the gaming facility for compliance with tribal building and safety codes every two years, and to correct any conditions that do not meet its standards. The tribe will give reasonable prior notice of any related inspections to the state's designated representative. State agents may accompany tribal inspectors and express concerns.
- If the state objects to certification, the tribe must make a "good faith effort" to address the state's concerns; if the state does not withdraw its objection, the matter is to be referred to the dispute resolution process established in the compact.

#### *2003 Tribal-State Compacts*

The three new compacts negotiated by Governor Davis in 2003 are similar to the 1999 tribal-state compact. The major differences are summarized below.

##### *Torres-Martinez Desert Cahuilla Indians, La Posta Band of Mission Indians, Santa Ysabel Band of Diegueño Mission Indians*

- All construction is to meet the building and safety codes of the tribe, which are to meet the standards of the local county or the Uniform Building Codes including all uniform fire, plumbing, electrical, mechanical and related codes.

#### *2004 Tribal-State Compacts*

Governor Schwarzenegger signed new compacts with three tribes (the Coyote Valley Band of Pomo Indians, the Fort Mojave Indian Tribe and the Lytton Rancheria). The Lytton compact was not ratified by the legislature; the Coyote Valley and Fort Mojave compacts were ratified. The governor also negotiated amended 1999 compacts with seven tribes, all of which were ratified. Key provisions are summarized below.

##### *Coyote Valley Band of Pomo Indians and Fort Mojave Indian Tribe*

- For any new construction or building modifications, the tribal ordinance must meet or exceed the California Building Code and the Public Safety Code applicable to the city or county in which the facility is located. Documentation that includes design and

structural plans is to be provided to the state designated agency. (The governor has designated the Department of General Services as that agency.)

- All construction on the gaming facility is to meet or exceed applicable codes. In all cases where the applicable codes would otherwise require an inspection, the tribe is to require an inspection and employ state-certified or licensed architects or engineers and inspectors. State-designated inspectors may accompany them. The tribe's inspectors must certify that the gaming facility meets applicable codes; certification is to be forwarded to the state designated agency, which may object.
- Construction plans, specifications, and change orders are to be provided to the designated state agency and reviewed by inspectors for compliance with the applicable codes.
- The tribe must make a "good faith" effort to correct deficiencies or the matter goes to dispute resolution. Any failure to remedy deficiencies in a reasonable period of time is a violation of the compact and grounds to prohibit occupancy.
- The tribe is to ensure qualified fire suppression services and satisfy all requirements of Title 19 of the California Code of Regulations.\* Any failure to correct deficiencies within a reasonable period of time shall be deemed a violation of the compact and grounds to prohibit occupancy.

*Rumsey Tribe of Wintun Indians, Buena Vista Rancheria of Me-Wuk Indians of California, Pala Band of Mission Indians, Pauma Band of Luiseño Mission Indians of the Pauma & Yuima Reservation, United Auburn Indian Community, Viejas Band of Kumeyaay Indians, Ewiiapaayp Band of Kumeyaay Indians – amended 1999 compacts*

The building standards provisions are similar to those of the Coyote Valley compact and apply to any construction, reconstruction, alternation, or addition occurring after the effective date of the amendment

#### ***2006 Tribal-State Compact***

The governor negotiated an amended 1999 tribal-state compact with the Quechan Tribe of the Fort Yuma Indian Reservation in 2005 that was ratified by the legislature in August 2006 and signed by the governor on September 28, 2006.

#### ***Quechan Tribe of the Fort Yuma Indian Reservation—amended 1999 compact***

As in the 2004 compacts, all construction is to meet the standards established in the California Building Code and Public Safety Code. Other provisions are similar.

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\* Title 19 includes the following Divisions: (1) State Fire Marshal (general fire, panic and building safety standards), (2) Office of Emergency Services, and (3) Seismic Safety Commission.

## UNRATIFIED COMPACTS

### *2004 Unratified Tribal-State Compact*

#### *Lytton Rancheria of California*

The gaming facility has been constructed according to the rules, regulations and codes of the city of San Pablo and is to be maintained in accordance with those codes. Provisions relating to health and safety and inspections are similar to those in the Coyote Valley tribal-state compact.

### *2005 Unratified Tribal-State Compacts*

In 2005, Governor Schwarzenegger negotiated new tribal-state compacts with the Yurok Tribe of the Yurok Reservation, the Big Lagoon Rancheria and the Los Coyotes Band of Cahuilla and Cupeño Indians that were not ratified by the legislature.

#### *Yurok Tribe of the Yurok Reservation*

- The gaming facility is to meet or exceed the California Building Code and the Public Safety Code applicable to Del Norte County including, but not limited to, codes for building, electrical, energy, mechanical, plumbing, fire and safety.
- Other provisions are similar to those in the Coyote Valley compact, including fire suppression capabilities and inspections.

#### *Los Coyotes Band of Cahuilla and Cupeño Indians and the Big Lagoon Rancheria*

- All construction on the gaming facility is to meet or exceed applicable codes. To determine compliance, in all cases where the applicable codes would otherwise require an inspection, the tribe is to require inspections and contract with the city of Barstow to conduct them. As in the 2004 compacts, the tribe agrees to correct any deficiency. Other related provisions also follow the 2004 compacts.

### *2006 Unratified Tribal-State Compacts*

In August 2006, the governor submitted six tribal-state compacts to the legislature for ratification. An amended 1999 compact with the Quechan Tribe of the Fort Yuma Reservation, which had been negotiated in 2005, was ratified. Five newly negotiated amended 1999 compacts were not ratified. These were with the Morongo Band of Mission Indians, the Pechanga Band of Luiseño Indians, the San Manuel Band of Mission Indians, the Agua Caliente Band of Cahuilla Indians, and the Sycuan Band of the Kumeyaay Nation.

***Morongo Band of Mission Indians, Pechanga Band of Luiseño Indians, Agua Caliente Band of Cahuilla Indians, San Manuel Band of Mission Indians, Sycuan Band of the Kumeyaay Nation—amended 1999 compacts***

- The tribes agree to adopt an ordinance requiring any gaming facility construction to meet or exceed the building and safety codes of the county and any city in which a facility is located and the Uniform Building Codes. The tribes are to require inspections to assure compliance, undertaken by California-licensed firms or individuals. State agents may accompany the inspections with notice.
- The designated state agency may request documentation including design and construction calculations, plans, and contract change orders. It may also conduct an independent inspection before public occupancy and if there is an immediate threat to public health or safety. Failure to remedy a serious deficiency is grounds to prohibit occupancy of the affected portion of the gaming facility.
- The tribes agree to correct any condition that does not meet the applicable codes and to conduct biennial inspections.
- The tribes agree to take all necessary steps to ensure the availability of sufficient and qualified fire suppression services and to ensure that the gaming facility meets all county and city fire codes and regulations. State representatives may accompany tribal inspectors and identify conditions that preclude certification of the facility as meeting reasonable standards of fire safety and life safety. The tribes agree to approve a plan for correcting deficiencies, to provide the plan to the state, and to certify to the state when all deficiencies have been corrected. Failure to promptly correct serious deficiencies is a violation of the compact and grounds to prohibit occupancy.



## CONSUMER PROTECTION STANDARDS

### RATIFIED COMPACTS

#### *1999 Tribal-State Compact*

- Information about methods of play, odds and payoff is to be visibly displayed or available to patrons in written form.
- Patron disputes are to be handled in accordance with the tribal gaming ordinance.
- Tribal gaming operations are exempt from state laws governing the use of tobacco.
- Gaming operations must comply with state public health standards for food and beverage handling. State or county health inspectors may inspect unless inspections are routinely made by a federal agency. Violations of standards are violations of the compact.
- The tribe must carry at least \$5 million in public liability insurance for patron claims and provide reasonable assurance that legitimate claims will be paid. The tribe is not required to agree to liability for punitive damages or attorneys' fees, but is to adopt a tort liability ordinance that may waive immunity to suits for monetary damages resulting from intentional or negligent injuries.
- The tribe is to comply with tribal codes and federal law regarding public health and safety.
- The tribe must adopt and comply with state laws prohibiting a gaming enterprise from cashing any check drawn against a federal, state, county or city fund.
- The tribe must adopt and comply with federal standards prohibiting extensions of credit.
- The tribe must adopt and comply with state laws prohibiting providing alcohol, food or lodging at reduced prices or as an incentive to gamble.
- The tribe must make reasonable provisions for adequate emergency fire, medical and disaster services for patrons and employees of the gaming facility.
- The service of alcoholic beverages is subject to applicable federal and state law (including licensing and inspection by the state Alcohol Beverages Control Board.)
- Firearms are prohibited except for state, local or tribal security or law enforcement.
- The tribe's tort liability ordinance, food and beverage handling standards, drinking water standards, building and safety standards, workplace standards, tribal codes and applicable federal standards governing health and safety play, benefit check cashing standards and prohibitions, and odds and payoff information are to be made available upon request.

### ***2003 Tribal-State Compacts***

The three new compacts negotiated by Governor Davis in 2003 are similar to the 1999 tribal-state compact. The major differences are summarized below.

#### ***Torres-Martinez Desert Cahuilla Indians***

- The compact has apparently conflicting provisions regarding tobacco use—an exemption (Section 8.1.2) and a requirement to follow state laws governing tobacco use (Section 10.1).

#### ***La Posta Band of Mission Indians and Santa Ysabel Band of Diegueño Mission Indians***

- The tribes are exempt from state tobacco laws but agree to provide a non-smoking area in the gaming facility and utilize a ventilation system.
- In the event of intentional or negligent injury to persons or property at the gaming facility, the tribes waive sovereign immunity for damages up to \$5 million.

### ***2004 Tribal-State Compacts***

Governor Schwarzenegger signed new compacts with three tribes (the Coyote Valley Band of Pomo Indians, the Fort Mojave Indian Tribe and the Lytton Rancheria). The Lytton compact was not ratified by the legislature. The Coyote Valley and Fort Mojave compacts were ratified. The governor also negotiated amended 1999 compacts with seven tribes, all of which were ratified. Key provisions are summarized below.

#### ***Coyote Valley Band of Pomo Indians and Fort Mojave Indian Tribe***

- This compact contains a new section on patron disputes. The tribal gaming agencies are to promulgate an ordinance governing patron disputes over the play or operation of any game, which allows for full investigation of any disputes. Patrons may resolve gambling disputes through binding arbitration before a retired judge. The tribes agree to a waiver of tribal sovereign immunity for that purpose.
- The tribes agree to maintain commercial general liability insurance of \$5 million per occurrence for bodily injury, personal injury and property damage and to not invoke their sovereign immunity up to the limits of the policy. California tort law governs all claims, and disputes may be settled in federal or state court. The tribes do not agree to liability for punitive damages or waive sovereign immunity for that purpose.
- The tribes agree to transmit copies of their gaming ordinances, rules, regulations, procedures, specifications, and standards to the California Gambling Control Commission (CGCC) and to make them available to the public upon request.
- The tribes are exempt from state tobacco laws but agree to provide a non-smoking area in their gaming facilities and to utilize a ventilation system.

#### ***Rumsey Band of Wintun Indians, Buena Vista Rancheria of Me-Wuk Indians of California, Pala Band of Mission Indians, Ewiiapaayp Band of Kumeyaay***

***Indians, Pauma Band of Luiseño Mission Indians of the Pauma & Yuima Reservation, United Auburn Indian Community, Viejas Band of Kumeyaay Indians —amended 1999 compacts***

- The sections on patron disputes are similar but not identical to those in the Coyote Valley compact. There are some differences in deadlines and standards. Notably, the tribes must obtain a general liability insurance policy with coverage of no less than \$10 million per occurrence for bodily injury, property damage or personal injury.

***2006 Tribal-State Compact***

The governor negotiated an amended 1999 tribal-state compact with the Quechan Tribe in 2005. The amended compact was ratified by the legislature in August 2006 and signed by the governor on September 28, 2006.

***Quechan Tribe of the Fort Yuma Indian Reservation—amended 1999 compact***

The section on patron disputes is essentially the same as in the 2004 ratified compacts.

**UNRATIFIED COMPACTS**

***2004 Unratified Tribal State Compact***

***Lytton Rancheria of California***

The provisions are generally similar to those in the Coyote Valley tribal-state compact, with some differences regarding the settlement of claims. The tribe agrees to maintain commercial general liability insurance of \$10 million per occurrence for bodily injury, personal injury and property damage, to not invoke its sovereign immunity up to the limits of the policy, and to adopt an ordinance that consents to binding arbitration before a retired judge in the event of dispute.

***2005 Unratified Tribal-State Compacts***

In 2005, Governor Schwarzenegger negotiated new tribal-state compacts with the Yurok Tribe of the Yurok Reservation, the Big Lagoon Rancheria and the Los Coyotes Band of Cahuilla and Cupeño Indians. These compacts were not ratified by the legislature.

***Yurok Tribe of the Yurok Reservation***

- The section on patron disputes is similar to that in the Coyote Valley compact. The tribe agrees to maintain liability insurance in the amount of \$5 million. A patron who is dissatisfied with a decision of the tribal gaming agency may proceed to resolution by binding arbitration before a retired judge. In that case, the tribe agrees to waive its right to assert sovereign immunity.
- As in the Coyote Valley compact, the tribe agrees to adopt and comply with state public health standards for food and beverage handling but not the use of tobacco

(although the tribe agrees to provide a non-smoking area and a state-of-the-art ventilation system).

