

COUNCIL AGENDA: NOVEMBER 5, 2013

**SUBJECT:** RESPONSE TO CALIFORNIA ATTORNEY GENERAL AND STATE CONTROLLER CONCERNING LETTER TO THE SAME ENTITIES FROM THE TULARE COUNTY INDIAN GAMING LOCAL COMMUNITY BENEFIT COMMITTEE

**SOURCE:** City Attorney

**COMMENT:** Over the past several years, the City and Tulare County have locked horns over the eligibility and nexus requirements for receipt of the 60% nexus grant funding permitted for grants awarded by this Committee from the Indian Gaming Local Distribution Fund. The City has maintained that that the Tule River Indian Tribe's Eagle Mountain Casino facilities located within the city limits made it eligible for awards under the nexus criteria. On this basis, the Committee awarded grant funds for projects in 2011 and 2012. However, in 2013 the Committee (via Senator Michael Rubio's office) requested and received an opinion from the Office of Legislative Counsel that has opined that these facilities and the Tribe's property interests within the city do not meet the eligibility criteria for 60% nexus funding. Due to this opinion, the Committee's legal counsel (Tulare County Counsel) sent a letter to the City in May 2013 requesting return of the funds awarded under this eligibility criteria in 2011 and 2012. However this letter has not been ratified by the Committee. Instead, the Committee has authorized sending a letter to the Attorney General and State Controller, and also authorized that any response from the City, and also the Tribe, be sent in conjunction with the Committee's letter.

The City believes that any request for return of the funding is improper under the law that governs the Committee and the grant distributions. The Committee bears the responsibility for making the grant eligibility determinations and awards. Furthermore, the funds for the 2011 and 2012 awarded projects have been expended.

**RECOMMENDATION:** That the City Council consider and approve the attached letter response.

**ATTACHMENTS:**

1. Letter from the IGLCBC to the Attorney General and State Controller; and
2. Proposed Companion Letter from the City of Porterville (with attachment)

ITEM NO. 10



# Tulare County Indian Gaming Local Community Benefit Committee



**Committee Members**

Mike Ennis  
Mutually Selected

Joe Garcia  
Tulare County Representative

Kenneth McDarment  
Tule Tribe Representative

Nancy McDarment  
Tule Tribe Representative

Robin Skiles, *Chairman*  
Tulare County Representative

Vacant  
Mutually Selected

Vacant  
Mutually Selected

**Alternate Members**

John Crivello  
Tulare County Representative

Vacant  
Mutually Selected

Rhoda Hunter  
Tule Tribe Representative

**Committee Staff**

Jed Chernabaeff &  
John Hess  
2800 W. Burrel Ave.  
Visalia, CA 93291  
(559) 636-5005

State of California Department of Justice  
Office of the Attorney General  
Bureau of Gambling Control  
PO Box 168024  
Sacramento, CA 95816-8024

State of California  
Office of the State Controller  
Division of Accounting and Reporting  
PO Box 942850  
Sacramento, CA 94250

To whom it may concern:

The Tulare County Indian Gaming Local Community Benefit Committee has had the opportunity to award \$3.5 million in Special Distribution Fund monies since 2004. The Committee has worked with the Tule River Tribal Council to ensure these funds are spent on projects that benefit communities and the Tribe, and mitigate impacts from the Eagle Mountain Casino. The Committee and Tribal Council have intentionally awarded funds to projects that provide a wide range of services.

In Fiscal Years 2011 and 2012, the Committee awarded funds to the City of Porterville for public safety enhancements, including the following: improvements of the City's Police Department Firing Range Facility; hiring a Juvenile Diversion Officer, a Community Service Officer, and a Fire Prevention/Public Education Officer; coordinating programs and services in "at-risk" areas; and the purchase of a vehicle for the Police Department. The City of Porterville has indicated that, as of June 2013, all of these funds have been spent on these activities. All of these projects meet the eligibility requirements for funding, and each has provided much needed benefit to the community.

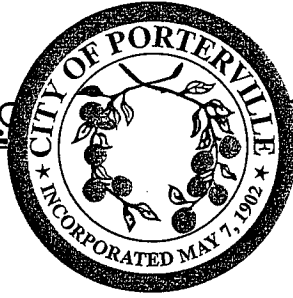
Based on an opinion of the California Office of Legislative Counsel (OLC) provided to Senator Michael Rubio's office at the request of the Committee dated February 4, 2013, the Tulare County Indian Gaming Local Community Benefit Committee has concluded that the Committee awarded funds to the City of Porterville from the 60% Nexus Test Criteria Amount of the Special Distribution Fund in Fiscal Years 2011 and 2012, but the City did not meet a sufficient number of the Nexus Test Criteria to qualify for this level of funding. On February 21, 2013, the Committee passed a resolution determining that the City of Porterville does not qualify for the 60% Nexus Test Criteria grants for Fiscal Year 2013. As a result, the Committee did not award any funds from the 60% Nexus Test Criteria amount to the City of Porterville in Fiscal Year 2013.

On May 9, 2013, Committee Legal Counsel sent a letter to the City of Porterville demanding the repayment of a portion of the 2011 and 2012 Committee grant awards, in the amount of \$217,313. This amount represents the difference between the actual amount awarded to Porterville and the amount that the City was eligible to receive under the 40% Discretionary Funding. Committee Legal Counsel has directed the City of Porterville that this money is to be repaid to the State of California, not the County of Tulare nor the Tulare County Indian Gaming Local Community Benefit Committee.

The Committee would like to bring this matter to your attention and seek any further direction that you may have at this time. The following documents are enclosed to provide further background information: the May 9, 2013 Demand Letter addressed to the City of Porterville; the February 4, 2013 Opinion from the OLC, and the February 21, 2013 Resolution of the Committee identifying the County of Tulare as the only eligible recipient of funds from the 60% Nexus Test Criteria amount. Should you have any questions regarding this matter, please contact Committee staff, Jed Chernabaeff or John Hess.

Sincerely,

  
Captain Robin Skiles,  
Committee Chairman



November 5, 2013

State of California Department of Justice  
Office of Attorney General  
Bureau of Gambling Control  
P.O. Box 168024  
Sacramento, CA 95816-8024

State of California  
Office of State Controller  
Division of Accounting and Reporting  
P.O. Box 942850  
Sacramento, CA 94250

**Re: Letter from the Tulare County Indian Gaming Local Community  
Benefit Committee to the Attorney General and State Controller  
Related to 2011 and 2012 Grant Awards to the City of Porterville**

To Whom It May Concern:

The City Council of the City of Porterville herewith submits its companion response to the above-referenced letter.

**BACKGROUND**

Over the past nine years, the City of Porterville and the County of Tulare have locked horns over the eligibility requirements for receipt of the 60% nexus grant funding permitted pursuant to Chapter 7.5 of the California Government Code (Grants of Indian Gaming Revenue to Local Governmental Agencies, Section 12710 et seq.) from the Tulare County Indian Gaming Local Community Benefit Committee (hereinafter "Committee"). Facilities for the Tule River Indian Tribe's Eagle Mountain Casino are located within the city limits, on property owned by the Tribe and part of a pending fee-to-trust application. These facilities include casino warehouse facilities and a transportation hub for casino customers and employees. The City has maintained that these facilities and properties, located wholly within the City limits, made it eligible for awards per the 60% nexus criteria. For fiscal years 2011 and 2012, the Committee found the City to be qualified and awarded funding to the City on that basis, the latter award happening in April 2012.

The Committee's legal counsel, Tulare County Counsel, did not agree with these Committee decisions. In June 2012, Tulare County Counsel withdrew its legal representation from the Committee for a period of approximately 11 months, until approximately May 2013. In October 2012, the Committee requested and then received in February 2013, via Senator Michael Rubio's office, an opinion from the Office of Legislative Counsel on the following: 1) the definition of "Indian lands" for the purposes of the applicable statutes; 2) the definition of a "casino;" 3) clarification concerning what "borders the Indian lands on all sides" means; and 4) a finding that the statutes do not prohibit a Committee from awarding a grant for a proposed project if the application does not identify the percentage of project costs attributable to the impacts caused by the casino. The Office of Legislative Counsel provided a disclaimer that it was not providing a legal opinion as to past actions and was not providing findings of fact. Utilizing this legal opinion, for the 2013 fiscal year grant awards, the Committee found that only the County met the geographic eligibility requirement and made the awards on that basis in May 2013.

On May 13, 2013, over one year after having been awarded the 2012 funding, the City of Porterville received a letter from Tulare County Counsel, providing that the LCBC was requesting return by the City of its 2011 and 2012 grant awards in the amount of \$217,313 plus interest, based on legal counsel's determination that the City did not meet the geographic eligibility requirements. This letter was then placed on the Committee's open session agenda several times for ratification by the Committee; however the Committee never approved the letter. In fact, a motion to ratify the letter failed unanimously on June 19, 2013, but the motion was later found to have been procedurally invalid and was deemed to have not occurred. That stated the Committee ultimately approved sending a notification and request for direction to the California Attorney General and State Controller, along with any response the City wished to provide, in lieu of making a direct reimbursement demand to the City or rescinding its prior grant approvals.