***Los Coyotes Band of Cahuilla and Cupeño Indians and the Big Lagoon Rancheria***

- The following documents are to be made available to the public upon request: the tribal-state compact, minimum internal control standards, rules for each class III game, the tribe's tort ordinance, and the tribal gaming agency's regulations concerning patron disputes. Otherwise the section on patron disputes is generally similar to that in the 2004 new and amended compacts.
- The tribe agrees to not offer or sell tobacco to anyone less than 18 years of age.

***2006 Unratified Tribal-State Compacts***

In August 2006, the governor submitted six tribal-state compacts to the legislature for ratification. An amended compact with the Quechan Tribe of the Fort Yuma Reservation, which had been negotiated in 2005, was ratified. Five newly negotiated amended 1999 compacts were not ratified. These were with the Morongo Band of Mission Indians, the Pechanga Band of Luiseño Indians, the San Manuel Band of Mission Indians, the Agua Caliente Band of Cahuilla Indians, and the Sycuan Band of the Kumeyaay Nation.

***Morongo Band of Mission Indians, Pechanga Band of Luiseño Indians, Agua Caliente Band of Cahuilla Indians, San Manuel Band of Mission Indians, Sycuan Band of the Kumeyaay Nation—amended 1999 compacts***

- The section on patron disputes is similar to that in the 2004 and 2005 compacts. Notably, a patron who is dissatisfied with a decision of a tribal gaming agency may proceed to resolution by binding arbitration before a retired judge. In that case, the tribes agree to waive their right to assert sovereign immunity.
- In the event that the Pechanga and Agua Caliente tribes establish tribal court systems, they may notify the state that they want to renegotiate the sections on patron disputes and adjudication of claims.

## ENVIRONMENTAL STANDARDS

### RATIFIED COMPACTS

#### *1999 Tribal-State Compact*

##### *Off-Reservation Environmental Impacts*

- The tribe agrees to adopt an ordinance providing for the preparation, circulation and consideration of environmental impact reports analyzing the potential off-reservation environmental impacts of all projects commenced on or after the effective date of the compact. The tribe agrees to make a “good faith effort” to incorporate in the ordinance the policies and purposes of the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), consistent with the tribe’s governmental interests.
- Prior to the expansion, significant renovation or modification of an existing facility, or any significant excavation, construction or development of a new facility, the tribe agrees to inform the public; determine any adverse impacts on the off-reservation environment; submit all environmental impact reports to the county and state for distribution to the public; consult with county or city officials to discuss mitigation; and, provide an opportunity for public comment.
- During the course of a project, the tribe agrees to make good faith efforts to inform local officials and affected members of the public of the project’s progress and to mitigate any and all significant adverse off-reservation environmental impacts.
- The state may request negotiations to amend the environmental provisions of the compact during the period of January 1, 2003, to March 3, 2003, and the tribe agrees to enter in negotiations in good faith.\* Any signatory tribe may bring an action in federal or state court after January 1, 2004, alleging that the state has failed to negotiate in good faith; in such an action the good faith of both the state and the tribe would be at issue.

##### *Water Quality*

- The tribe agrees to adopt and comply with federal water quality and safe drinking water standards. State and county health inspectors may inspect if a federal agency does not inspect. Violations are considered to be violations of the compact.

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\* Governor Davis issued such a request but withdrew it following his recall by voters.

### ***2003 Tribal-State Compacts***

The three new compacts negotiated by Governor Davis in 2003 are similar to the 1999 tribal-state compact. The major differences are summarized below.

#### ***Torres-Martinez Desert Cahuilla Indians***

- Prior to commencement of the gaming facility project, the tribe agrees to consult with county government and the city of Coachella to develop site-or-project-specific terms and conditions, and to enter into written agreements that address the mitigation of significant environmental, economic and social effects including, but not limited to: groundwater, water support, waste water treatment, air quality, solid waste management, hazardous waste management, fire and protective services, public health and safety, impacts during and of construction, increased traffic, noise, and protection of cultural, historical and biological resources. (The tribe has not conducted an environmental review or broken ground on the casino project for internal reasons.)
- Between January 1, 2007, and March 1, 2007, the state may request negotiations for an amendment if the compact has proven to be inadequate to protect off-reservation impacts or ensure adequate mitigation. The tribe has a right to bring a federal action after January 1, 2008, in which the parties' good faith would be at issue.

#### ***La Posta Band of Mission Indians and Santa Ysabel Band of Diegueño Mission Indians***

- The tribes agree to consult with relevant local governments and develop written agreements to address mitigation, as in the Torres-Martinez compact.
- If the tribes and local government entities are unable to reach an agreement, they agree to follow specified dispute resolution provisions beginning with good faith negotiations and moving to binding arbitration. The tribes consent to be sued in federal or state court to compel arbitration or to enforce an arbitration award.
- The La Posta and Santa Ysabel compacts both include the renegotiation provision found in the Torres-Martinez compact.

### ***2004 Tribal-State Compacts***

Governor Schwarzenegger signed new compacts with three tribes (the Coyote Valley Band of Pomo Indians, the Fort Mojave Indian Tribe and the Lytton Rancheria). The Lytton compact was not ratified by the legislature; the Coyote Valley and Fort Mojave compacts were ratified. The governor also negotiated amended 1999 compacts with seven tribes, all of which were ratified. Key provisions are summarized below.

#### ***Coyote Valley Band of Pomo Indians***

- Defines "project" as any activity occurring on Indian lands authorized by this compact, a principal purpose of which is to serve the tribe's gaming operation, and which may cause a direct physical change or reasonably foreseeable indirect physical

change in the off-reservation environment during construction or expansion, including but not limited to access roads, parking lots, a hotel, utility or waste disposal systems, or water supply.

- A “significant effect on the off-reservation environment” occurs if the project has the potential to degrade the quality of the off-reservation environment or if cumulative effects are considerable, or if the project will cause substantial adverse effects on human beings, either directly or indirectly.
- The tribe agrees to cause a tribal environmental impact report (TEIR) to be prepared detailing all short and long term significant effects of the project on the off-reservation environment and ways in which they may be minimized, including mitigation measures and their effectiveness, as well any wasteful consumption of energy and direct growth-inducing impacts.
- The TEIR is to indicate reasons for determining that various effects of the project are not significant, if such a determination is made.
- The TEIR is to describe a range of reasonable alternatives, with sufficient information about each, to attain most of the basic objectives and avoid or substantially lessen any significant effects on the environment.
- Adequate notice is required to the state and county of the preparation of the draft TEIR, completed draft TEIR and final TEIR, including publication in a newspaper and direct mailings to owners and occupants of property adjacent to the proposed gaming facility.
- Before commencement of a project, and no later than issuance of the final TEIR to the county, the tribe agrees to offer to commence negotiations with the county over timely mitigation of any significant effects on the off-reservation environment.
- If the county and tribe are unable to reach a written agreement within 90 days of the submission of the final TEIR, either party may request binding arbitration before a single arbitrator. The tribe agrees to waive its sovereign immunity in connection with the arbitration, and the arbitral award becomes part of the required written agreement with the county and city. Failure to prepare a TEIR may warrant an injunction
- Exhibit A attached to the compacts presents a detailed *Off-Reservation Environmental Impact Analysis Checklist*.

#### *Fort Mojave Indian Tribe*

- Similar to the Coyote Valley compact, the tribe agrees to cause a TEIR to be prepared analyzing the significant effects on the off-reservation environmental of all activities authorized by the compact before entering into enforceable written agreements with San Bernardino County and the city of Needles.
- The TEIR is to contain all information required under California Public Resources Code § 21100 et. seq. This compact is less detailed than the Coyote Valley compact regarding discussion of mitigation measures and project alternatives, and provides less time (55 days versus 90 days) for local government negotiation.

- The *Off-Reservation Environmental Impact Analysis Checklist* is not included in the Fort Mojave compact.

***Rumsey Band of Wintun Indians, Buena Vista Rancheria of Me-Wuk Indians of California, Pala Band of Mission Indians, Pauma Band of Luiseño Mission Indians of the Pauma & Yuima Reservation, United Auburn Community, Viejas Band of Kumeyaay Indians--amended 1999 compacts***

- The environmental provisions are similar to those in the Coyote Valley tribal-state compact with some minor changes (such as the public notice requirement). They include the *Off-Reservation Environmental Impact Analysis Checklist* and apply to any activity occurring after the effective date of the amendments.

***Ewiiapaayp Band of Kumeyaay Indians—amended 1999 compact***

- Similar in other respects to provisions in the amended 1999 compacts above, this compact allows the tribe's TEIR to be combined into a single document with a TEIR prepared by the Viejas Band of Kumeyaay Indians, on whose lands the project is planned.

***2005 Tribal-State Compact***

The governor negotiated an amended 1999 tribal-state compact with the Quechan Tribe in 2005. The amended compact was ratified by the legislature in August 2006, and signed by the governor on September 28, 2006.

***Quechan Tribe of the Fort Yuma Indian Reservation—amended 1999 compact***

- The environmental provisions are similar to those in the 2004 Coyote Valley tribal-state compact, including the attached *Off-Reservation Environmental Impact Analysis Checklist*.

**UNRATIFIED COMPACTS**

***2004 Unratified Tribal-State Compact***

***Lytton Rancheria of California***

- The provisions are generally similar to those of the 2004 Coyote Valley tribal-state compact, including the attached *Checklist*.

***2005 Unratified Tribal-State Compacts***

In 2005, Governor Schwarzenegger negotiated new tribal-state compacts with the Yurok Tribe of the Yurok Reservation, the Big Lagoon Rancheria and the Los Coyotes Band of Cahuilla and Cupeño Indians that were not ratified by the legislature.



### ***Yurok Tribe of the Yurok Reservation***

- The provisions are generally similar to those of the 2004 Coyote Valley tribal-state compact, including the attached *Checklist*.

### ***Los Coyotes Band of Cahuilla and Cupeño Indians***

- The provisions are similar to those of the 2004 Coyote Valley tribal-state compact.

### ***Big Lagoon Rancheria***

- The tribe's reservation is located in an environmentally sensitive area along the coastline of Humboldt County, and the state has serious environmental concerns over the impact of a casino at that site. The tribe has sued the state to compel it to enter into a compact authorizing Class III gaming. Given these factors, the tribe agrees to forego its efforts to locate a gaming facility on its reservation and to relocate the proposed facility to a gaming site in the city of Barstow, to be shared with the Los Coyotes Band of Cahuilla and Cupeño Indians. That parcel is not currently held in trust by the federal government for gambling purposes. The tribes have requested that the Secretary of the Interior take the land into trust for that purpose.
- Other provisions are similar to those in the 2004 Coyote Valley compact.

### ***2006 Unratified Tribal-State Compacts***

In August 2006, the governor submitted six tribal-state compacts to the legislature for ratification. An amended compact with the Quechan Tribe of the Fort Yuma Reservation, which had been negotiated in 2005, was ratified. Five newly negotiated 1999 amended compacts were not ratified. These were with the Morongo Band of Mission Indians, the Pechanga Band of Luiseño Indians, the San Manuel Band of Mission Indians, the Agua Caliente Band of Cahuilla Indians, and the Sycuan Band of the Kumeyaay Nation.

### ***Morongo Band of Mission Indians, Pechanga Band of Luiseño Indians, Agua Caliente Band of Cahuilla Indians, San Manuel Band of Mission Indians, Sycuan Band of the Kumeyaay Nation—amended 1999 compacts***

- A new section on the mitigation of off-reservation impacts (10.8) requires a TEIR to be completed before the commencement of any project. The TEIR is to provide detailed information about significant effects on the off-reservation environment, as detailed in an attached *Checklist*, particularly any significant effects that cannot be avoided and/or would be irreversible.
- The provisions are generally similar to those in the 2004 Coyote Valley compact, with some changes in public notice provisions. However the dispute resolution process differs. The arbitrator is to issue an award that provides for feasible mitigation and reasonably compensates for public services without unduly interfering with the principal objectives of the project or imposing environmental mitigation measures different from those required to mitigate similar projects in the surrounding area.

- The Agua Caliente compact states that the section defining *project* and *significant effect on the environment* serves as an alternative to directly applying the California Environmental Quality Act (CEQA) to the tribal environmental review process.

## LABOR STANDARDS

### RATIFIED COMPACTS

#### *1999 Tribal-State Compact*

- The tribe agrees to adopt standards no less stringent than federal workplace and occupational health and safety standards. The state may inspect for compliance unless a federal agency regularly inspects for compliance with the federal standards. Violations of the applicable standards are violations of the compact.
- The tribe agrees to adopt and comply with state and federal anti-discrimination laws. However the tribe may provide employment preference to Native Americans.
- The tribe may create its own workers compensation system provided there is specified coverage including the right to notice, an independent medical examination, a hearing before an independent tribunal, a means of enforcement, and benefits comparable to those afforded under state law. Independent contractors doing business with the tribe must comply with state workers' compensation laws.
- The tribe agrees to participate in state unemployment compensation and disability programs for employees of the gaming facility, and consents to the jurisdiction of state agencies and courts charged with enforcement.

#### *Model Tribal Labor Relations Ordinance (Optional Addendum B)*

The 1999 tribal-state compact requires a tribe to adopt an agreement or other procedure acceptable to the state for addressing the organization and representational rights of Class III gaming employees and employees in related enterprises, or the compact is null and void. Attached to the compact, as "Optional Addendum B" is a ***Model Tribal Labor Relations Ordinance***. Tribes with 250 or more casino-related employees are required to adopt an identical ordinance. (The tribal ordinances were reviewed for conformity by the governor's legal affairs advisor.)

- Under the ***Model Tribal Labor Relations Ordinance*** ("Ordinance"), employees have the right to engage in employee organizations, bargain collectively, and join in concerted activities for the purpose of collective bargaining. The Ordinance defines unfair labor practices on the part of a tribe or a union, guarantees the right to free speech, and provides for union access to employees for bargaining purposes. (Excluded employees include supervisors, employees of the tribal gaming commission, employees of the security or surveillance departments, cash operations employees or any dealer.)

### ***Key Issues: Certification of union representation and dispute resolution***

- Upon a showing of interest by 30 percent of the applicable employees, the tribe is to provide the union an election eligibility list of employee names and addresses. A secret ballot is to follow. An elections officer chosen by the tribe is to verify the authorization cards and conduct the election. If the labor organization receives a majority of votes, the election officer is to certify it as the exclusive collective bargaining representative for the unit of employees. Decisions may be appealed to a tribal labor panel.
- The Ordinance establishes procedures to address an impasse in collective bargaining, including the union's right to strike outside of Indian lands, and to decertify a certified union. It also creates three levels of binding dispute resolution mechanisms, beginning with a tribal forum, followed by an arbitration panel, and finally tribal court and federal court. Collective bargaining impasses may only proceed to the first level of binding dispute resolution, in which a designated tribal forum makes the decision.

### ***2003 Tribal-State Compacts***

The three new compacts negotiated by Governor Davis in 2003 are similar to the 1999 tribal-state compact. They were with the Torres-Martinez Desert Cahuilla Indians, the La Posta Band of Mission Indians and the Santa Ysabel Band of Diegueño Indians.

- No apparent change from the 1999 compact's ***Model Tribal Labor Relations Ordinance***.

### ***2004 Tribal-State Compacts***

Governor Schwarzenegger signed new compacts with three tribes (the Coyote Valley Band of Pomo Indians, the Fort Mojave Indian Tribe and the Lytton Rancheria). The Lytton compact was not ratified by the legislature; the Coyote Valley and Fort Mojave compacts were ratified. The governor also negotiated amended 1999 compacts with seven tribes, all of which were ratified. Key changes are summarized below.

#### ***Coyote Valley Band of Pomo Indians and Fort Mojave Indian Tribe***

- The tribes agree to adopt and comply with federal and state workplace and occupational health and safety standards. State inspectors may assess compliance unless regular inspections are made by a federal agency with the federal standards. Violations of the applicable standards are violations of the compact and may be the basis to prohibit employee entry into the gaming facility.
- The tribes agree to participate in the state's workers' compensation program for employees of the gaming facility and consent to the jurisdiction of the Worker's Compensation Appeals Board and state courts for purposes of enforcement. The tribes also agree to participate in the state unemployment compensation benefits

program and withhold the appropriate taxes, and consent to state agency jurisdiction and the jurisdiction of state courts for enforcement.

#### *Model labor relations ordinance*

The tribes agree to repeal their existing tribal labor relations ordinances and adopt the labor relations ordinance appended to the compact, which differs in important respects from the model ordinance appended to the 1999 and 2003 compacts.

- As in the 1999 compact, a labor organization is granted access in order to organize eligible employees in non-work areas on non-work time. The tribe agrees to provide the labor organization with a list of eligible employees and their last known addresses upon a showing of interest from 30 percent of the employees. The tribe also agrees to facilitate the dissemination of information from the labor organization to eligible employees.

#### *Key Issues: union certification and dispute resolution*

- ***“Card check neutrality”***--A new Section 7 on “tribe and union neutrality” provides that if a labor organization offers in writing to not engage in strikes or disparage the tribe, and to resolve all issues through binding dispute mechanisms, the tribe agrees to recognize and certify the labor organization if it provides dated and signed authorization cards from at least 50 percent plus one of the eligible employees without a formal election. The tribe agrees to not express any opposition to that labor organization or preference for another labor organization.
- If a labor organization agrees to accept the conditions specified for “tribe and union neutrality” in Section 7(a), the labor organization is deemed to have accepted the entire Ordinance and waives any right to file any form of action or proceeding with the National Labor Relations Board.\*
- If a labor organization has agreed in writing to accept the conditions for “tribe and union neutrality” specified in Section 7(a), and the union engages in a strike, boycott or other economic activity, the tribe may withdraw from its obligation to resolve the impasse through a binding dispute mechanism. If the labor organization has not agreed to the conditions in Section 7(a), it may engage in a strike in the event the impasse is not solved through binding dispute resolution mechanisms.
- The model ordinance creates three levels of binding dispute resolution mechanisms in the event of an impasse: first, a designated tribal forum, and second, a Tribal Labor Panel composed of arbitrators. The panel is to serve all the tribes that have adopted this ordinance and its decisions are binding. Finally, either party may seek to compel

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\* The National Labor Relations Board has asserted jurisdiction over labor relations in tribal casinos, finding in a 2004 *Decision and Order* that operating a commercial business such as a casino “...is not an expression of sovereignty in the same way that running a tribal court system is.” The San Manuel Band of Mission Indians has appealed the decision to the U.S. Supreme Court. See Charlene Wear Simmons, *Gambling in the Golden State*, California Research Bureau, May 2006, pp. 76-77 for a brief discussion of this issue.

arbitration or confirm an arbitration award in Tribal Court, and the decision may be appealed to federal court. Unlike the 1999 compact, a collective bargaining impasse may proceed through all levels of dispute resolution, not just the first level.

- The model ordinance specifies factors for an arbitrator to consider if collective bargaining negotiations result in an impasse. These include wages, hours and other terms and conditions of employment at other Indian gaming operations in Mendocino County, the cost of living, regional and local market conditions, the tribe's financial capacity (if the issues is raised by the tribe), the size and type of casino or related facility, and the competitive nature of the business environment.

***Rumsey Band of Wintun Indians--amended 1999 compact***

- The section on labor relations in the 1999 compact is repealed, replaced by the tribe's labor relations ordinance since the tribe has recognized a union as the exclusive collective bargaining representative for its employees and entered into a collective bargaining agreement. As in the Coyote Valley compact, the tribe agrees to adopt and comply with federal and state workplace and occupational health and safety standards.

***Buena Vista Rancheria of Me-Wuk Indians of California, Ewiiapaayp Band of Kumeyaay Indians, Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, United Auburn Community--amended 1999 compacts***

- Within 30 days of the effective date of the amendment, the tribes are to amend their labor relations ordinances (described in the 1999 tribal-state compact) to incorporate a revised tribal labor relations ordinance similar to the ordinance described in the Coyote Valley compact, including card check neutrality. The local labor market is to be considered in case of an impasse. Buena Vista and Ewiiapaayp agree to adopt and comply with federal and state workplace and occupational health and safety standards.

***Viejas Band of Kumeyaay Indians—amended 1999 compact***

- Since the tribe entered into a collective bargaining agreement with a labor organization before the enactment of its tribal labor relations ordinance, and that agreement has since been renewed, no change in the ordinance is necessary to address employee rights. The tribe agrees to adopt and comply with federal and state workplace and occupational health and safety standards.

***Pala Band of Mission Indians—amended 1999 compact***

- The tribe has entered into a Memorandum of Understanding with a labor union providing for employer neutrality, arbitrator-verified authorizations that a majority of eligible employees have authorized the union, a no strike clause and binding arbitration. The tribe has recognized the union as its exclusive bargaining representative. For this reason, the parties agree that no change in the tribal labor relations ordinance is necessary. The tribe agrees to adopt and comply with federal and state workplace and occupational health and safety standards.

### ***2006 Tribal-State Compact***

The governor negotiated an amended 1999 tribal-state compact with the Quechan Tribe in 2005. The amended compact was ratified by the legislature in August 2006 and signed by the governor on September 28, 2006.

#### ***Quechan Tribe of the Fort Yuma Indian Reservation—amended 1999 compact***

- The tribe agrees to adopt and comply with federal and state workplace and occupational health and safety standards and consents to the state's jurisdiction to inspect and enforce those standards.
- The model labor relations ordinance is similar to that in the 1999 tribal-state compact, with some changes. These include deletion of the provision that tribal law, ordinances, customs, and traditions prevail over the model labor relations ordinance in the event of conflict. The provision that strike-related picketing shall not be conducted on Indian lands is also deleted.
- Notably, this compact does not provide for card check neutrality. The selection of a collective bargaining agency is by secret ballot in an election conducted by the tribe.

### **UNRATIFIED COMPACTS**

#### ***2004 Unratified Tribal-State Compact***

##### ***Lytton Rancheria of California***

- The tribe agrees to withhold earnings of persons employed at the gaming facility to comply with child and spousal support orders.
- The initial provisions of the model labor relations ordinance are somewhat similar to those in the Coyote Valley tribal-state compact. A major difference is the lack of "card check neutrality." The union is not afforded the option of presenting authorization cards signed by 50 percent of the eligible employees, requiring the tribe to enter into an agreement to certify and authorize the union as the employees' bargaining agent without a secret ballot. The provisions of the 1999 tribal-state compact requiring a secret ballot election apply, although the tribe and the union may agree to a different arrangement.
- Provisions regarding dispute resolution mechanisms and requiring binding arbitration are similar to those in the Coyote Valley tribal-state compact.

#### ***2005 Unratified Tribal-State Compacts***

In 2005, Governor Schwarzenegger negotiated new tribal-state compacts with the Yurok Tribe of the Yurok Reservation, the Big Lagoon Rancheria and the Los Coyotes Band of Cahuilla and Cupeño Indians that were not ratified by the legislature.

### *Yurok Tribe of the Yurok Reservation*

- The model labor relations ordinance appended to the compact (Exhibit B) is similar to that in the Lytton Rancheria compact and, as in other 1999 compacts, the tribe agrees to adopt it. There is no provision for “card check neutrality” as in six of the 2004 compacts. The union is not afforded the option of presenting authorization cards signed by 50 percent of the eligible employees, thereby requiring the tribe to enter into an agreement to certify and authorize the union as the employees’ collective bargaining agent. Instead the provisions of the 1999 compact requiring a secret ballot election apply, although the tribe and the union may agree to a different arrangement.
- An employment preference for members of the tribe is not explicitly stated as in the previous compacts.

### *Los Coyotes Band of Cahuilla and Cupeño Indians and the Big Lagoon Rancheria*

- The tribes agree to adopt and comply with federal and state workplace and occupational health and safety standards, allow inspection by state inspectors, and consent to the jurisdiction of state enforcement agencies including the Division of Occupational Safety and Health, the Occupational Safety and Health Standards Board and the Occupational Safety and Health Appeals Board, and of state courts.
- The tribes may elect to finance their liability for unemployment compensation benefits, instead of participating in the California Unemployment Fund, by any method specified in California Unemployment Insurance Code § 803.
- The tribes agree to participate in the state’s workers’ compensation program.
- The tribes agree to adopt the Model Tribal Labor Relations Ordinance appended to the compact. This model ordinance contains a section on “Tribe and union neutrality” similar to that in the Coyote Valley compact.
- **Card check neutrality:** If a labor organization offers in writing to not engage in strikes or disparage the tribe, and to resolve all issues through binding dispute mechanisms, the tribes agree to recognize and certify the labor organization if it provides dated and signed authorization cards from at least 50 percent plus one of the eligible employees, without a formal election.
- Although similar in other respects to the Coyote Valley tribal-state compact, the appended model labor relations ordinance does not explicitly mention the union’s right to strike, providing instead that the tribe and labor organization will negotiate in good faith for a collective bargaining agreement.

### *2006 Unratified Tribal-State Compacts*

In August 2006, the governor submitted six tribal-state compacts to the legislature for ratification. An amended compact with the Quechan Tribe of the Fort Yuma Reservation, which had been negotiated in 2005, was ratified. Five newly negotiated amended 1999 compacts were not ratified. These were with the Morongo Band of Mission Indians, the Pechanga Band of Luiseño Indians, the San Manuel Band of



Mission Indians, the Agua Caliente Band of Cahuilla Indians, and the Sycuan Band of the Kumeyaay Nation.

***Morongo Band of Mission Indians, Pechanga Band of Luiseño Indians, Agua Caliente Band of Cahuilla Indians, San Manuel Band of Mission Indians, Sycuan Band of the Kumeyaay Nation—amended 1999 compacts***

- The tribes agree to comply with standards no less stringent than those in the federal Fair Labor Standards Act and implementing regulations.
- The tribes agree to participate in the state's workers' compensation program for their employees and to ensure that independent contractors doing business with the tribe comply with state workers' compensation laws. Alternatively, the tribe may establish its own system of insuring gaming facility employees' work-related injuries, with specified standards.
- The ***Model Tribal Labor Relations Ordinance*** appended to the 1999 tribal-state compact remains in force. Notably, it does not contain the provision for card check neutrality found in eight of the 2004–2005 compacts (six of which have been ratified), or the revised dispute resolution process found in those compacts.



## LOCAL COMMUNITY AGREEMENTS/MITIGATION

### RATIFIED COMPACTS

#### 1999 Tribal-State Compact

- No direct mention—see “Environmental” section.