**THE COMMITTEE IS RESPONSIBLE FOR THE DECISIONS IT MAKES  
AND THE CITY HAS DETRIMENTALLY RELIED UPON THOSE  
DECISIONS**

It is improper for the Committee to demand that the City bear the consequences for the *Committee's decision* to award those funds. Pursuant to the applicable California Government Code Sections, the Committee is the entity responsible for making the eligibility determinations. Per Government Code Section 12715(b)(1), "This committee has the following additional responsibilities," which includes per Section 12715(b)(1)(B), "Assessing the eligibility of applications for grants from local jurisdictions impacted by tribal gaming operations." Pursuant to Section 12715(c)(1), "A nexus test based on the geographical proximity.... shall be *used by each county's Indian Gaming Local Community Benefit Committee....*" [Emphasis Added.] There is nothing in the statute, or any other covenant or condition, that transfers this responsibility to the agencies that apply for funding before the Committee. In fact this was noted in the 2011 California State Auditor's report concerning allocation and use of moneys from the Indian Gaming

Special Distribution Fund (at page 29). "Specifically, the law requires benefit committees in counties with tribes that pay into the distribution fund to conduct a nexus test... ." [See excerpt of Report, attached.] That the Committee may have taken action inconsistent with its own legal counsel's advice does not shift this responsibility.

The City has always supported the Committee's decision to seek what it believes was needed legal clarification as to the eligibility requirements; however the City understood and the Committee meeting records reflect that this advice was intended to guide the Committee's *future* grant approvals. The City has detrimentally relied upon the Committee's decisions in 2011 and 2012, and to utilize an opinion obtained six months after the funds were awarded to the City as the basis for requiring reimbursement violates the principles of promissory/equitable estoppel. "The vital principle is that he who by his language or conduct leads another to do what he would not otherwise have done shall not subject such person to loss or injury by disappointing the expectations upon which he acted. Such a change in position is sternly forbidden." [*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462 at 488 (quoting *Seymour v. Oelrichs* (1909) 156 Cal.782).]

### **THE CITY HAS EXPENDED THE AWARDED FUNDS**

For the past nine years the City has advocated before the Committee for the funding of its projects, and it believed that it could meet the 60% criteria test based on the casino operations located on Tribe-owned lands within the City. As noted, for the 2011 and 2012 fiscal year award cycles, the City was successful in obtaining funding under these criteria. Those funds went to projects that were eligible as determined by the Committee.

Forcing the return of the funds by the City after the funds have been utilized would be inappropriate, since this remedy is not provided for in the applicable statutes. The violations that are addressed are contained in Government Code Sections 12715(h) and 12715(i), which concerns use of grant funds by a local jurisdiction for an unrelated purpose or improper (as defined) purpose. Even under these provisions, the statutory remedy requires termination of the grant and return of any *unexpended* funds, and in the City's case the funds have been fully expended.

The State Auditor identified this issue in its 2011 Report, and noted (at page 30) that the legislative remedy is as follows:

Likewise, if a grant recipient uses grant funds for an unrelated purpose, the grant terminates immediately and the amount of the grant *not yet spent* reverts back to the distribution fund. Although the law contains no such express requirement for nexus funds that are not awarded as the law directs, we believe it is reasonable to expect that funds not used for the purpose authorized by the Legislature should return to the fund from which they were appropriated. *Therefore, Legislature should clarify the law if it wishes to require that nexus set-aside funds revert back to the distribution fund when benefit committees are not able, or choose not, to award the full nexus set-aside to the appropriate cities and counties.* [Emphasis Added.]

Currently, there is no remedy in the statutes addressing projects that are later found to not meet all of the eligibility criteria, and additional legislation may be in order to address this issue.

Finally, if the Committee is going to require the City to return these funds, it should take steps to require other agencies to return funds if it granted funds to other potentially improper purposes. Numerous problems were identified per the aforementioned State Auditor's Report in the jurisdictions it reviewed related to proper justification of projects related to casino impacts. For example, as was noted in the Report (pages 23-24), the Riverside County Fire Department received almost \$906,000 for equipment for wildland fire response, without tracking incidences that were related to the casino. In prior years Tulare County has applied for and received funding for similar reasons without showing direct impacts from the casino. In fact, there are likely applications from all of the various parties over the past years that may not have met the standards outlined in the State Auditors Report; yet the City is the only entity wherein the Committee has considered requesting reimbursement.

### CONCLUSION

It was the City's responsibility to advocate for funding for its projects, and the Committee bears the responsibility for its determinations as to eligibility and the appropriateness of the applications before it. This includes the responsibility for making the assessments on the proper nexus percentages. While the City understands that there has been a difference of opinion between the Committee and its legal counsel concerning whether the City should be considered for the 60% nexus funding, the Committee ultimately made the decision to make the awards to the City, and it is inappropriate for the Committee to now hold the City responsible for its own decisions, particularly under the current applicable law.

That stated, the City understands that its issues with Tulare County and this Committee underscore the need for further legislative clarification. The City will continue to abide by the decisions of the Committee and the letter and spirit of the laws that govern it, as it always has.

Thank you.

Very truly yours,

Cameron J. Hamilton  
Mayor, City of Porterville

cc: John Lollis, City Manager  
Julia M. Lew, City Attorney  
Tulare County Local Indian Gaming Community Benefit Committee

Elaine M. Howle  
State Auditor  
Doug Cordiner  
Chief Deputy

# CALIFORNIA STATE AUDITOR

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February 15, 2011

2010-036

The Governor of California  
President pro Tempore of the Senate  
Speaker of the Assembly  
State Capitol  
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As required by Chapter 858, Statutes of 2003, the California State Auditor presents this audit report concerning the allocation and use of moneys from the Indian Gaming Special Distribution Fund (distribution fund).

This report, our second review of the allocation and expenditure of grants from the distribution fund, concludes that Indian Gaming Local Community Benefit Committees (benefit committees) continue to have difficulty complying with grant requirements and related laws. Our review of a sample of 20 grants totaling \$5.7 million revealed that in 10 instances the grant recipient either could not provide evidence of, or could not quantify, the impact of the casino. As a result, they were unable to prove that the funding was in proportion to the impact of a casino, as required by law. In three other cases, benefit committees awarded grants that were unrelated or disproportionately related to casino impacts, and the Yolo County benefit committee awarded the entirety of its nearly \$336,000 allocation to an ineligible entity. Further, in three of the counties we reviewed, benefit committees did not award some cities and counties the minimum amounts the law set aside for them.

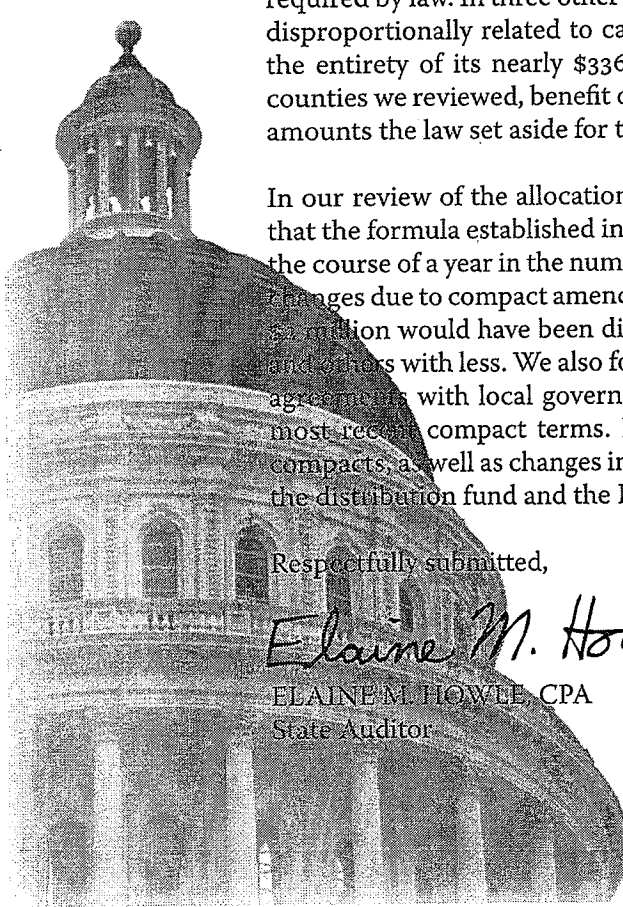
In our review of the allocation of funds to counties by the State Controller's Office, we found that the formula established in law does not take into account the possibility of a change during the course of a year in the number of devices operated by a tribe. Had the law taken into account changes due to compact amendments that took effect during fiscal year 2007-08, approximately \$2 million would have been distributed differently, providing some counties with more money and others with less. We also found that many tribes with compact amendments are negotiating agreements with local governments to directly fund mitigation projects, as required by their most recent compact terms. Finally, changes in contribution requirements due to amended compacts, as well as changes in the number of licenses, have altered the revenue streams of both the distribution fund and the Indian Gaming Revenue Sharing Trust Fund.

Respectfully submitted,



Elaine M. Howle

ELAINE M. HOWLE, CPA  
State Auditor





## Summary

### Results in Brief

In this review, our second examination of the allocation and expenditure of grants from the Indian Gaming Special Distribution Fund (distribution fund), we found that the Indian Gaming Local Community Benefit Committees (benefit committees) responsible for distributing these funds within the counties continue to have difficulty in complying with distribution fund grant requirements and with related laws. The distribution fund uses money contributed by some tribal casinos, required under agreements known as gaming compacts between the tribe and the State, to mitigate the impact of tribal gaming on local governments in the State. As of September 2010 California had compacts with 67 of California's federally recognized tribes, 57 of which operated a total of 58 tribal casinos in 26 counties.

In fiscal year 2008–09, the Legislature appropriated \$30 million from the distribution fund to local governments for mitigation projects. This amount was divided among 25 counties, which issued 185 grants. Our review of a sample of 20 of these grants awarded to local governments in seven counties revealed that for 10 of the grants, which together totaled \$3.2 million, the local government either could not provide evidence of, or could not quantify, the impact of a local casino. As a result, for projects that both mitigated an adverse impact of a casino and provided other local benefits, neither we nor the county could determine whether the share provided from the distribution fund grants was proportional to the casino's impact, as required by state law.

These grants may have been approved because some county benefit committees obtained the tribes' sponsorship for the proposals before selecting them for funding. Requiring the benefit committee to select projects for grant funding before obtaining tribal sponsorship would have several inherent benefits. Not only does the consideration of each grant application by the benefit committee in a public meeting allow for discussion and public comment on each application's relative merits, but it also presents the opportunity for an applicant to provide additional information and clarification on the application.

In three of the counties we reviewed, five local governments did not receive as much grant money as was set aside for them in law by the nexus test—a test of geographical proximity that defines the minimum grant amounts certain local governments should receive. In total, more than \$1.2 million set aside for these local governments went instead to other cities and counties. The county representatives described several reasons for this situation. Santa Barbara County misinterpreted the law, leading it to miscalculate the nexus amounts,

### Audit Highlights . . .

*Our audit of the Indian Gaming Special Distribution Fund (distribution fund) revealed the following:*

- » *The Legislature allocated \$30 million from the distribution fund to local governments for mitigation projects in fiscal year 2008–09, which was divided among 25 counties that issued 185 grants.*
- » *We reviewed 20 grants and found that for 10, the local government either could not provide evidence of, or could not quantify, the impact of a local casino.*
- » *In three of the counties we reviewed, five local governments did not receive as much grant money—\$1.2 million—as was set aside for them in law.*
- » *Members of the Indian Gaming Local Community Benefit Committees do not always make the required financial disclosures.*
- » *Amended compacts have resulted in less revenue for the distribution fund yet have increased the revenue available to the State's General Fund. In addition, they have resulted in agreements for tribes to mitigate casino impacts on local governments.*
- » *Due to newly amended compacts, some tribes ceased making contributions to the distribution fund partway through the 2007–08 fiscal year, a situation unanticipated by the law that affected how almost \$2 million was distributed.*

and the benefit committee decided to further reduce the amount. In Riverside County, one city that was eligible for grant funds did not apply for a grant, and the tribes did not fully sponsor other grants. Finally, Amador County was unable to explain why it awarded the amounts it chose. Only Riverside County informed local governments of the amounts set aside for them based on the nexus test. We also found that a poor understanding of the law's requirements resulted in one grant benefiting an ineligible entity. The benefit committee in Yolo County provided roughly \$336,000 to a school district, which is an ineligible entity under state law.

Our review also revealed that members of benefit committees do not always make the financial disclosures required by state law. Although each member is required to file a statement of economic interests that helps to identify conflicts of interest that he or she might have, our review found that 12 of the 49 committee members in four of the seven counties whose grants we reviewed failed to file their statements. Further, two members filed statements more than a year late. Several factors contributed to these omissions, including the failure of some benefit committees to establish conflict-of-interest codes that include each of the elements required by state law as well as the failure of filing officers who collect such forms to follow guidelines for administering the process.

During our review, we calculated the current balances of the distribution fund and the Indian Gaming Revenue Sharing Trust Fund (trust fund), from which the California Gambling Control Commission distributes funds to tribes that operate few gaming devices or that do not have gaming compacts with the State. We also summarized the revenue and expenditures of each of these funds. Changes in contribution requirements due to amended compacts, as well as changes in the number of licenses, have altered the revenue streams of both funds.

Although the amended compacts have resulted in less revenue for the distribution fund, they have increased the revenue available to the State's General Fund, which the Legislature might need to consider as an alternative source for funding grants and services related to casino impacts in the future. Additionally, the new or amended compacts allow tribes to work directly with local governments to address casino impacts. Eight of the tribes with new or amended compacts that we contacted have entered into written agreements with local cities and counties, and these tribes have agreed to contribute to mitigation projects and to reimburse the local governments for services provided to the casinos.

We also reviewed the fiscal year 2008–09 allocation by the State Controller's Office (Controller) from the distribution fund to counties. We found that the Controller used the formula established

in law but that, due to newly amended compacts, some tribes ceased making contributions to the distribution fund partway through fiscal year 2007–08—a situation that the law did not anticipate. Had the allocation taken into account the fact that these tribes did not contribute throughout the year, approximately \$2 million would have been distributed differently, providing some counties with more money and others with less.

### Recommendations

The Legislature should consider amending the law to require that counties forfeit equivalent amounts of future money from the distribution fund if their benefit committees approve grant applications that fail to provide evidence that projects are funded in proportion to casinos' impacts. To make certain that the projects' eligibility, merit, and relevance are discussed in a public forum during the projects' selection, the Legislature should also clarify that benefit committees should meet to consider applications before submitting them for tribal sponsorship.

Alternatively, the Legislature could emphasize local priorities by amending the law to allow benefit committees to approve any applications that are submitted to them for public debate and committee approval before tribal sponsorship, regardless of the proportionality of a casino impact.

To provide an incentive for benefit committees to award cities and counties the amounts that the Legislature has appropriated to them for mitigating casino impacts, the Legislature should require that grant funds allocated for each city and county according to the nexus test revert to the distribution fund if they are not awarded to that city or county.

The Legislature should amend the law for allocating distribution funds to counties to include provisions for prorating a county's distribution fund allocation based on the percentage of the year that each gaming device in the county is required to contribute to the fund. Such an amendment would ensure a more proportionate distribution when the number of contributing gaming devices changes during the course of the year.

To help ensure that they meet the grant requirements established in the law, counties should take the following actions:

- Ensure that eligible cities and counties receive the proportional share of funding they are set aside according to the nexus test by making the governments aware of available distribution fund grants and of the minimum grant amounts that are set aside for them under the nexus test.

- Require benefit committee filing officers to avail themselves of the free training provided by the Fair Political Practices Commission (FPPC) so that they are aware of and follow their responsibilities under the Political Reform Act of 1974. Counties should also adhere to FPPC guidelines for notifying committee members of the need to submit statements of economic interests.
- Ensure that benefit committees' conflict-of-interest codes comply with state law.
- Require that the county auditor review each grant application to ensure a rigorous analysis of a casino's impact and of the proportion of funding for the project provided by the grant. Benefit committees should consider a grant application only when the county auditor certifies that the applicant has quantified the impact of the casino and verifies that the grant funds requested will be proportional to the casino's impact.
- Review the law for changes that may affect applicants' eligibility for distribution fund grants before awarding the grants so that ineligible entities do not receive grants.
- Encourage eligible local governments to submit multiple applications so that the benefit committees can choose appropriate projects while ensuring that local governments are awarded the amount defined in law.

#### Agency Comments

Two of the seven counties we visited—Riverside and Amador—disagreed with various determinations we made regarding the relationship of casino impacts to the grants their benefit committees awarded. Two of the counties—Humboldt and San Diego—either objected to, or indicated a concern with, involving the county auditor in the process of reviewing applications. Three of the seven counties—Shasta, Humboldt, and Santa Barbara—indicated that they had altered, or were planning to alter, their practices to implement our recommendations related to conflict-of-interest codes or the filing of statements of economic interest. Humboldt also indicated that it believes grant funds are inadequate to address casino impacts, and Amador suggested that the current grant requirements are rigid, unresponsive, and overly prescriptive.

## Introduction

### Background

In the 11 years since the passage of Proposition 1A and the signing of the initial tribal-state gaming compacts—agreements that authorized gaming on tribal lands within California—Indian gaming has experienced extensive growth. During this time, additional compacts have been signed, existing compacts have been amended, and various court decisions have changed the landscape of Indian gaming. According to the California Gambling Control Commission (gambling commission), as of June 2010, Indian tribes operated almost 65,000 class III gaming devices. Class III gaming devices include slot machines. According to the National Indian Gaming Commission, revenues from Indian gaming in California and Northern Nevada grew from \$2.9 billion in federal fiscal year 2001 to \$7 billion in federal fiscal year 2009.

### Federal Indian Gaming Regulatory Act

Unless authorized by an act of Congress, the jurisdiction of state governments and the application of state laws do not extend to Indian lands. Therefore, the provisions of the compacts authorized by the 1988 federal Indian Gaming Regulatory Act (IGRA) generally regulate the relationships between the State and tribal casinos. Congress enacted the IGRA to provide “a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments” and “to shield [tribal gaming] from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation.”