#### *2003 Tribal-State Compacts*

The three new compacts negotiated by Governor Davis in 2003 are similar to the 1999 tribal-state compact. They were with the Torres-Martinez Desert Cahuilla Indians, the La Posta Band of Mission Indians and the Santa Ysabel Band of Diegueño Indians.

##### *Torres-Martinez Desert Cahuilla Indians*

- The tribe agrees to enter into binding and enforceable agreements with Riverside and Imperial Counties and the city of Coachella to address the mitigation of significant environmental, economic and social effects. These include impacts on water supplies, wastewater treatment, air quality, solid and hazardous waste management, fire and protective services, and public health and safety. Other impacts include those created by and during construction, increased traffic, noise, and economic and social impacts, as well as protection of cultural, historical and biological resources.
- The tribe agrees to make a good faith effort to mitigate any and all significant adverse off-reservation environmental impacts. The state may request negotiations between January 1, 2007 and March 1, 2007, if this section of the compact proves inadequate. In that event, the tribe may file a federal action after January 1, 2008, in which the good faith of the parties’ negotiations would be at issue. If the state has requested negotiations and by January 1, 2009, there is no agreement, the tribe is to cease construction and other activities that have the potential to cause adverse off-reservation impacts until there is an agreement. The tribe may sue the state alleging failure to negotiate in good faith to prevent the state from stopping construction.

##### *La Posta Band of Mission Indians and Santa Ysabel Band of Diegueño Mission Indians*

- The tribes agree to enter into binding and enforceable agreements with county and other local governmental entities to address mitigation of significant environmental, economic and social effects resulting from gaming activities, as in the Torres-Martinez compact.
- If a local government entity and the tribes are unable to reach an agreement as to the terms of these written agreements, they will follow specified dispute resolution procedures. Either party may seek to have the dispute resolved by an arbitrator, but

neither party is required to submit to arbitration. Disagreements not resolved by arbitration may be resolved in federal or state court.

### ***2004 Tribal-State Compacts***

Governor Schwarzenegger signed new compacts with three tribes (the Coyote Valley Band of Pomo Indians, the Fort Mojave Indian Tribe and the Lytton Rancheria). The Lytton compact was not ratified by the legislature: the Coyote Valley and Fort Mojave compacts were ratified. The governor also negotiated amended 1999 compacts with seven tribes, all of which were ratified. We summarize key provisions below.

#### ***Coyote Valley Band of Pomo Indians and Fort Mojave Indian Tribe***

- A new Section 11 addresses off-reservation environmental and economic impacts. The Coyote Valley tribe agree to enter into an enforceable written agreement with Mendocino County, as does the Fort Mojave tribe with San Bernardino County and the city of Needles, to mitigate any off-reservation environmental impacts (including aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, water resources, land use, mineral resources, traffic, noise, utilities and service systems, and cumulative effects). A TEIR is required (see section on “Environmental Standards”).
- The agreement is to provide for compensation for law enforcement, fire protection, emergency medical services and other public services provided by the county for the gaming operation as well as mitigation and compensation for any effect on public health including gambling addiction and public safety.
- The compacts recognize the authority of state and local law enforcement to exercise criminal jurisdiction within tribal boundaries per Public Law 280.

#### ***Rumsey Band of Wintun Indians—amended 1999 compact***

- This amended 1999 compact contains provisions requiring local government agreements to mitigate off-reservation impacts similar to those in the Coyote Valley tribal-state compact. The tribe’s October 2002 intergovernmental agreement with Yolo County satisfies requirements for an agreement with the county, provided that any new project after January 1, 2008, must have a new agreement.

#### ***Buena Vista Rancheria of Me-Wuk Indians of California—amended 1999 compact***

- The tribe has intergovernmental agreements with Amador County and the city of Ione. When the agreement with the city expires, a new enforceable agreement is to address compensation for law enforcement, road and traffic control improvements, a water line and the off-reservation environmental effects associated with the gaming facility.

#### ***Pala Band of Mission Indians, Ewiiapaayp Band of Kumeyaay Indians, Pauma Band of Luiseño Mission Indians of the Pauma & Yuima Reservation, United***

***Auburn Indian Community, Viejas Band of Kumeyaay Indians—amended 1999 compacts***

- These amended 1999 compacts contain provisions requiring tribal-local government agreements to mitigate off-reservation impacts similar to those in the Coyote Valley tribal-state compact. Binding arbitration is required to settle disputes.

***2006 Tribal-State Compact***

***Quechan Tribe of the Fort Yuma Indian Reservation—amended 1999 compact***

- The tribe agrees to enter into an agreement with Imperial County, as in the 2004 amended compacts, and also to enter into an enforceable agreement with the state department of transportation to mitigate off-reservation impacts on the state highway system. In the event an agreement is not reached, either party may request binding arbitration.

**UNRATIFIED COMPACTS**

***2004 Unratified Tribal-State Compact***

***Lytton Rancheria of California***

- The provisions are generally similar to those of the Coyote Valley tribal-state compact, except that the tribe is to enter into enforceable agreements with the city of San Pablo and the state department of transportation. In the event agreements are not reached, either party may request binding arbitration.

***2005 Unratified Tribal-State Compacts***

In 2005, Governor Schwarzenegger negotiated new tribal-state compacts with the Yurok Tribe of the Yurok Reservation, the Big Lagoon Rancheria and the Los Coyotes Band of Cahuilla and Cupeño Indians that were not ratified by the legislature.

***Yurok Tribe of the Yurok Reservation***

- The tribe agrees to enter into enforceable written agreements with Del Norte County and the state (and may enter into an agreement with Humboldt County) regarding timely mitigation of any significant effect on the off-reservation environment. Either party may demand binding arbitration. Mitigation must include repair, improvement or replacement of the Klamath Community Services District-owned wastewater treatment plant.
- As in the 2004 compacts, the agreements are to provide compensation for public safety services and programs designed to address gambling addiction.

***Los Coyotes Band of Cahuilla and Cupeño Indians and the Big Lagoon Rancheria***

- The tribe agrees to enter into an enforceable written agreement with the City of Barstow, the County of San Bernardino, and the state Department of Transportation.

Mitigation factors are similar to those in the Yurok tribal-state compact, as is the dispute resolution mechanism (binding arbitration).

### ***2006 Unratified Tribal-State Compacts***

In August 2006, the governor submitted six tribal-state compacts to the legislature for ratification. An amended compact with the Quechan Tribe of the Fort Yuma Reservation, which had been negotiated in 2005, was ratified. Five newly negotiated amended 1999 compacts were not ratified. These were with the Morongo Band of Mission Indians, the Pechanga Band of Luiseño Indians, the San Manuel Band of Mission Indians, the Agua Caliente Band of Cahuilla Indians, and the Sycuan Band of the Kumeyaay Nation.

#### ***Morongo Band of Mission Indians, Pechanga Band of Luiseño Indians, San Manuel Band of Mission Indians, Sycuan Band of the Kumeyaay Nation—amended 1999 compacts***

- The tribes agree to negotiate with the county and any city located within one quarter mile of the border of the gaming facility, and to enter into enforceable written agreements to provide for timely mitigation of any significant effect on the off-reservation environment; compensation for law enforcement, fire protection, emergency medical services and other public services provided as a consequence of the gaming project; and, reasonable compensation for programs designed to address gambling addiction. These provisions are similar to those in the 2004 compacts.
- Either party may request binding arbitration before a single arbitrator in the event of a dispute. The arbitrator is to issue an award that provides for feasible mitigation and reasonably compensates for public services without unduly interfering with the principal objectives of the project or imposing environmental mitigation measures different from those required to mitigate similar projects in the surrounding area. The award is deemed to be part of the Intergovernmental Agreement. The tribes agree to waive their right to sovereign immunity in connection with the arbitrator's decision of any action brought in federal or state court.

#### ***Agua Caliente Band of Cahuilla Indians—amended 1999 compact***

- Prior to constructing a new facility, the tribe agrees to demonstrate local community support in the form of a resolution by the city council or county board of supervisors, and a public advisory vote or “fair and scientific” telephone survey (standards for the survey are specified in Exhibit B of the compact). Other provisions are as in the Morongo and other 2006 amended compacts.

## PROBLEM AND PATHOLOGICAL GAMBLING PROGRAMS

### RATIFIED COMPACTS

#### *1999 Tribal-State Compact*

- No persons under age 18, or age 21 if alcohol is served, may be present in any room where Class III gaming activities are taking place.

#### *2003 Tribal-State Compacts*

The three new compacts negotiated by Governor Davis in 2003 are similar to the 1999 tribal-state compact. They were with the Torres-Martinez Desert Cahuilla Indians, the La Posta Band of Mission Indians and the Santa Ysabel Band of Diegueño Indians.

#### *Torres-Martinez Desert Cahuilla Indians, La Posta Band of Mission Indians and Santa Ysabel Band of Diegueno Mission Indians*

- No persons under age 21 may be present in any room where Class III gaming activities are taking place unless enroute to a nongaming area.
- The local government agreement is to include mitigation measures and feasible project alternatives concerning problem and pathological gambling. (This provision is not included in Torres-Martinez tribal-state compact.)

### 2004 TRIBAL-STATE COMPACTS

Governor Schwarzenegger signed new compacts with three tribes (the Coyote Valley Band of Pomo Indians, the Fort Mojave Indian Tribe and the Lytton Rancheria). The Lytton compact was not ratified by the legislature; the Coyote Valley and Fort Mojave compacts were ratified. The governor also negotiated amended 1999 compacts with seven tribes, all of which were ratified. Key provisions are summarized below.

#### *Coyote Valley Band of Pomo Indians and Fort Mojave Indian Tribe*

- The written agreement with local government is to include mitigation and compensation of any effect on public health such as gambling addiction.
- The Coyote Valley tribe is to post notices in conspicuous places advising patrons where they may receive assistance for gambling problems. The Fort Mojave notices may be posted or made available in pamphlet format.
- The tribes agree to implement procedures whereby patrons may limit their access to gambling, including restraints on credit, check cashing and advertising.
- In the Coyote Valley compact, no person under age 18 may be present in any room in which Class III gaming activities are being conducted, or age 21 if alcohol is served.

In the Fort Mojave compact, no person under age 21 may be present in rooms where Class III gaming activities are conducted.

***Rumsey Band of Wintun Indians, Buena Vista Rancheria of Me-Wuk Indians of California, Pala Band of Mission Indians, Ewiiapaayp Band of Kumeyaay Indians, Pauma Band of Luiseño Mission Indians of the Pauma & Yuima Reservation, United Auburn Community, Viejas Band of Kumeyaay Indians—amended 1999 compacts***

- These amended compacts do not include provisions in the Coyote Valley and Fort Mojave tribal-state compacts requiring posting of notices about assistance for gambling problems and implementation of procedures to limit access for problem gamblers.
- Written agreements with local governments are to include mitigation and compensation of any effect on public health such as gambling addiction.

#### ***2005 Tribal-State Compact***

***Quechan Tribe of the Fort Yuma Indian Reservation—amended 1999 compact***

- A new problem gambling section requires signage near all public entrances, automatic teller machines and exits giving a toll-free helpline number for assistance with gambling problems.
- The tribal gaming agency is to establish a self-exclusion program for patrons and an involuntary exclusion program, including denying access and credit.
- The tribe is to prevent persons under the age of 18 from loitering in gaming area.
- The tribal gaming agency is to adopt a code of conduct and assure that advertising and marketing contain a responsible gaming message and a toll-free helpline number.

#### **UNRATIFIED COMPACTS**

##### ***2004 Unratified Tribal-State Compact***

***Lytton Rancheria of California***

- No person under age 21 may be present where gaming activities are taking place.
- The tribal gaming agency is to establish a program to mitigate problem gambling and adopt a code of conduct that addresses responsible gambling and advertising.
- The problem gambling program is to include training staff to identify and manage problem gambling; making information about prevention and assistance available at visible locations such as ATMs (including a toll-free help-line number); establishing a self-exclusion program and an involuntary exclusion program, and; preventing underage individuals from loitering in gaming areas.
- The tribe's agreement with the city of San Pablo and the state is to include reasonable compensation for programs designed to address gambling addiction.



### ***2005 Unratified Tribal-State Compacts***

In 2005, Governor Schwarzenegger negotiated new tribal-state compacts with the Yurok Tribe of the Yurok Reservation, the Big Lagoon Rancheria and the Los Coyotes Band of Cahuilla and Cupeño Indians that were not ratified by the legislature.

#### ***Yurok Tribe of the Yurok Reservation***

- No person under age 21 may be present in any area where gaming activities are taking place.
- The tribe agrees to maintain notices and pamphlets located at conspicuous locations in the gaming facility with information about preventing problem gambling and advising patrons where they may obtain assistance (including a toll-free help line). The tribal gaming agency is to implement procedures by which patrons may voluntarily limit their access to gambling (including credit, check cashing and direct mail advertisements), and also procedures by which the gaming operation may halt promotional mailers and deny access and credit and check cashing services to patrons who have exhibited signs of problem gambling.
- The tribe's written agreements with Del Norte and Humboldt Counties and the state are to provide compensation for programs designed to address gambling addiction.
- The tribal gaming agency is to adopt a code of conduct similar to that of the American Gaming Association that addresses responsible gaming and advertising and ensures that marketing activities make no false or misleading claims.