The IGRA establishes three classes of gaming activity, as described in the text box. Each class is subject to differing levels of jurisdiction from three parties, namely the tribe, the State, and the federal government. The tribes themselves have exclusive jurisdiction over class I gaming, which is not subject to regulation by the IGRA. Tribes also have jurisdiction over class II gaming, but this activity is subject to the IGRA. Our audit is limited to class III gaming devices. Under the IGRA, a tribe may conduct class III gaming on Indian lands only in a state that permits such gaming. Moreover, the tribe must negotiate a compact with the state governing the conduct of gaming activities, the U.S. Department of the Interior must approve the compact, and the tribe must adopt an ordinance

#### Classes of Gaming

Class I: Social games played solely for prizes of minimal value or traditional gaming connected to tribal ceremonies or celebrations.

Class II: Bingo and card games that meet certain criteria.

Class III: All other forms of gaming such as lotteries, certain card games, and slot machines that classes I and II do not include.

Sources: United State Code, Title 25, Section 2703, and the California Constitution, Article IV, Section 19.

or resolution approved by the chair of the National Indian Gaming Commission. The compact will then take effect only when notice of approval by the U.S. Department of the Interior has been published in the *Federal Register*. The IGRA permits the compacts to include provisions regarding the assessment of fees by the State in amounts necessary to defray the costs of regulating gaming activities.

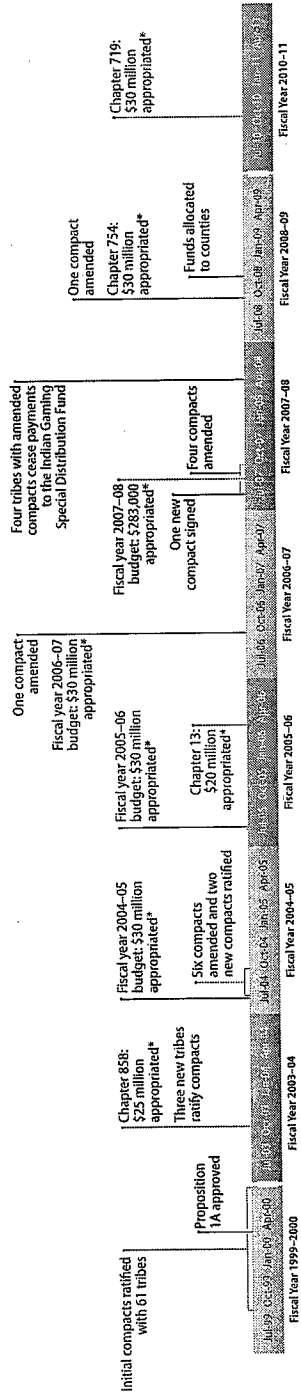
### **Tribal-State Gaming Compacts in California**

In the State's March 2000 primary election, Proposition 1A received voter approval. Proposition 1A amended the California Constitution to give the governor the authority to negotiate and enter into compacts, subject to ratification by the Legislature. The proposition also gave federally recognized Indian tribes the authority—consistent with the IGRA—to operate slot machines, lottery games, and certain types of card games on Indian lands in California.

In 1999, anticipating voter approval of Proposition 1A, the governor negotiated and the Legislature approved legislation ratifying compacts with many tribes. State law ratifying these compacts, which are identical in most respects, affirms that any future compact entered into by the State that is identical to the original compacts in all material respects is ratified unless the Legislature objects within 30 days of the governor submitting the compact to it. The State eventually entered into 61 of these tribal-state gaming compacts (1999-model compacts). The 1999-model compacts later received final federal approval as required by the IGRA, and they are effective until December 31, 2020. In consideration for the State's willingness to enter into these compacts, the tribes agreed to provide to the State, on a sovereign-to-sovereign basis, a portion of their revenues from gaming devices in the form of license and operation fees. These fees provide money for two funds: the Indian Gaming Revenue Sharing Trust Fund (trust fund), which distributes money to tribes that do not have compacts or that have compacts and operate fewer than 350 gaming devices, and the Indian Gaming Special Distribution Fund (distribution fund), which finances various state and local government activities.

Between 2003 and 2010, the governor negotiated, the Legislature ratified, and the federal government approved six additional compacts and amendments to 12 of the original compacts (post-1999-model compacts). A time line of these events is presented in Figure 1. As Table 1 on page 8 shows, the provisions in the 1999-model compacts related to contributions to state-administered funds are significantly different from the provisions in the post-1999-model compacts.

**Figure 1**  
Time Line of Events Related to Indian Gaming in California



Sources: Tribal-state gaming compacts; budget acts for fiscal years 2004-05, 2005-06, and 2006-07; Chapter 858, Statutes of 2003; Chapter 13, Statutes of 2006; Chapter 754, Statutes of 2008; and Chapter 719, Statutes of 2010.

\* Appropriations are for local mitigation grants.

**Table 1**  
**Summary of Revenue Provisions for Ratified and New Tribal-State Gaming Compacts**

	ORIGINAL COMPACTS					POST-1999-MODEL COMPACTS				
	1999-MODEL COMPACTS	2003 COMPACTS	2004 COMPACTS	2004 AMENDMENTS	2006 AMENDMENTS	2007 COMPACT	2007 AMENDMENTS	2008 AMENDMENTS		
Number of class III devices allowed per compact	Up to 2,000 devices	From 350-2,000 devices per tribe	From 1,500-2,000 devices per tribe	Unlimited number of devices	Up to 1,100 devices	Up to 99 devices	From 5,000-7,500 devices per tribe	Up to 5,000 devices		
Contributions to the Indian Gaming Revenue Sharing Trust Fund	Payments on a per-device basis	None	Payments on a per-device basis and contingent upon net win	Payments of \$2 million annually per tribe, or payment based on a per-device fee	Payments on a per-device basis and contingent upon net win	None	Payments of \$2 million annually per tribe	Payments of \$4.6 million annually per tribe		
Contributions to the Indian Gaming Special Distribution Fund	Payments based on percentage of net win from devices operated as of September 1999	None	None	None	None	None	None	None		
Contributions to the General Fund	None	Payments of 5 percent of net win	Payments based on total number of devices in operation and percentage of net win	Payments based on total number of devices in operation or percentage of net win	Payments based on percentage of net win	Payments based on percentage of net win	Payments of 15 percent of net win from devices in excess of 2,000 and 25 percent of net win from devices in excess of 5,000	Payments of 20 percent to 25 percent of net win		
				Payments of \$57.5 million to \$33.8 million for certain tribes			Payments of \$23.4 million to \$45 million annually			

Sources: Tribal-state gaming compacts.



As of September 2010 California had compacts with 67 of California's federally recognized tribes, 57 of which operate a total of 58 tribal casinos. Figure 2 on the following page shows the locations of casinos with class III gaming devices operated by federally recognized Indian tribes. The Appendix lists the tribes with compacts and indicates the maximum number of gaming devices each tribe is allowed to operate.

### California Gambling Control Commission

California's 1997 Gambling Control Act created the gambling commission to serve as the State's regulatory body over gambling activities, including Indian gaming. This commission has jurisdiction over the operation, concentration, and supervision of gambling establishments. Various aspects of the gambling commission's oversight authority are provided by different sources, namely state law, executive orders, and compact provisions. Five commissioners appointed by the governor oversee and make policy decisions for the gambling commission. The gambling commission performs audits and collects trust fund deposits based on quarterly license fees. It also acts as the trustee of the trust fund and administers the distribution fund.

### Indian Gaming Special Distribution Fund

The 1999-model compacts call for each tribe that operates more than 200 grandfathered devices—those in operation as of September 1, 1999, before the compacts were ratified—to deposit a percentage of its average net wins into the distribution fund that state law established in the State Treasury. Generally, the net win of a device is its gross revenue—the amount players pay into the device—less the amount paid out to winners. As Table 2 indicates, the percentage of average net wins for grandfathered devices deposited into the distribution fund ranges from 7 percent to 13 percent, depending on how many devices the tribe operated on September 1, 1999.

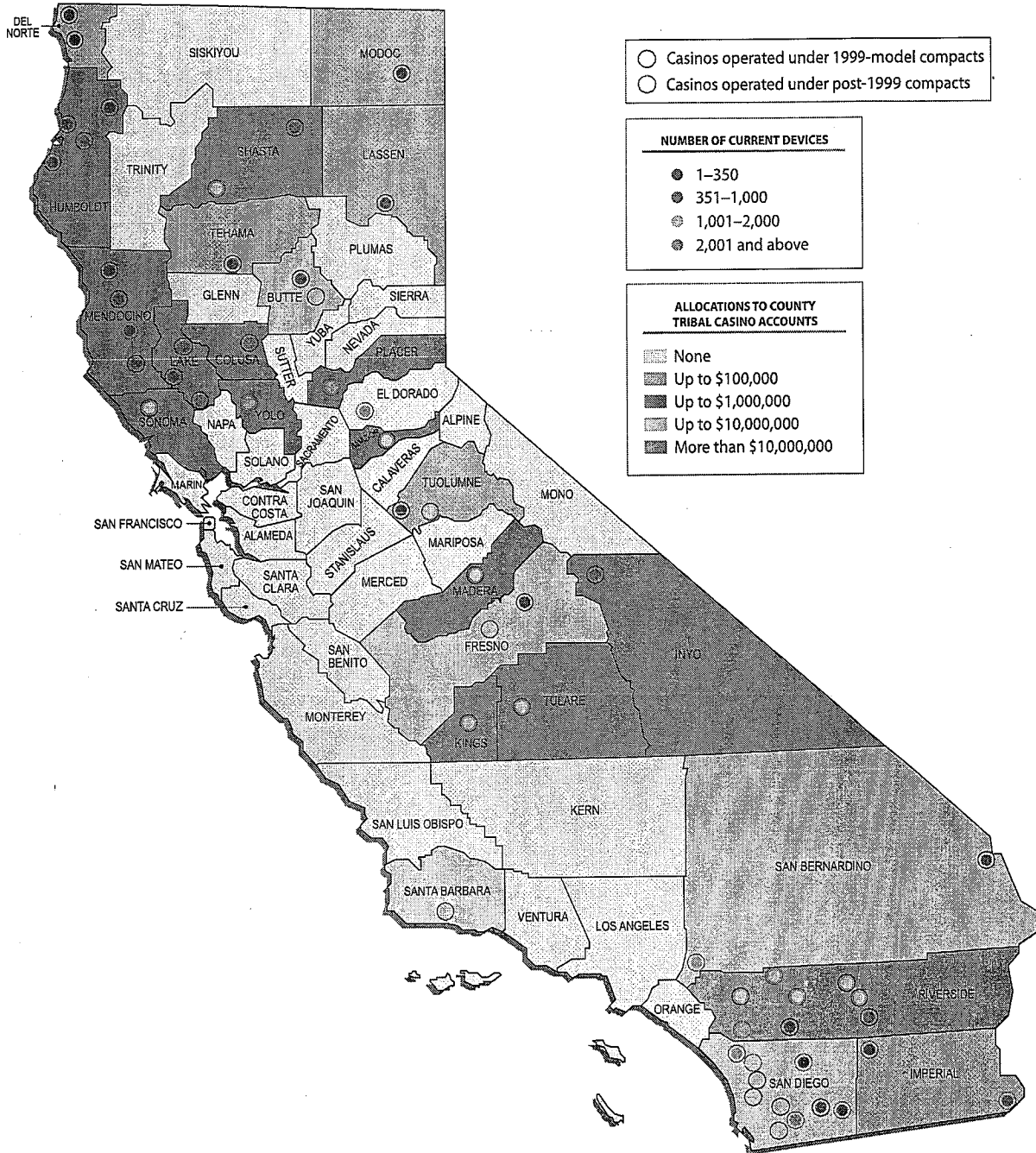
**Table 2**  
**Indian Gaming Special Distribution Fund Tiered Payment Schedule for 1999 Tribal-State Gaming Compacts**

NUMBER OF DEVICES IN OPERATION AS OF SEPTEMBER 1, 1999	PERCENTAGE OF AVERAGE GAMING DEVICE NET WINS
201–500	7%
500–1,000	10
1,000+	13

Source: Tribal-state gaming compacts ratified in 1999.

Note: Tribes with 200 or fewer devices in operation as of September 1, 1999, do not pay into the Indian Gaming Special Distribution Fund.

**Figure 2**  
**Location of Indian Casinos Operating Class III Gaming Devices in California**



Sources: California Gambling Control Commission documents, tribal-state gaming compacts, and State Controller’s Office allocations.

\* This circle represents two casinos in Riverside County, which are operated by the same tribe, that have 1,994 devices combined. Individual numbers of devices for each casino were not available.

The California Government Code (Government Code) specifies that the money deposited into the distribution fund is available for appropriation by the Legislature to address four needs, prioritized as follows:

1. Supporting the trust fund to ensure that it can distribute \$1.1 million annually to each tribe that does not have a compact or that has a compact and operates fewer than 350 devices. In fiscal year 2008–09, the Legislature appropriated a total of \$50 million for this purpose.
2. Funding problem-gambling prevention programs managed by the Department of Alcohol and Drug Programs (Alcohol and Drug Programs). The Legislature appropriated a total of \$4.3 million for this purpose in fiscal year 2008–09. In addition, the Legislature appropriated \$4 million to Alcohol and Drug Programs from this fund for local assistance.
3. Paying the operating costs for the Indian gaming regulatory functions of the gambling commission and of the Department of Justice (Justice). In fiscal year 2008–09, the Legislature appropriated a total of \$24.9 million for this purpose.
4. Supporting local governments impacted by tribal gambling. The Legislature appropriated a total of \$30 million for this purpose in fiscal year 2008–09.

#### ***Indian Gaming Revenue Sharing Trust Fund***

The terms of the 1999-model compacts require tribes that acquire licenses for gaming devices to contribute to the trust fund, which state law established in the State Treasury. For each license it acquires, a tribe operating under a 1999-model compact must pay into the trust fund a nonrefundable one-time prepayment fee of \$1,250. The compacts also require tribes to pay license fees each quarter. As Table 3 on the following page indicates, to calculate a tribe's quarterly license fee, the compacts use a graduated rate schedule based on the tribe's number of licensed gaming devices. In May 2001 the gambling commission made its first distribution to tribes without compacts and to tribes with compacts that operate fewer than 350 gaming devices, and since that time it has attempted to distribute \$1.1 million annually to each of these tribes. However, trust fund revenues have never provided sufficient money for the gambling commission to make the full annual distributions. Therefore, since fiscal year 2003–04, the gambling commission has transferred amounts from the distribution fund to supplement the yearly distributions.

**Table 3**  
**Indian Gaming Revenue Sharing Trust Fund Tiered Payment Schedule for 1999 Tribal-State Gaming Compacts**

NUMBER OF LICENSED GAMING DEVICES	FEE PER DEVICE PER YEAR
0-350	\$0
351-750	900
751-1,250	1,950
1,251-2,000	4,350

Source: Tribal-state gaming compacts ratified in 1999.

Note: The first 350 devices operated by a tribe do not require licenses. Devices operated prior to September 1, 1999, do not require licenses.

### ***Problem-Gambling Prevention Program***

The Office of Problem and Pathological Gambling, which is administered by Alcohol and Drug Programs, is the second priority for the use of distribution fund money. This office spent \$3.9 million in fiscal year 2008-09. A deputy director at Alcohol and Drug Programs stated that it allocated roughly \$1.6 million of its appropriation for conducting public awareness campaigns and for operating toll-free crisis management telephone lines; \$1 million for treatment support services, such as establishing a Web-based data repository and billing system, training new providers to treat problem-gambling behaviors, and continuing research to determine behavioral treatment efficacy; \$750,000 for educating organizations and individuals on the signs of problem-gambling behaviors; \$200,000 for research into youth gambling behaviors; and the remainder for assessing prevention services needs, developing and enhancing policies and procedures, convening an advisory group, producing publications, and administering and monitoring the program. In addition, Alcohol and Drug Programs received \$4 million from the distribution fund for local assistance, with which it implemented a stepped-care multimodal treatment program, including interventions as well as outpatient, intensive outpatient, and residential care.

### ***Regulatory Activities of the Gambling Commission and Justice***

The gambling commission spent \$7.9 million and Justice spent \$14.9 million in fiscal year 2008-09 for regulatory activities related to Indian gaming. The gambling commission stated that its responsibilities related to tribal gaming include oversight of class III gaming operations; distribution of tribal gaming revenues to various state funds and to authorized, federally recognized, noncompact tribes; monitoring tribal gaming through periodic background checks

of tribal key employees, vendors, and financial sources; validation of gaming operation standards through testing, auditing, and review; and fiscal auditing of tribal payments to the State pursuant to compact provisions.