#### ***Los Coyotes Band of Cahuilla and Cupeño Indians and the Big Lagoon Rancheria***

- No person under age 21 may be present in any area where gaming activities are taking place.
- The compact contains a new section on "Program to Mitigate Problem Gambling." Gaming facility supervisors and floor employees are to be trained to identify and manage problem gambling. Educational materials are to be posted in conspicuous places to prevent problem gambling and offer information about where to find assistance. The tribes agree to create a self-exclusion program for problem gamblers and an involuntary exclusion program including halting promotional mailings and denying access and credit to patrons who have exhibited signs of problem gambling.
- Other provisions are similar to those in the Yurok tribal-state compact.

### ***2006 Unratified Tribal-State Compacts***

In August 2006, the governor submitted six tribal-state compacts to the legislature for ratification. An amended compact with the Quechan Tribe of the Fort Yuma Reservation, which had been negotiated in 2005, was ratified. Five newly negotiated amended 1999 compacts were not ratified. These were with the Morongo Band of Mission Indians, the Pechanga Band of Luiseño Indians, the San Manuel Band of Mission Indians, the Agua Caliente Band of Cahuilla Indians, and the Sycuan Band of the Kumeyaay Nation.

*Morongo Band of Mission Indians, Pechanga Band of Luiseño Indians, Agua Caliente Band of Cahuilla Indians, San Manuel Band of Mission Indians, Sycuan Band of the Kumeyaay Nation —amended 1999 compacts*

- The tribes agree to negotiate with the county and the city, including any city located within one-quarter mile of the border of the gaming facility, to provide reasonable compensation for programs designed to address gambling addiction.

## REGULATION, ENFORCEMENT AND DISPUTE RESOLUTION

### RATIFIED COMPACTS

#### *1999 Tribal-State Compact*

All gaming activities must comply with the federal Indian Gaming Regulatory Act (IGRA) and the rules and regulations adopted by the tribal gaming agency.

#### *Licensing*

Background investigations and licenses issued by the tribal gaming agency are required of gaming employees, suppliers, and others with influence over the gaming operation. An investigation and determination of suitability for key gaming employees, suppliers and financial sources by the state gaming agency are also required. Licenses must be renewed every two years. A tribe may contract with the state gaming agency to conduct background investigations or provide other assistance and must report violations to the state gaming agency.

***Gaming employees*** must be of good character and integrity, or have a prior history that does not pose a threat to the public interest or effective regulation of gambling. The tribes may employ persons whose applications for a determination of suitability have been denied by the state gaming agency if they are already licensed by the tribe, have been a tribal employee for some years, or if the activities in question occurred before the filing of their initial application to the state agency. The state and tribal gaming agencies are to cooperate in developing standard employee licensing forms.

***Gaming resource suppliers*** that provide at least \$25,000 in gaming resources in any 12-month period must be licensed by the tribal gaming agency. Tribes are not to enter into agreements with suppliers who have been deemed unsuitable by the state gaming agency, or whose determination of suitability has expired.

***Financial sources*** that extend financing, directly or indirectly, must be licensed by the tribe. They may be found unsuitable by the state gaming agency, in which case the tribe agrees to sever the arrangement. Banks, public agencies and investors holding less than ten percent of outstanding indebtedness in bonds issued by the tribe may be excluded from this requirement at the tribe's discretion.

***Tribal Gaming Agency*** members must be found to be suitable after a background investigation by the tribe, which may request assistance from the state gaming agency. The tribe is to adopt a conflict-of-interest code and ensure prompt removal of any tribal gaming agency member who has acted in a corrupt or compromised manner.

***Management contractors***<sup>\*</sup> must be determined to be suitable by the state gaming agency every two years in order to do business with the tribe

***Any other person having significant influence*** over the gaming operation must have a tribal gaming license. Non-key gaming employees may be defined by an agreement between the tribal gaming agency and the state gaming agency, however there is no agreed upon definition.

### ***Tribal Regulation***

The tribal gaming agency is to promulgate rules and regulations on the following subjects at a minimum, and ensure their effective enforcement: the physical safety of patrons and employees, detection of employee theft and fraud, an annual audit, a list of persons barred from the gaming facility due to past behavior such as criminal activity, the safeguarding of assets, the prevention of illegal activity, and the recording of all incidents that deviate from normal operating policies. The tribal gaming agency is also to approve rules for all Class III games that are consistent with those adopted by the state gaming agency.

It is the responsibility of the tribal gaming agency to conduct on-site gaming regulation and control. The tribe is responsible for establishing and testing gaming standards. The tribal gaming agency is to investigate and correct any violation, and may request state assistance. The tribal gaming agency is to report significant violations to the state gaming agency.

Gaming devices may not be transported from tribal land without notice to the county sheriff and in accordance with agreed upon procedures, or the devices may be seized by California law enforcement. The tribe is responsible for establishing and testing gaming standards.

### ***State Regulation***

All tribal gaming regulations proposed by the state gaming agency must be approved by an association composed of two representatives from each gaming tribe and two representatives each from the Division of Gambling Control in the California Department of Justice and the California Gambling Control Commission. The association meets quarterly and 34 tribes constitute a quorum. Three regulations have been adopted since the compact's adoption, most recently an emergency preparedness plan. In cases of imminent threat to public health and safety, the state gaming agency may adopt regulations that become effective immediately.

The state retains criminal jurisdiction to enforce state gambling laws.

The state gaming agency has the right to inspect the public areas of a tribe's Class III gaming activities during business hours without prior notice and areas not accessible to the public with prior notice. The agency may inspect and copy records at that time.

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<sup>\*</sup> A "management contractor" means any gaming resource supplier with whom the tribe has contracted for the management of any gaming activity or gaming facility.

These documents remain the property of the tribe and are exempt from disclosure under the Public Records Act.

### ***Federal Regulation***

When the 1999 tribal-state compact was negotiated, the National Indian Gaming Commission (NIGC) appeared to have an important role under IGRA in regulating “Class III” or casino-style tribal gambling operations, including approving management contracts, conducting background investigations of tribal gaming employees, and directing audits. The regulatory provisions of California’s 1999 tribal-state compact were negotiated under the assumption. Recently, however, the U.S. District Court of Appeals for the District of Columbia ruled that the NIGC has no authority to regulate slot machines, blackjack and other Nevada-style gambling at Indian casinos.\* The NIGC has reportedly stopped conducting audits of tribal casinos pending appeal of the decision.

### ***Dispute Enforcement***

The tribe and state will first attempt to resolve disputes through a process of good faith negotiation, beginning with written notice. If the dispute is not resolved within 30 days after the first tribal-state meeting, either party may refer it to arbitration. Disagreements may be resolved in the U.S. District Court where the gaming facility is located, the Ninth Circuit Court of Appeals, or the appropriate state court. The tribe and state waive sovereign immunity to disputes between them on issues arising under the compact with the exception of suits for damages.

### ***2003 Tribal-State Compacts***

The three new compacts negotiated by Governor Davis in 2003 are similar to the 1999 tribal-state compact. They were with the Torres-Martinez Desert Cahuilla Indians, the La Posta Band of Mission Indians and the Santa Ysabel Band of Diegueño Indians.

#### ***Torres-Martinez Desert Cahuilla Indians, La Posta Band of Mission Indians, Santa Ysabel Band of Diegueño Mission Indians***

- Most provisions are similar to those in the 1999 compact. In addition, the tribes agree to send a copy of their gaming ordinances and tribal gaming agency rules and regulations to the California Gambling Control Commission (CGCC). The documents are to be made public.
- The annual audit is to be submitted to the state gaming agency.

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\* NIGC regulations establishing minimum internal controls for class III gaming casinos were overturned by a U.S. District Court in a lawsuit brought by the Colorado River Indian Tribes, a finding upheld by the U.S. Court of Appeals for the District of Columbia. The NIGC has requested the Court of Appeals to reconsider portions of its decision. See *Colorado Indian Tribes vs. National Indian Gaming Commission*.

- If a state gaming agency regulation conflicts with a final published regulation of the NIGC, the NIGC regulation governs until conclusion of any pending dispute resolution proceeding. (This provision may no longer be valid if the NIGC's role in regulating Class III gaming is overturned by the federal courts--see *Colorado Indian Tribes vs. National Indian Gaming Commission*).

### ***2004 Tribal-State Compacts***

Governor Schwarzenegger signed new compacts with three tribes (the Coyote Valley Band of Pomo Indians, the Fort Mojave Indian Tribe and the Lytton Rancheria). The Lytton compact was not ratified by the legislature; the Coyote Valley and Fort Mojave compacts were ratified. The governor also negotiated amended 1999 compacts with seven tribes, all of which were ratified. Key provisions are summarized below.

#### ***Coyote Valley Band of Pomo Indians***

- The compact does not include the "association" of gaming tribes created to approve state gaming regulations created in the 1999 compact. The state gaming agency is authorized to adopt regulations that apply to any aspect of the gaming operation that is not addressed by a tribal regulation or is ineffective as long as it is not inconsistent with the compact, after notifying, meeting and conferring with representatives of the tribal gaming agency. In cases of an imminent threat to public health or safety, the state gaming agency may adopt a regulation that is effective immediately. Either party may demand binding arbitration if it is dissatisfied with a regulation.
- Each tribal employee license application form is to be printed showing the state gaming agency's approval of its use. The agency is authorized to directly seek information from applicants. The tribe agrees to not employ anyone whose application to the agency for a determination of suitability has been denied or expired without renewal.
- If requested by a tribal government or gaming agency, the state gaming agency may assist in conducting background investigations of a member of the tribal gaming agency.
- The state gaming agency may determine that a member of the tribal gaming agency is unsuitable and request removal of that member. The tribe agrees to either remove the member or demand an expedited binding arbitration. The compact specifies factors for the arbitrator to consider when making a determination whether a member is suitable or unsuitable.
- The state gaming agency is to maintain a list of suitable gaming resource suppliers from which a tribe may license a supplier. Financial sources must be licensed by the tribal gaming agency and apply to the state gaming agency for a finding of suitability prior to extending financing. If the agency denies the determination of suitability, the tribal gaming agency is to deny or revoke the license.
- Gaming device suppliers are subject to the same licensure and finding-of-suitability requirements as other gaming resource suppliers.

- A new section on approval and testing of gaming devices specifies that the hardware and software for a gaming device must have been tested and certified by an approved, licensed independent or state gaming test laboratory, and the software must also have been tested by the tribal gaming agency prior to insertion into the gaming device. The tribal gaming agency is to provide the state gaming agency copies of its regulations specifying technical standards for its gaming devices. In the event of a dispute, standards default to those approved by the State of Nevada. An annual independent audit is required for compliance purposes.
- The tribal gaming agency is to ensure compliance with gaming device testing and approval standards through an annual independent audit and to provide the results to the state gaming agency.
- The state gaming agency may inspect the tribe's gaming devices on a random basis up to four times annually and more upon reasonable belief of an irregularity, after informing the tribe.
- Firm timelines are established for actions required in the dispute resolution process, which includes binding arbitration before a single arbitrator.
- The auditor employed by the tribe to audit the annual financial statement is to be approved by the state gaming agency

***Fort Mojave Indian Tribe***

- As in the 1999 compact, all tribal gaming regulations proposed by the state gaming agency must be approved by an association composed of two representatives from each gaming tribe and two representatives each from the Division of Gambling Control in the California Department of Justice and the California Gambling Control Commission. The association meets quarterly and 34 tribes constitute a quorum.
- Every state gaming agency regulation applying to gaming activities and operations must first be submitted to the association for comment. A proposed regulation disapproved by the association within 30 days of submission cannot be resubmitted unless it has been readopted by the state gaming agency with a detailed, written response to the association's objections. The tribe may seek to repeal or amend the regulation through the dispute resolution process established in the compact.
- The CGCC may issue regulations interpreting the section on "Financial Sources." The Commission's ability to adopt regulations applying to the gaming operation is limited to licensing, approval and testing of gaming devices, and rules and regulations for the operation and management of the gaming operation and facility.
- Other regulatory provisions are similar to those in the Coyote Valley compact.

***Rumsey Band of Wintun Indians—amended 1999 compact***

- The association of California tribal and state gaming regulators is defined as in the 1999 compact.

- A section on testing and approval of gaming devices, similar to that in the Coyote Valley tribal-state compact, is included.
- There is a new section on licensure of financial sources.

***Buena Vista Rancheria of Me-Wuk Indians of California—amended 1999 compact***

- The provisions are similar to those in the Rumsey Band's amended 1999 compact, ***Ewiiaapaayp Band of Kumeyaay Indians, Pala Band of Mission Indians, Pauma Band of Luiseño Mission Indians of the Pauma & Yuima Reservation, United Auburn Indian Community, United Auburn Community, Viejas Band of Kumeyaay Indians—amended 1999 compacts***
- The regulatory provisions of these amended 1999 compacts are similar to those in the Rumsey Band's amended tribal-state 1999 compact.

***2005 Tribal-State Compact***

***Quechan Tribe of the Fort Yuma Indian Reservation—amended 1999 compacts***

- The regulatory provisions are similar to those in the Rumsey Band's amended 1999 compact.

**UNRATIFIED COMPACTS**

***2004 Unratified Tribal-State Compact***

***Lytton Rancheria of California***

- The regulatory provisions of this compact are generally similar to those of the Coyote Valley compact. The state gaming agency may adopt regulations applying to any aspect of the gaming operation if they are consistent with tribal gaming agency regulations and the compact. The state gaming agency may also adopt regulations if circumstances pose an imminent threat to public health or safety, or if it determines that tribal regulations dealing with the operation and management of the gaming operation and facility, approval and testing of gaming devices, and/or licensing are ineffective.
- The tribe agrees to notify the police department of the city of San Pablo at least ten days before transporting gaming devices to and from the gaming facility.
- The tribe agrees to ensure that members of the tribal gaming agency are free from corruption, undue influence, compromise and conflicting interests, to establish and enforce an appropriate conflict of interest code, and to ensure the prompt removal of any tribal gaming agency member who is found to have acted in a corrupt or compromised manner or has a conflict of interest.



- The compact establishes a binding arbitration process before a single arbitrator should the tribe contest a finding by the state gaming agency that a member of the tribal gaming agency is unsuitable.

### ***2005 Unratified Tribal-State Compacts***

In 2005, Governor Schwarzenegger negotiated new tribal-state compacts with the Yurok Tribe of the Yurok Reservation, the Big Lagoon Rancheria and the Los Coyotes Band of Cahuilla and Cupeño Indians that were not ratified by the legislature.

#### ***Yurok Tribe of the Yurok Reservation***

The provisions are generally similar to the 2004 Coyote Valley compact with the following additions:

- If a gaming resource supplier has received a determination of suitability, the tribal gaming agency may issue a license without requiring the supplier to apply again to the state gaming agency, although the CGCC must immediately be given notice of the action. In other cases, the tribal gaming agency is to transmit to the CGCC all license application materials within ten days of issuing a license to a gaming resource supplier.
- If the CGCC finds newly discovered information, an applicant previously determined to be suitable for a gaming employee license may be deemed unsuitable. The CGCC is to notify the tribal gaming agency of its determination and afford the tribe an opportunity to be heard prior to the revocation of the employee's tribal gaming license. In addition, the applicant must be provided written notice of all appeal rights.
- The CGCC and the tribal gaming agency agree to cooperate in developing standard licensing forms for tribal gaming employees on a statewide basis
- A procedure is created whereby the state may object to the designation of certain tribal gaming records as "confidential" and therefore not subject to state review.

#### ***Los Coyotes Band of Cahuilla and Cupeño Indians and the Big Lagoon Rancheria***

The provisions are generally similar to the Yurok tribal-state compact with the following additions.

- A new provision allows the tribal gaming agency and the state gaming agency to agree that some employees do not require licensure if they do not work in the part of the gaming facility in which gaming activities are conducted. This determination is subject to annual review by the tribe and the state.
- Employees who work in gaming activities but do not supervise, operate, maintain, repair, assist, or account for gaming activities, and who do not make discretionary decisions affecting the conduct of the gaming operation, are not required to obtain

a determination of suitability by the state gaming agency. The state gaming agency may review all tribal license applications and if the state agency determines that a person would be unsuitable for licensure, the tribe agrees not to employ that person.

- If the tribal gaming agency elects to exclude a financial source from licensing requirements, it is to give immediate notice to the state gaming agency and provide supporting documentation, upon request. The state gaming agency may determine whether the financial source is unsuitable, in which case the tribe is to stop payment to the financial source. This provision is subject to good faith renegotiation in or after five years.

***The gaming test laboratory is to be an independent or state governmental gaming test laboratory, with specified licensing and selection standards.***

### ***2006 Unratified Tribal-State Compacts***

In August 2006, the governor submitted six tribal-state compacts to the legislature for ratification. An amended compact with the Quechan Tribe of the Fort Yuma Reservation, which had been negotiated in 2005, was ratified. Five newly negotiated amended 1999 compacts were not ratified.

***Morongo Band of Mission Indians, Pechanga Band of Luiseño Indians, Agua Caliente Band of Cahuilla Indians, San Manuel Band of Mission Indians, Sycuan Band of the Kumeyaay Nation—amended 1999 compacts***

- Most regulatory provisions remain as in the 1999 compact. This means that many standards agreed to in subsequent compacts, as detailed above, do not apply. The following bullets summarize key additions.
- A new section on licensure of financial sources is similar to that in the 2004 compacts.
- A new section on testing and approval of gaming devices requires that manufacturers or distributors who sell, lease or distribute gaming devices must be deemed suitable by the CGCC and licensed by the tribal gaming agency. The software for the game must have been tested, approved and certified by an independent or state government gaming agency and tested by the tribal gaming agency. The hardware must have been tested by an independent gaming test laboratory and by the tribal gaming agency.
  - However these amended 1999 compacts do not require an annual independent audit to ensure compliance with gaming device testing and approval standards, as in the 2004 compacts.
- The CGCC may inspect five percent of the gaming devices on a random basis up to four times a year during business hours, with notice. It may also review the tribes' technical standards, regulations and internal controls applicable to gaming devices. The tribes agree to notify the CGCC of revisions to those standards.

- The tribes agree to provide the governor's legal affairs secretary with copies of the adopted or amended ordinances required by the compact within 30 days of their effective date.

## REVENUE SHARING

### RATIFIED COMPACTS

#### *1999 Tribal-State Compact*

##### *Revenue Sharing Trust Fund (RSTF)*

The RSTF is to be distributed to non-gaming tribes (defined as tribes with fewer than 350 gaming devices) in the amount of \$1.1 million/year, paid by gaming compact tribes through a yearly license fee per licensed gaming device.

The compact has been interpreted to mean that a tribe's first 350 gaming devices do not have to be licensed. The following fees apply only to licensed gaming devices:

- \$0: 1-350 licensed gaming devices
- \$900: 351-750 licensed gaming devices
- \$1,950: 751-1,250 licensed gaming devices
- \$4,350: 1,251-2,000 licensed gaming devices
- a one-time prepayment fee of \$1,250 per licensed gaming device.

Tribes in arrears to the RSTF or the Special Distribution Fund more than two quarterly license fee payments may not conduct any gaming activity.

##### *Special Distribution Fund (SDF)*

Payments are based on the number of gaming devices operated by a tribe on September 1, 1999, with the first payment made two and one quarter years after the effective date of the compact.\* Quarterly payments are based on the number of gaming devices and the

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\* The tribes that have made contributions to the Special Distribution Fund include: Agua Caliente Band of Cahuilla Indians, Barona Band of Mission Indians, Berry Creek Rancheria, Big Sandy Rancheria, Big Valley Rancheria, Bishop Paiute-Shoshone Indians, Cabazon Band of Cahuilla Indians, Chicken Ranch Rancheria, Colusa Indian Community, Hopland Band of Pomo Indians, Jackson Rancheria, Mooretown Rancheria, Morongo Band of Cahuilla Mission Indians, Redding Rancheria, Robinson Rancheria of Pomo Indians, Rumsey Band of Wintun Indians, San Manuel Band of Serrano Mission Indians, Santa Rosa Indian Community, Santa Ynez Band of Chumash Indians, Smith River Rancheria, Soboba Band of Luiseno Indians, Sycuan Band of Diegueño Mission Indians, Table Mountain Rancheria, Tule River Indian Tribe, Twenty-Nine Palms Mission Indians, Viejas Band of Kumeyaay Indians. (The Rumsey and Viejas Bands no longer contribute to the SDF under their amended 2004 compacts, but rather have revenue-sharing agreements with the state.)

following cumulative percentages of net win, defined as *total net win from all terminals divided by number of terminals*.

- 0%: on the first to 200 gaming devices
- 7%: on 201-500 gaming devices
- 10%: on 500 to 1,000 devices
- 13%: on more than 1,000 gaming devices

Revenues in the SDF may be appropriated by the legislature to: (1) make grants for programs to address gambling addiction; (2) support impacted state and local government agencies; (3) compensate state regulatory costs; (4) make up shortfalls in the RSTF, or; (5) for other purposes as determined by the legislature. Compact tribes are to be consulted during the process of determining grants to local governments.

The state may require an audit of the tribe's Quarterly Contribution Report, and an annual audit is required. If the audit finds payments have been understated, the state is to notify the tribe. If the tribe accepts the difference or does not provide a satisfactory reconciliation to the state, the tribe must immediately pay the deficiency plus interest at the rate of one percent per month or the maximum rate permitted by law, whichever is less. Tribes that are more than two quarterly license fee payments in arrears may not conduct any Class III gaming activity.

### *2003 Tribal-State Compacts*

The three new compacts negotiated by Governor Davis in 2003 were built on the 1999 tribal-state compact. They were with the Torres-Martinez Desert Cahuilla Indians, the La Posta Band of Mission Indians and the Santa Ysabel Band of Diegueño Indians.

#### *Torres-Martinez Desert Cahuilla Indians*

- A percentage of net win\* from slot machines is to be paid into the General Fund—three percent the first year of operation, four percent the second year, and five percent the third year and thereafter--for a 350 gaming device facility in Imperial County. When land in Riverside County is taken into trust, the state and the tribe will enter into negotiations for additional payments based on the number of gaming devices to be located in a gaming facility in the county.
- The required annual audit is to be submitted to the state gaming agency.
- There is no requirement that the tribe pay into the RSTF or the SDF.

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\* "Net win" is redefined as that defined by the American Institute of Certified Accountants, meaning the difference between gaming wins and losses before deducting costs and expenses.

***La Posta Band of Mission Indians and Santa Ysabel Band of Diegueño Mission Indians***

- The tribes shall pay five percent of their net win\* for deposit into the state General Fund after opening the gaming facility.
- There is no requirement that the tribes pay into the RSTF or the SDF.

***2004 Tribal-State Compacts***

Governor Schwarzenegger signed new compacts with three tribes (the Coyote Valley Band of Pomo Indians, the Fort Mojave Indian Tribe and the Lytton Rancheria). The Lytton compact was not ratified by the legislature; the Coyote Valley and Fort Mojave compacts were ratified. The governor also negotiated amended 1999 compacts with seven tribes, all of which were ratified. Key provisions are summarized below.

***Coyote Valley Band of Pomo Indians***

- If the tribe generates no more than \$30 million a year in net win\* and operates no more than 750 gaming devices, annual fees per device shall be:
  - 0-250 devices: \$4,600
  - 251-500 devices: \$4800
  - 501-750 devices: \$5100.
- If the tribe operates more than 750 gaming devices or earns over \$30 million a year, it shall pay the state a percentage of its annual net win:
  - \$0-\$50 million: 12%
  - Over \$50 to \$100 million: 15%
  - Over \$100 million to \$150 million: 18%
  - Over \$150 million to \$200 million: 22%
  - Over \$200 million: 25%.
- Net Win” is redefined to mean gross revenue less all prizes, payouts, and participation fees.<sup>†</sup>
- If the tribe earns over \$50 million in net win in any year, it will also pay into the RSTF \$900 per gaming device for the number of devices from 1,100 to 2,000. The RSTF payments are to be paid only to tribes that do not offer either Class II (bingo)

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\* “Net win” is redefined as that defined by the American Institute of Certified Accountants, meaning the difference between gaming wins and losses before deducting costs and expenses.

<sup>†</sup> Participation fees are made to gaming resource suppliers to lease gaming devices.

or Class III (casino) gaming. (This is a change from the 1999 compacts, which allowed tribes to operate up to 350 gaming devices and still receive payments.)

- The tribe is to submit a certified Quarterly Net Win Payment Report to the CGCC. Overdue quarterly payments accrue interest at the rate of one percent per month.
- The annual audit is to be sent to the CGCC, which shall approve of the auditor. The CGCC may cause an audit to be made if it determines that the net win is understated. In that event, the tribe may pay with interest or commence dispute resolution.

***Fort Mojave Indian Tribe***

- As long as the tribe has over 1,000 members, its payment of net win to the state is based on the following schedule:

\$0-\$50 million:	10%
Over \$50 to \$100 million:	14%
Over \$100 to \$150 million:	18%
Over \$150 to \$200 million:	22%
Over \$25 million:	25%.
- If the tribe's membership falls between 500 and 1,000 members, the payment rate to the state for net win of \$0-\$50 million increases to 11%, and increases to 15% for net win over \$50 to \$100 million. If the membership falls below 500 members, the payment rate on the first \$50 million increases to 12% of net win.
- The definition of net win is similar to that in the Coyote Valley compact.
- If the tribe earns over \$25 million in net win in any year, it will pay into the RSTF \$900 per gaming device for the number of devices from 701 to 1,100 and \$1,950 per device for 1101-1500 gaming devices. The RSTF payments are to be paid only to tribes that do not offer either Class II or Class III gaming.

***Rumsey Band of Wintun Indians—amended 1999 compact***

- The tribe is not required to make payment to the SDF. Payments to maintain its existing licenses to operate gaming devices are \$500,000 quarterly, paid into the RSTF.

- The definition of “net win” established in the 1999 compact is repealed and replaced with the following definition: gross revenue (“drop”) less all prizes and payouts, fills, hopper adjustments\* and participation fees.
- The tribe may operate additional gaming devices above the 1,763 already in operation by paying the state the following fees.