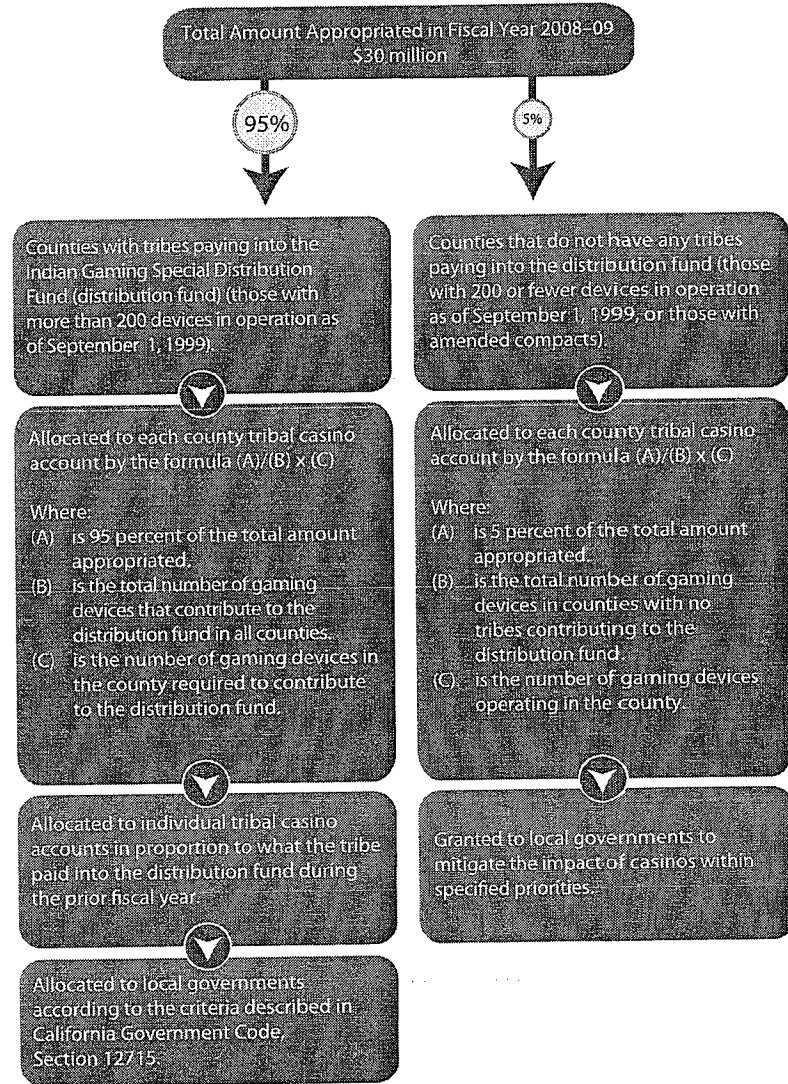
Justice stated that it uses its distribution fund allocation to support the regulatory activities related to Indian gaming for three of its divisions: the Bureau of Gambling Control in the Division of Law Enforcement, the Division of Public Rights, and the Hawkins Data Center. For example, the Indian Gaming Law Section of the Division of Public Rights monitors Indian gaming practices, and it consults and advises the governor on compact negotiations and Indian law issues. The Bureau of Gambling Control works with other state gaming agencies and tribal gaming agencies to regulate gaming on tribal lands.

#### ***Local Governments Affected by Tribal Gambling***

The Government Code's fourth priority for distribution fund money is supporting local government agencies impacted by tribal gaming. When funds are appropriated from the distribution fund for mitigation grants, the State Controller's Office (Controller), in consultation with the gambling commission, divides these funds among eligible counties to use for mitigation projects according to a methodology established in state law. As Figure 3 on the following page shows, the Government Code defines a method for dividing these funds between counties with tribes that contribute to the fund and counties that have casinos but that do not have tribes that contribute to the fund. The Government Code also describes how funds are allocated to the county tribal casino account for each county. For counties in which tribes pay into the distribution fund, the money is further allocated into an individual tribal casino account for each tribe based on the amount that the tribe paid into the distribution fund in the previous fiscal year.

The \$30 million allocated to local governments in fiscal year 2008–09 was divided among 25 counties that issued 185 grants. The amounts received by these counties varied considerably. For example, Modoc County received the least of any county and elected not to spend the funds it was allocated, so the money reverted to the distribution fund as required by law. Riverside County received the most funds—more than 47 percent of the \$30 million—and it distributed the funds in 60 grants averaging more than \$235,000 each. Figure 4 on page 15 summarizes the purposes for which counties reported spending their distribution fund allocations for fiscal year 2008–09.

**Figure 3**  
**Allocation of Funding From the Indian Gaming Special Distribution Fund to Local Governments**

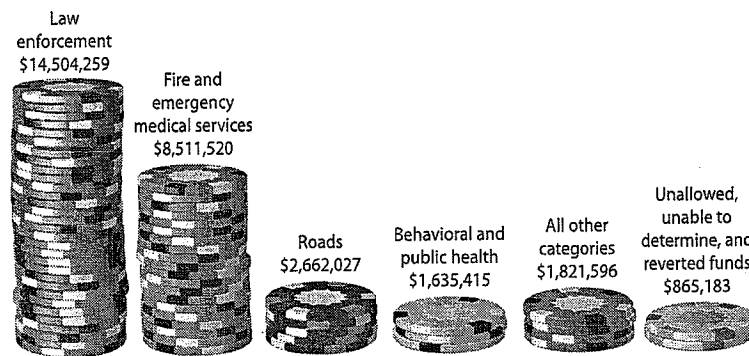


Sources: California Government Code, sections 12714 and 12715, and Chapter 754, Statutes of 2008.

State law creates, in each county in which Indian gaming occurs, an Indian Gaming Local Community Benefit Committee (benefit committee) that awards grants from the distribution fund. Generally, each county's benefit committee consists of two county representatives selected by the county board of supervisors, three elected representatives selected by the county board of supervisors from cities located within four miles of a tribal casino, and two representatives selected on the recommendation of a majority of the county's tribes paying into the distribution fund. In a county in which only one city is

located within four miles of a tribal casino that is in an unincorporated part of the county, only one elected representative of that city sits on the benefit committee. In counties that do not have a tribal casino within four miles of a city, the county board of supervisors and the tribes in the county mutually select additional members of the benefit committee in lieu of city members. San Diego County's benefit committee consists of two representatives of the county selected by the county board of supervisors, one elected representative selected by the board of supervisors from the city located within four miles of a tribal casino, three representatives selected on the recommendation of a majority of the county's tribes paying into the distribution fund, and the sheriff of San Diego County.

**Figure 4**  
**Total Mitigation Expenditures From the Indian Gaming Special Distribution Fund**  
**by Category, as Described in County Annual Reports for Fiscal Year 2008–09**



Source: Fiscal year 2008–09 annual reports submitted by counties.

As the text box delineates, each benefit committee is responsible for establishing procedures for local governments within the county to apply for grants and for selecting eligible applications for the distribution of grant funds. To allocate funds correctly to local governments in counties that have a tribe paying into the distribution fund, benefit committees must determine the geographical proximity of cities and the county, using a set of criteria known as the nexus test established in the Government Code. Figure 5 on page 17 shows the nexus test criteria and the required allocation of funds, in which 60 percent of the funds are allocated using the nexus test and the remainder are awarded as discretionary grants, allowing the benefit committees to choose which local governments receive the money. These criteria are intended to provide a fair and proportionate system for awarding grants to local governments impacted by tribal gaming.

**Responsibilities of Indian Gaming Local Community Benefit Committees**

- Awarding grants.
- Ensuring that funds are allocated according to priorities established by law.
- Establishing all application policies and procedures for grants from the Individual Tribal Casino Account or County Tribal Casino Account.
- Assessing the eligibility of applications for grants from local jurisdictions impacted by tribal gaming operations.
- Determining the amount of reimbursement to the county for administering the grant program (not to exceed 2 percent of the total county allocation).

Source: California Government Code, Section 12715.

### Priority Uses of Indian Gaming Special Distribution Fund Grants

- Law enforcement
- Fire services
- Emergency medical services
- Environmental impacts
- Water supplies
- Waste disposal
- Behavioral health
- Planning and adjacent land uses
- Public health
- Roads
- Recreation and youth programs
- Child care programs

Source: California Government Code, Section 12715.

After the benefit committees award grants and the grants receive affirmative sponsorship of the tribes from whose individual tribal casino accounts the funds are distributed, the benefit committees submit lists of the approved grants to the Controller, which releases the funds directly to the local government entities awarded the grants. Although multiyear grants are allowed, any money that counties do not grant by the end of the fiscal year reverts to the distribution fund. Grants are administered by the county, which can be reimbursed for up to 2 percent of the funds for demonstrated administrative expenses. The Government Code defines 12 priorities for the award of grants, as shown in the text box. For example, grant funds can be used to help pay for the cost of maintaining roads that experience an increase in traffic due to casino patrons, for the proportion of staffing costs related to the additional workload firefighters experience because of the need to respond to emergencies at the casinos, or for additional police officers needed because the presence of casino patrons increases the number of individuals in their jurisdiction.