<p><b>Table 3</b></p> <p><b>Rumsey Band of Wintun Indians, Annual Fees Per Gaming Device</b></p>	
Additional Games in Operation	Annual Fee Per Gaming Device
1,763 to 2,000	\$11,000
2,001 to 2,500	\$12,000
2,501 to 3,000	\$13,200
3,001 to 3,500	\$17,000
3,501 to 4,000	\$20,000
4,001 to 4,500	\$22,000
4,500 and above	\$25,000
Source: Amendment to Tribal-State Compact Between the State of California and the Rumsey Band of Wintun Indians	

- In addition, the tribe agrees to make yearly payments of \$25 million to the state for 18 years, beginning January 1, 2005, with the understanding that the state will use these and other payments from 2004 amended 1999 compacts, totaling at least \$100 million annually, to securitize bonds authorized by AB 687 (Nuñez), Chapter 91, Statutes of 2004. If the bonds cannot be issued, the payments will be made to the state. The yearly payment represents at least ten percent of the tribe’s net win in 2003.
- After 18 years, and until the end of the amended compact on December 31, 2030, the tribe shall continue to make a \$25 million annual payment or ten percent of annual net win from the number of gaming devices (1,762) operated by the tribe under its 1999 compact, whichever is less. The CGCC may audit the net win calculation.
- The tribe consents to be sued and waives its right to sovereign immunity in proceedings to enforce payment obligations. Failure to make timely payment of the \$25 million dollar yearly payment would be a material breach of the amended compact.

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\* Hopper adjustment is an accounting procedure that counts the amount of coins or tokens initially deposited in a slot machine for play, representing a casino’s cash asset. At the end of the accounting period, the amount of coins or tokens is counted again. The hopper content may exceed the initial fill, representing an increase in net win, while payouts may represent a decrease in net win. See CGCC Publication #1, February 16, 2005, pp. 6-7.



***Buena Vista Rancheria of Me-Wuk Indians of California—amended 1999 compact***

The tribe agrees to pay quarterly, for deposit in the RSTF, the following fees. The tribe does not have a casino at this time.

<b>Table 4</b>	
<b>Buena Vista Rancheria, Quarterly Fees Per Gaming Device</b>	
Number of Gaming Devices	Quarterly Fee Per Gaming Device
1-350	\$0
351-100	\$225
1101-1600	\$350
1601-2000	\$500
Over 2000	\$750
Source: Amendment to Tribal-State Compact Between the State of California and the Buena Vista Rancheria of Me-Wuk Indians of California	

- The tribe also agrees to pay the state the following percentage of annual net win: 15% for \$0-\$200 million net win and 25% for over \$200 million, to securitize bonds authorized by AB 687 (Nuñez), Chapter 91, Statutes of 2004.
- The tribe consents to be sued and waives its right to sovereign immunity in proceedings to enforce payment obligations. Failure to make timely payment would be a material breach of the amended compact. (These provisions are in all later compacts.)

***Pala Band of Mission Indians—amended 1999 compact***

- The tribe agrees to pay the state the same annual fees per gaming device, paid on a quarterly basis, as specified in the Rumsey compact, for gaming devices over 2,000 (see Table 3 above).
- To maintain its existing licenses, the tribe agrees to deposit \$500,000 quarterly into the RSTF.
- The tribe agrees to pay the state \$18.86 million annually for 18 years to securitize bonds authorized by AB 687. This amount represents at least ten percent of the tribe's net win in 2003. After 18 years, the tribe agrees to continue the same payment or, if it is less, ten percent of the annual net win attributable to the 2,000 gaming devices operated by the tribe pursuant to its 1999 compact.

***Ewiiaapaayp Band of Kumeyaay Indians—amended 1999 compact***

- The tribe has decided to fund an endowment for the benefit of the Southern Indian Health Council, an inter-tribal organization composed of seven tribes, and to make additional payments to five of those tribes, the majority of which are presently non-

compact tribes. In addition, the tribe agrees to make the following payments to the RSTF, beginning on the sixth year of gaming activities (the tribe does not currently have a casino).\*

<b>Table 5</b> <b>Annual Payments by the Ewiiapaayp Band of Kumeyaay Indians</b> <b>to the Revenue Sharing Trust Fund</b>	
Year of Tribe's Gaming Activities	Annual Payments
Year 6	\$200,000
Year 7	\$300,000
Year 8	\$400,000
Year 9	\$500,000
Year 10	\$750,000
Year 11 and after to Dec. 31, 2030	\$1,500,000
Source: <i>Amendment to the Tribal-State Compact Between the State of California and the Ewiiapaayp Band of Kumeyaay Indians</i>	

- The tribe agrees to make annual payments to the state amounting to 15 percent of \$0 to \$200 million "net win" revenues, and 25 percent for annual net win over \$200 million. These payments may be used to securitize bonds authorized by AB 687.

***Pauma Band of Luiseño Mission Indians of the Pauma & Yuima Reservation***

- The tribe will make annual payments to the state of \$5.75 million for 18 years beginning on January 1, 2005, to securitize bonds authorized by AB 687. This represents 13 percent of the tribe's net win in 2003. After 18 years, the tribe will continue the same annual payment or, if it is less, ten percent of the annual net win attributable to the additional gaming devices.
- In addition, the tribe will pay \$47,604 per year into the RSTF to maintain its existing gaming licenses, and \$500,000 annually after March 31, 2008, or upon completion of its new gaming facility, whichever comes first.
- The tribe agrees to pay the following fees annually to the state, based on additional gaming devices above the tribe's existing 1,050 gaming devices.

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\* The compact would allow the tribe to conduct gaming activities on the Viejas Band's Indian lands, but the tribe does not have approval from the Secretary of the Interior to do so.

<b>Table 6</b> <b>Pauma Band of Luiseno Mission Indians, Annual Fee Schedule</b>	
Additional Gaming Devices in Operation	Annual Fee Per Gaming Device
1,051 to 1,500	\$8,500
1,501 to 2,000	\$11,000
2,001, to 2,500	\$12,000
2,500 to 3,000	\$13,200
3,001 to 3,500	\$17,000
3,501 to 4,000	\$20,000
4,000 to 4,500	\$22,500
4,500 and above	\$25,000
Source: <i>Amendment to Tribal-State Compact Between the State of California and Pauma Band of Luiseno Mission Indians of the Pauma &amp; Yuima Reservation, 2004</i>	

### ***United Auburn Indian Community***

- The tribe agrees to pay annual fees to the state based on additional gaming devices above the tribe's existing 1,906 gaming devices. To maintain its existing licenses, the tribe will pay \$500,000 quarterly into the RSTF.
- The tribe will make annual payments to the state of \$33.8 million for 18 years to securitize bonds authorized by AB 687. This amount represents at least ten percent of the tribe's annualized net win from July 1, 2003 to May 31, 2004. After 18 years, the tribe will continue the same annual payment or, if it is less, ten percent of the annual net win attributable to the tribe's existing 1,906 gaming devices.

<b>Table 7</b> <b>United Auburn Indian Community, Annual Fee Schedule</b>	
Additional Gaming Devices in Operation	Annual Fee Per Gaming Device
1,907 to 2,000	\$11,000
2,001 to 2,500	\$12,000
2,501 to 3,000	\$13,000
3,001 to 3,500	\$17,000
3,501 to 4,000	\$20,000
4,001 to 4,500	\$22,500
4,500 and above	\$25,000
Source: <i>Amendment to Tribal-State Compact Between the State of California and the United Auburn Indian Community, 2004</i>	

### ***Viejas Band of Kumeyaay Indians***

- The tribe agrees to make annual payments to the state of \$17.4 million for 18 years beginning on January 1, 2005, to securitize bonds authorized by AB 687. This amount represents at least ten percent of the tribe's net win in 2003. After 18 years, the tribe will continue the same annual payment or, if it is less, ten percent of the annual net win attributable to the tribe's existing 2,000 gaming devices.
- The tribe agrees to pay annual fees to the state based on additional gaming devices above the tribe's existing 2,000 gaming devices (Table 8). To maintain its existing licenses, the tribe will also pay \$500,000 quarterly into the RSTF.

<b>Table 8</b>	
<b>Viejas Band of Kumeyaay Indians, Annual Fee Schedule</b>	
Additional Gaming Devices in Operation	Annual Fee Per Gaming Device
2,001 to 2,500	\$12,000
2,501 to 3,000	\$13,200
3,001 to 3,500	\$17,000
3,501 to 4,000	\$20,000
4,001 to 4,500	\$22,500
4,500 and above	\$25,000
Source. <i>Amendment to Tribal-State Compact Between the State of California and the Viejas Band of Kumeyaay Indians</i> , 2004	

### ***2006 Tribal-State compacts***

#### ***Quechan Tribe of the Fort Yuma Indian Reservation***

- The tribe is limited to 1,100 gaming devices. If it earns over \$75 million in net win in a calendar year, the tribe agrees to pay into the RSTF \$900 per gaming device, in excess of 700 devices, in operation the preceding year.
- Net win is defined as *gross revenue less all prizes, payouts, fills, hopper adjustments and participation fees made to gaming resource suppliers to lease gaming devices*.
- The tribe will make quarterly payments to the state calculated on the basis of the previous quarter's net win to securitize bonds authorized by AB 687.

Table 9			
Quechan Tribe of the Fort Yuma Indian Reservation, Payment to State of Net Win from Gaming Devices			
	Percentage paid to state		
Annual Net Win	3,000 or more members	3,000- 2,500 members	Under 2,500 members+
\$0 to \$50 million	10%	11%	12%
Over \$50 to 100 million	14%	15%	15%
Over \$100 to \$150 million	18%	18%	18%
Over \$150 to \$200 million	22%	22%	22%
Over \$200 million	25%	25%	25%
Source: Amendment to Tribal-State Compact Between the State of California and the Quechan Tribe of the Fort Yuma Indian Reservation, 2006			

- The tribe agrees to send an annual audit by an outside CPA certifying net win calculations to the CGCC, which may also audit. If the CGCC determines that the net win has been understated, it will notify the tribe. The state may seek injunctive relief in federal or state court to compel payment, in which case the tribe waives its sovereign immunity to sue.

## UNRATIFIED COMPACTS

### *2004 Unratified Tribal-State Compact*

#### *Lytton Rancheria of California*

- The tribe agrees to pay the state 25 percent of the net win generated from its gaming devices and banking and percentage card games during the preceding quarter. At the discretion of the state Director of the Department of Finance, this payment may be used to securitize bonds authorized by AB 687.
- The following may be deducted from the amount paid the state: payments made to the city of San Pablo, the county of Contra Costa and the state Department of Transportation pursuant to intergovernmental agreements, and payments made to the RSTF (\$750,000 quarterly).
- An annual audit by an independent certified public accountant is to be provided to the CGCC. The CGCC may audit the net win calculation.
- Any failure to make payments entitles the state to seek injunctive relief in federal or state court to compel payment plus interest; the tribe waives sovereign immunity for this purpose.

### ***2005 Unratified Tribal-State Compacts***

In 2005, Governor Schwarzenegger negotiated new tribal-state compacts with the Yurok Tribe of the Yurok Reservation, the Big Lagoon Rancheria and the Los Coyotes Band of Cahuilla and Cupeño Indians that were not ratified by the legislature.

#### ***Yurok Tribe of the Yurok Reservation***

- The tribe agrees to remit quarterly payments to the state based on the net win generated from the gaming devices based on a percentage determined by the cumulative total of net win since the beginning of the calendar year. The amount paid to Del Norte County and Humboldt County under intergovernmental agreements is to be deducted, conditioned upon the tribe having at least 4,000 members.

<b>Table 10</b>	
<b>Yurok Tribe of the Yurok Reservation, Payment to State of Net Win from Gaming Devices</b>	
Annual Net Win	Percentage
\$0 to \$50 million	10%
Over \$50 to 100 million	14%
Over \$100 to \$150 million	18%
Over \$150 to \$200 million	22%
Over \$200 million	25%
Source: <i>Tribal-State Compact Between the Yurok Tribe and the State of California, 2006</i>	

#### ***Los Coyotes Band of Cahuilla and Cupeño Indians and the Big Lagoon Rancheria***

- The tribes agree to pay the state a percentage of the net win generated from its gaming devices and banking and percentage card games.

<b>Table 11</b>	
<b>Los Coyotes Band of Cahuilla and Cupeño Indians and Big Lagoon Rancheria, Payment to State, % of Net Win</b>	
Annual Net Win	Percentage
\$0 to \$100 million	16%
Over \$100 million to \$200 million	20%
Over \$200 million	25%
Source: <i>Tribal-State Compact Between the Los Coyotes Band of Cahuilla and Cupeño Indians and the State of California, 2006</i> , and the <i>Tribal-State Compact Between Big Lagoon Rancheria and the State of California, 2006</i>	

- The tribes agree to remit quarterly payments to the state from which they may deduct payments to the city of Barstow of up to \$500,000, and payments made pursuant to an intergovernmental agreement with the state Department of Transportation (not to exceed 2.5 percent of the quarterly net win, a limitation that the state can waive).
- The tribes also agree to pay into the RSTF beginning on the sixth year of gaming activities (see Table 12). These payments are intended to increase the annual payment to non-gaming tribes.