### Prior Report and Legislative Action

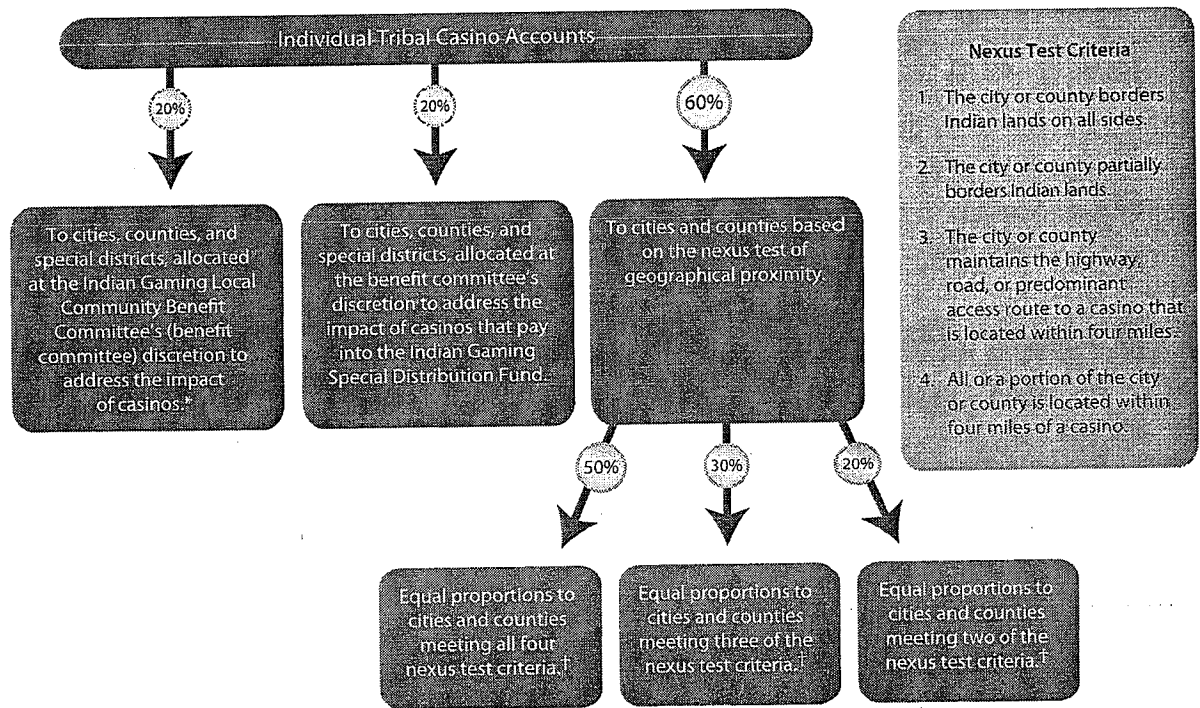
In July 2007, as required by the Government Code, Section 12717, we issued a report on the Indian Gaming Special Distribution Fund. Titled *Indian Gaming Special Distribution Fund: Local Governments Do Not Always Use It to Mitigate the Impacts of Casinos, and Its Viability Will Be Adversely Affected by Compact Amendments* (report 2006-036), this report included a finding that some projects funded by the distribution fund were not related to an impact from a casino. Specifically, 15 of the 30 grants reviewed for that report either did not address a casino impact or were primarily unrelated to casino impacts. Although the intent of the law was to support local government agencies impacted by tribal gaming, the law did not contain specific requirements that local governments use the funds only for projects addressing casino impacts.

The 2007 report also found that counties and benefit committees needed to improve their administration of distribution fund grants. For example, the report cited several instances in which local governments did not use the interest they earned on unspent distribution fund money to pay for casino mitigation projects. Several local governments asserted that state law authorized the



use of interest earned on the grants for general purposes. However, the report concluded that because these are grant funds, local governments should use the interest the funds produce for the purposes established in the compacts and in state law. Moreover, 11 of the benefit committee members in the counties sampled for the 2007 report failed to file required statements of economic interests. In addition, the audit revealed that only nine of the 24 counties receiving grant funds submitted annual reports to all of the required legislative committees and the gambling commission on the projects financed by the distribution fund.

**Figure 5**  
Allocation of Funds From Individual Tribal Casino Accounts



Source: California Government Code, Section 12715.

\* These grants are generally limited to service-oriented and one-time large capital projects, but in some instances may be awarded for other projects.

† These funds must be made available in equal proportions to cities and counties meeting a different number of nexus test criteria if no local governments meet the required number of criteria.

Our July 2007 report prompted several actions. The former governor eliminated \$30 million from the fiscal year 2007–08 appropriation from the distribution fund, citing concerns raised in the report and indicating that he would support restoring the appropriation if counties and benefit committees addressed those concerns. Further, in September 2008, Chapter 754,

Statutes of 2008 (Chapter 754), enacted as an urgency measure, implemented several of our recommendations. Specifically, Chapter 754 requires that benefit committees select only grant applications that mitigate casino impacts and only provide funds in proportion to the impact in cases when a project's benefits exceed the impacts. Chapter 754 also clarifies that school districts are not eligible for funding, requires that all grant funds be deposited in interest-bearing accounts, and states that the interest must be used to mitigate casino impacts. Finally, Chapter 754 requires counties to provide their annual reports if they are to remain eligible for distribution fund money the following year.

### Recent Court Decisions

Federal courts issued two decisions in the past year that have had significant implications for Indian gaming in the State. One case concerned the limit on the number of gaming device licenses set by the State under the 1999-model compacts. The other case called into question a provision that the State sought to negotiate into an amended compact.

In its August 2010 decision in *Cachil Dehe Band of Wintun Indians of the Colusa Indian Community v. California*,<sup>1</sup> the Ninth Circuit of the U.S. Court of Appeals (Ninth Circuit) held that the State had misinterpreted the section of the 1999-model compacts for determining the number of gaming devices that California tribes are permitted to license. Two tribes claimed that the compacts permitted more licenses than the State had determined were allowed. The Ninth Circuit held that the limit on licenses exceeds the number recognized by the State, and the court upheld a lower court's order that the State conduct a license draw open to 1999-model compact tribes for the additional licenses. At the time of the ruling, the State had already conducted the ordered license draw in October 2009 as required by the lower court's ruling and had issued 1,878 additional licenses.

In *Rincon Band of Luiseno Mission Indians of the Rincon Reservation v. Schwarzenegger*,<sup>2</sup> a case decided in April 2010, the Ninth Circuit found that the State had negotiated with the Rincon Band of Luiseno Mission Indians (Rincon tribe) in bad faith by conditioning its agreement to expand the Rincon tribe's class III gaming rights on the tribe's agreement to pay a percentage of its revenues to the State's General Fund. The court ruled that the State's repeated insistence that the tribe pay a percentage of its net revenues to the General Fund was an attempt by the State to

<sup>1</sup> 681 F.3d 1066.

<sup>2</sup> 602 F.3d 1019.

impose a tax on the tribe in violation of the IGRA. The State has appealed the decision to the U.S. Supreme Court, which, as of November 2010, has not yet decided whether it will hear the case.

### Scope and Methodology

Section 12717 of the Government Code requires the Bureau of State Audits to conduct an audit every three years regarding the allocation and uses of moneys from the distribution fund by the recipients of the grant money and report its findings to the Legislature and all other appropriate entities.

To determine if distribution fund money is allocated appropriately to each county, we reviewed the Controller's calculation of the amounts for each county.

Using factors that included the amounts of funding received and geographic location, we selected seven counties—Amador, Humboldt, Riverside, San Diego, Santa Barbara, Shasta, and Yolo—to evaluate the uses of distribution fund grants. We reviewed the composition of the benefit committees for these counties to ensure that their membership met the requirements of state law, and we requested copies of members' conflict-of-interest filings. We are referring several concerns we identified related to conflict-of-interest filings to the Fair Political Practices Commission, the entity responsible for enforcing these requirements. To assess whether grant funds are being awarded appropriately at the county level, we reviewed county and benefit committee policies and procedures, and we interviewed county staff regarding the awarding of distribution fund grants. We also reviewed the eligibility of local governments to receive funds in each sample county and assessed whether the benefit committees awarded funds appropriately according to the criteria in state law.

To evaluate whether grants awarded in the counties we selected had reasonable relationships to casinos' impacts and satisfied the requirements in state law, we obtained annual reports for fiscal year 2008–09 grants, which were the most recent grants available at the time of our audit. We then selected between one and four grants in each county we visited, using such criteria as the amount of the grant, the purpose of the project funded, and the description of the project. We prioritized our selection of some grants according to whether the grants' descriptions appeared questionable. We then reviewed grant applications describing the selected projects and their relationships to casinos' impacts, interviewed grantee staff, and obtained supporting documentation about those impacts. We reviewed evidence of the impacts that the projects were designed to mitigate; the proportionality of the grant

funding to the casinos' impacts; the amounts, appropriateness, and reasonableness of grant funds spent; and the use of any interest earned on these grant funds.

Some grantees provided us hard-copy documentation from various electronic systems, such as accounting or time-keeping information. We performed limited work to assure ourselves of the nature of the information. However, because we were assessing the funding decisions made by, and the information available to, the benefit committees rather than evaluating the operations of the grantees, we did not perform standard data reliability procedures to provide assurance of the accuracy or completeness of this information.

To determine the ability of the distribution fund to continue to fund the programs that depend on it, we compared distribution fund revenue and expenditures. Using these figures, we projected the distribution fund balance from fiscal years 2011-12 through 2014-15. Because one of the major expenditures for the distribution fund is to cover shortfalls in the trust fund to ensure that payments mandated by state law can be made to tribes that do not have compacts or that have compacts but operate fewer than 350 gaming devices, we also reviewed trust fund activity from fiscal years 2000-01 through 2009-10 to identify changes in revenue and expenditures.

Finally, as part of our review of the distribution fund balance and the cause of changes in the revenue it receives, we obtained all post-1999-model compacts. Although these compacts remove requirements to contribute to the distribution fund, they do require that tribes negotiate agreements with local governments to mitigate casino impacts after subsequent casino construction or expansion. To determine the extent to which such local agreements exist, we contacted all tribes with post-1999-model compacts that have casinos or that have filed environmental impact reports. We inquired as to whether these tribes had negotiated any agreements; if so, we obtained copies of the agreements to confirm that the local agreements provided for the mitigation of casino impacts.