<b>Table 12</b> <b>Annual Payments by the Los Coyotes Band of Cahuilla and Cupeño Indians and the Big Lagoon Rancheria to the Revenue Sharing Trust Fund</b>	
Year of Tribe's Gaming Activities	Annual Payments
Year 6	\$200,000
Year 7	\$300,000
Year 8	\$400,000
Year 9	\$500,000
Year 10	\$750,000
Year 11 and after to Dec. 31, 2035	\$1,500,000
Source: <i>Tribal-State Compact Between the State of California and the Los Coyotes Band of Cahuilla and Cupeño Indians</i>	

### ***2006 Unratified Tribal-State Compacts***

In August 2006, the governor submitted six tribal-state compacts to the legislature for ratification. An amended compact with the Quechan Tribe of the Fort Yuma Reservation, which had been negotiated in 2005, was ratified. Five newly negotiated amended 1999 compacts were not ratified. These were with the Morongo Band of Mission Indians, the Pechanga Band of Luiseño Indians, the San Manuel Band of Mission Indians, the Agua Caliente Band of Cahuilla Indians, and the Sycuan Band of the Kumeyaay Nation.

#### ***Morongo Band of Mission Indians—amended 1999 compact***

- The tribe agrees to pay the state an annual payment of \$36.7 million on its existing gaming devices and an annual payment, made quarterly, for the operation of up to 5,500 additional gaming devices: 15 percent of the net win\* generated by up to 3,000 gaming devices, and 25 percent of the net win generated from the operation of over 3,000 to 5,500 additional gaming devices.

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\* The definition of "net win" is *gross revenue from all Class III gaming devices less all prizes, fills, hopper adjustments, payouts and participation fees for leasing gaming devices.*

- Payments are to be made quarterly and accompanied by a net win certification provided by the authorized representative of the gaming operation. The CGCC may audit the net win calculation and, if it finds it to be understated, notify the tribe. If the tribe does not accept the difference or provide a satisfactory reconciliation, interest is to accrue at the rate of one percent per month. The tribe may commence dispute resolution after making payment.
- If fee payments are not made within 60 days, the tribe is to cease operating all of its gaming devices until full payment is made (provided that the state has given written notice to the tribe of the overdue amount with at least 15 business days to pay, and 60 days have passed). The state may seek injunctive relief in federal court and the tribe waives sovereign immunity for this purpose.
- The tribe agrees to continue payments to the RSTF (\$2 million annually) to maintain its existing gaming device licenses. If there is insufficient revenue in the RSTF to meet its obligations, the state gaming agency is to direct a portion of state revenues to make the required payments to all eligible recipient tribes.

***Pechanga Band of Luiseño Indians—amended 1999 compact***

- The tribe agrees to pay the state an annual payment of \$42.5 million and an annual payment, made quarterly, for the operation of up to 5,500 additional gaming devices: 15 percent of the net win (defined as in the amended Morongo compact) generated by up to 3,000 gaming devices and 25 percent net win from the operation of over 3,000 to 5,500 additional gaming devices. The tribe also agrees to pay two million dollars annually to the RSTF to maintain its existing licenses for gaming devices.
- Other revenue-related provisions are similar to those in the Morongo compact.

***Agua Caliente Band of Cahuilla Indians—amended 1999 compact***

- The tribe agrees to make the state an annual payment of \$23.4 million (which represents at least nine percent of the tribe's annual net win in 2005), and an annual payment based on 15 percent of the net win (defined as in the amended Morongo compact) generated from all gaming devices over the existing 2,000 devices. The payments are to be made quarterly, with payment requirements as in the Morongo amended compact.
- The tribe agrees to pay two million dollars annually into the RSTF to maintain its existing licenses for gaming devices. Payments made to the SDF under the 1999 compact will cease on the effective date of the amended compact.

***San Manuel Band of Mission Indians—amended 1999 compact***

- The tribe agrees to pay the state an annual payment of \$45 million and an annual payment for the operation of the newly authorized gaming devices of 15 percent of net win (defined as in the Morongo amended compact) for up to 3,000 new devices, and 25 percent for over 3,000 and up to 5,500 devices. In addition, the tribe agrees to



pay two million dollars annually into the RSTF to maintain its existing licenses to operate gaming devices.

- The payments are to be made quarterly, with payment requirements as in the Morongo amended 1999 compact.

*Sycuan Band of the Kumeyaay Nation—amended 1999 compact*

- The tribe agrees to pay the state annually \$20 million and 15 percent of the net win (as defined in Morongo amended compact) generated by newly authorized gaming devices over 2,000 to 5,000. In addition, the tribe agrees to pay three million dollars annually into the RSTF to maintain its existing licenses to operate gaming devices.
- The payments are to be made quarterly, with payment requirements as in the Morongo amended compact.

## TERMS OF COMPACT

### RATIFIED COMPACTS

#### *1999 Tribal-State Compact*

- Effective until December 31, 2020.
- Either party may bring an action in federal court, after providing 60 days written notice to the other party, requesting a declaration that the other party has materially breached the compact. If such a declaration is issued, the complaining party may unilaterally terminate the compact. As previously discussed (see section on Regulation, Dispute Resolution above), the tribe and state agree to first attempt to resolve disputes through a process of good faith negotiation.
- The terms of the compact may be amended by mutual agreement. A tribe may request renegotiation to offer Class III gaming not authorized in the current compact.
- All negotiations to amend the compact shall be in conformity with the Indian Gaming Regulatory Act (IGRA). Both parties agree to negotiate in good faith.
- The tribe may terminate the compact if the exclusive right of federally recognized tribes to operate slot machines (“gaming devices”) in California is abrogated.
- If the state enters into a subsequent compact that has more favorable provisions than this compact, the state will enter into the entire subsequent compact with a signatory tribe upon the tribe’s request, but only for the duration of this compact (December 1, 2020).

#### *2003 Tribal-State Compacts*

The three new compacts negotiated by Governor Davis in 2003 were based on the 1999 tribal-state compact. They were with the Torres-Martinez Desert Cahuilla Indians, the La Posta Band of Mission Indians and the Santa Ysabel Band of Diegueño Indians.

#### *Torres-Martinez Desert Cahuilla Indians, La Posta Band of Mission Indians, Santa Ysabel Band of Diegueño Mission Indians*

- Effective until December 21, 2024, with provisions to automatically extend the compacts until June 30, 2026.
- If the tribes’ exclusive right to operate gaming devices is abrogated, they may terminate the compact and lose the right to Class III gaming or negotiate reduced revenue-sharing payments to cover for the cost of state regulation, payments to local governments impacted by the gaming, grants for programs to address gambling addiction, and assessments as permissible under federal law.

- In March 2008, and every fourth year thereafter, the parties will commence negotiations regarding any matter encompassed by the compact.

#### ***2004 Tribal-State Compacts***

Governor Schwarzenegger signed new compacts with three tribes (the Coyote Valley Band of Pomo Indians, the Fort Mojave Indian Tribe and the Lytton Rancheria). The Lytton compact was not ratified by the legislature. The governor also negotiated amended 1999 compacts with seven tribes, all of which were ratified. We summarize key provisions below.

##### ***Coyote Valley Band of Pomo Indians and Fort Mojave Indian Tribe***

- Effective until December 31, 2025. Either party may request negotiations to extend or enter into a new compact 18 months prior to that date.

##### ***Rumsey Band of Wintun Indians, Pala Band of Mission Indians, Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, Viejas Band of Kumeyaay Indians—amended 1999 compacts***

- Effective until December 31, 2030.

##### ***Buena Vista Rancheria of Me-Wuk Indians of California—amended 1999 compact***

- Effective until December 31, 2025.

#### ***2006 Tribal-State Compact***

##### ***Quechan Tribe of the Fort Yuma Indian Reservation—amended 1999 compact***

- Effective until December 31, 2025.

### **UNRATIFIED COMPACTS**

#### ***2004 Unratified Tribal-State Compacts***

##### ***Lytton Rancheria of California***

- Effective until December 31, 2025.

#### ***2005 Unratified Tribal-State Compacts***

In 2005, Governor Schwarzenegger negotiated new tribal-state compacts with the Yurok Tribe of the Yurok Reservation, the Big Lagoon Rancheria and the Los Coyotes Band of Cahuilla and Cupeño Indians that were not ratified by the legislature.

##### ***Yurok Tribe of the Yurok Reservation***

- Effective until December 31, 2025.

### ***Los Coyotes Band of Cahuilla and Cupeño Indians***

- The compact is not effective until the specified parcel of land is taken into trust for gaming purposes by the Department of the Interior pursuant to 25 U.S.C. § 2710(d)(3)(B), the adjoining parcel is taken into trust for the benefit of the Big Lagoon Rancheria and similarly determined to be eligible for Class III gaming, and the state's compact with the Big Lagoon Rancheria has been ratified.
- If the compact does not take effect prior to August 31, 2007, and the specified parcel is not taken into trust by May 31, 2007, the compact is null and void unless the tribe and the state agree to extend the date.
- Effective until December 31, 2025.

### ***Big Lagoon Rancheria***

- The compact is not effective until the specified parcel of land is taken into trust for gaming purposes by the Department of the Interior pursuant to 25 U.S.C. § 2710(d)(3)(B), the state's compact with the Los Coyotes Band of Cahuilla and Cupeño Indians is ratified by statute, and the Stipulation for Entry of Judgment in ***Big Lagoon Rancheria, a Federally Recognized Indian Tribe, Plaintiff, v. State of California, Defendant***, has been executed and approved and a judgment entered by the District Court.
- If the compact does not take effect prior to August 31, 2007, and the specified parcel is not taken into trust by May 31, 2007, the compact is null and void unless the tribe and the state agree to extend the date. Furthermore, if the settlement agreement in ***Big Lagoon Rancheria, a Federally Recognized Indian Tribe, Plaintiff, v. State of California, Defendant***, is not approved by the Secretary of the Interior, or is adjudicated as invalid by a final decision of a federal or state court, either the state or the tribe may unilaterally terminate the compact.
- Effective until December 31, 2025.

### ***2006 Unratified Tribal-State Compacts***

In August 2006, the governor submitted six tribal-state compacts to the legislature for ratification. An amended compact with the Quechan Tribe of the Fort Yuma Reservation, which had been negotiated in 2005, was ratified. Five newly negotiated amended 1999 compacts not ratified. These were with the Morongo Band of Mission Indians, the Pechanga Band of Luiseño Indians, the San Manuel Band of Mission Indians, the Agua Caliente Band of Cahuilla Indians, and the Sycuan Band of the Kumeyaay Nation.

***Morongo Band of Mission Indians, Pechanga Band of Luiseño Indians, Agua Caliente Band of Cahuilla Indians, San Manuel Band of Mission Indians, Sycuan Band of the Kumeyaay Nation—amended 1999 compacts***

- Effective until December 31, 2030. No later than July 1, 2028, the state or tribe may request good faith negotiations to extend and modify this amended 1999 compact or to enter into a new compact.

## **APPENDIX A**

### **1999 COMPACT TRIBES**

1. Agua Caliente Band of Cahuilla Indians
2. Alturas Indian Rancheria
3. Augustine Band of Mission Indians
4. Barona Group of Mission Indians
5. Bear River Band
6. Berry Creek Rancheria
7. Big Sandy Rancheria
8. Big Valley Rancheria
9. Blue Lake Rancheria
10. Buena Vista Rancheria
11. Bishop Paiute-Shoshone Indians
12. Cabazon Band of Mission Indians
13. Cahto Indian Tribe
14. Cahuilla Band of Mission Indians
15. Campo Band of Diegueno Mission Indians
16. Chemehuevi Indian Tribe
17. Cher-Ae Heights Indian Community
18. Chicken Ranch Rancheria
19. Colusa Indian Community
20. Ewiiapaayp Band of Kumeyaay Indians
21. Dry Creek Rancheria
22. Elem Indian Colony
23. Elk Valley Rancheria
24. Hoopa Valley Tribe
25. Hopland Band of Pomo Indians
26. Jackson Rancheria
27. Jamul Indian Village
28. La Jolla Band of Mission Indians
29. Manchester-Point Arena Rancheria

30. Manzanita Mission Indians
31. Middletown Rancheria
32. Mooretown Rancheria
33. Morongo Band of Cahuilla Mission Indians
34. Pala Band of Luiseno Mission Indians
35. Paskenta Band of Nomlaki Indians
36. Pauma Band of Luiseno Mission Indians
37. Pechanga Band of Luiseno Mission Indians
38. Picayune Rancheria
39. Pit River Tribe
40. Quechan Tribe
41. Redding Rancheria
42. Resighini Rancheria
43. Rincon Band of Luiseno Mission Indians
44. Robinson Rancheria of Pomo Indians
45. Rumsey Indian Rancheria
46. San Manuel Band of Mission Indians
47. San Pasqual Band of Mission Indians
48. Santa Rosa Indian Community
49. Santa Ynez Band of Chumash Indians
50. Sherwood Valley Rancheria
51. Shingle Springs Rancheria
52. Smith River Rancheria
53. Soboba Band of Luiseno Indians
54. Susanville Indian Rancheria
55. Sycuan Band of Diegueno Mission Indians
56. Table Mountain Rancheria
57. Tuolumne Band of Me-Wuk Indians
58. Tule River Indian Tribe
59. Twenty-Nine Palms Mission Indians
60. United Auburn Indian Community
61. Viejas Group of Mission Indians

## NOTES

<sup>1</sup> "Tribal gaming revenue jumps 16 percent in 2005," *International Gaming and Wagering Business*, August 2006, p. 14. See also Alan Meister, *Casino City's Indian Gaming Industry Report, 2005-2006, Updated Edition* (Casino City Press; Newton, Massachusetts, 2005), p. 10.