## Chapter 1

### BENEFIT COMMITTEES EXERCISED POOR JUDGMENT IN AWARDING SOME GRANTS, AND GRANT ADMINISTRATION NEEDS IMPROVEMENT

#### Chapter Summary

Indian Gaming Local Community Benefit Committees (benefit committees) have had difficulty in complying with Indian Gaming Special Distribution Fund (distribution fund) grant requirements and with related laws. Our review of a sample of 20 grants awarded in seven counties in the State revealed that three were unrelated or not proportionally related to any adverse impacts that the respective Indian casinos may have on their surrounding areas. For 10 other grants, the grantees were unable to quantify or provide evidence of the casinos' impacts. Additionally, some counties failed to award local governmental entities within a certain geographical proximity to their respective casinos the minimum amounts that the law sets aside for those entities. One county awarded a distribution fund grant to an ineligible applicant, leaving fewer funds for distribution to eligible entities and projects. Further, some members on the benefit committees in four of the seven counties we reviewed failed to file required statements of economic interests.

#### Some Local Governments Could Not Quantify the Impacts of Casinos, and Some Grants Were Not Proportional or Were Unrelated to the Casinos' Impacts

State law requires that distribution funds be used only to mitigate impacts from casinos on local jurisdictions and that the grant expenditures be proportional to the casinos' impacts. However, the benefit committees in six of the seven counties we reviewed granted more than \$3.2 million to local governments that could not demonstrate or quantify the impacts from the local casinos, and Yolo County granted all of its funds—almost \$336,000—to an entity that was not eligible to receive them. Additionally, we found that three grants, totaling almost \$400,000, were unrelated or not proportionally related to any adverse impact an Indian casino might have to the surrounding area.

Our review of 20 grants distributed by benefit committees in seven counties found that at least one recipient in each of six of the counties either was unable to quantify the impacts of the respective casino or used the funds for a project that did not mitigate a casino impact. The seventh county, Yolo, issued one grant for

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almost \$336,000 to an ineligible recipient. As Table 4 shows, grants totaling more than \$3.2 million—56 percent of the \$5.7 million total amount of the grants reviewed—went to recipients who were unable to demonstrate the impacts of local casinos. Because the recipients could not quantify the impacts of the casinos, we could not determine whether the amounts spent on the recipients' projects were proportional to the impacts of the casinos.

**Table 4**  
Appropriateness of Grants Awarded by Indian Gaming Local Community Benefit Committees

COUNTY	SOLELY RELATED TO, OR PROPORTIONAL TO, CASINO IMPACT	GRANTEE UNABLE TO QUANTIFY CASINO IMPACT	FUNDS AWARDED DO NOT MITIGATE, OR ARE GREATER THAN THE PROPORTION OF, THE CASINO'S IMPACT	ENTITY INELIGIBLE TO RECEIVE GRANT
Amador	1 Grant \$88,200	2 Grants \$105,794	—	—
Humboldt	2 Grants \$70,103	1 Grant \$25,000	—	—
Riverside	1 Grant \$441,000	1 Grant \$905,627	2 Grants \$135,000	—
San Diego	—	3 Grants \$1,787,910	—	—
Santa Barbara	2 Grants \$1,163,403	1 Grant \$173,281	—	—
Shasta	—	2 Grants \$228,406	1 Grant \$258,515	—
Yolo	—	—	—	1 Grant \$335,854
<b>Totals</b>	<b>6 Grants</b> <b>\$1,762,706</b>	<b>10 Grants</b> <b>\$3,226,018</b>	<b>3 Grants</b> <b>\$393,515</b>	<b>1 Grant</b> <b>\$335,854</b>

Source: Bureau of State Audits' review of fiscal year 2008–09 Indian Gaming Special Distribution Fund grants.

Although many local governments had difficulty in quantifying the impacts of their local casinos, six of the 20 grants we reviewed were related solely to or were proportional to casinos' impacts. Santa Barbara County's fire department and the Blue Lake Fire Protection District in Humboldt County, for example, received distribution fund grants for fire services. Both fire departments tracked casino-related emergency calls and were able to demonstrate that the amount of funds they received was proportional to the services they provided to the local casinos.

During the fieldwork portion of our audit, we initially determined that the Amador County Sheriff's Department (sheriff's department) was unable to quantify the impact of the casino for a grant it received. The sheriff's department provided information that quantified the number of incidents the sheriff's department indicated were casino-related and showed a

proportional relationship to the amount of grant funding received. However, according to the undersheriff, although the sheriff's department uses an indicator in its electronic case files to indicate which incidents were casino-related, it is the sheriff's policy to avoid mention of the casino in the description of the case unless being at the casino was relevant to the facts of the incident or the incident occurred at the casino. Without more detailed information on the incident's relationship to the casino, we could not determine if the casino contributed to causing these incidents. However, based on a suggestion provided to us during the agency review period that we only consider those incidents occurring at the casino, we concluded a sufficient number of incidents occurred at the location of the casino for us to consider that the impact was proportional to the grant funding.

We found that most of the local governments we reviewed that received distribution fund grants identified impacts of their local casinos, although many of those same governments could not demonstrate or quantify the proportion of the impacts. For instance, the city of El Cajon in San Diego County received a \$95,000 distribution fund grant. The city intends to use the money to resurface streets that have been affected by bus traffic from the terminals that provide transportation to and from five local casinos. The El Cajon Transit Center provides bus service for one casino, while the casino bus terminal across the street provides transportation to four other casinos. In its application, the city identified three streets surrounding the two terminals that needed repair. We visited the casino bus terminal and observed severe damage to the road where casino buses enter and exit the casino bus terminal. The city estimated that 90 percent, 75 percent, and 10 percent, respectively, of the total cost of resurfacing the three streets is attributable to casinos. However, according to the deputy city manager, El Cajon did not undertake any traffic counts on the affected streets. Thus, we were unable to confirm that the given impact estimates are proportional to the casino buses rather than to city buses and regular city traffic.

In Riverside County, a mitigation project undertaken by the county fire department received almost \$906,000 for equipment for wildland fire response. According to data provided by the fire chief, 34 percent of the wildland fires in the county in 2009 occurred within the local casino's area of influence. The fire department defined the casino's area of influence as a large portion of the county that includes several communities. The fire chief confirmed that the casino has not necessarily led to an increase in actual fires; instead, it has caused an increase in fire potential. We realize that the number of fires can vary from year to year for many reasons; however, because the fire department has not tracked the incidences related to the casino, we were unable to determine if

*According to the deputy city manager, El Cajon did not undertake any traffic counts on the affected streets. Thus, we were unable to confirm that the given impact estimates are proportional to the casino buses rather than to city buses and regular city traffic.*

the amount of grant funds awarded was necessary to mitigate the casino's impact. This situation highlights the difficulty of assessing grants that may reduce potential risk associated with a casino in contrast to evaluating those grants that mitigate an identified and quantifiable impact.

In another instance, San Diego County's benefit committee awarded a \$1.4 million grant to San Diego County that was administered by the San Diego County Regional Fire Authority. The county then entered into an agreement with the San Miguel Consolidated Fire Protection District (San Miguel). According to the county fire services coordinator, San Miguel will use the funds to construct a regional fire and public utilities training center that will be owned by the Heartland Fire Training Authority, a joint powers authority. The county fire services coordinator informed us that the county applied for the funds because it wanted to obtain additional funds for San Miguel to use for a regional training facility that expands training opportunities beyond existing sites that are at capacity. He also stated that this will provide a regional facility for consistent training for career and volunteer firefighters on specialized subjects that are used in responding to a critical incident.

Information provided by the county at our request described impacts from the casino experienced by the local governments within the county. However, the county did not supply information necessary for determining the proportion of the total workload that related to the county's casinos, nor did it reasonably consider the other benefits that this grant provides for the portion of the workload that is unrelated to casinos. In addition, although the county asserted that the grant was for its benefit and provided a copy of an agreement with San Miguel to administer the grant, the county described itself on the application for funds as a *pass-through*. Although San Diego County was eligible for grants from funds allocated using the nexus test—described in the Introduction—San Miguel was not, and the \$1.4 million granted was greater than the total amount of discretionary funding available to local governments in the county. Finally, according to the fire services coordinator, the county paid an additional \$400,000 in September 2010 to become a partner in the regional training center, despite the fact that it had previously provided the \$1.4 million grant to support the construction of the training center. However, the fire services coordinator later contradicted his statement and explained that although \$400,000 has been authorized, the county is not yet a partner.

*Although San Miguel Consolidated Fire Protection District (San Miguel) was not eligible for grants from funds allocated using the nexus test, San Diego County—which was eligible for such grants and did receive \$1.4 million—passed the funds on to San Miguel through an agreement.*

During our prior audit of distribution fund grants, we reviewed a \$700,000 grant that San Miguel applied for independently of the county, and subsequently received for the purpose of building a tower for firefighters to use in training to put out fires in large



structures. At that time, San Miguel stated that this project was necessary because the casino was one of only a few large structures within its jurisdiction. However, when we followed up on the expenditure of that grant during the course of this audit, San Miguel's deputy chief stated that the \$700,000 was used for planning and architectural costs for the creation of a larger comprehensive training facility, rather than to build the tower. Despite San Miguel's receiving more than \$2 million in distribution fund grants thus far for the training facility, the deputy chief stated that because the training tower is the final aspect of the center to be built, additional funds will be required to pay for its construction.

We also found that three grants, totaling almost \$400,000, were unrelated or not proportionally related to any adverse casino impact. For example, the city of Redding's water utility received a distribution fund grant in the amount of roughly \$259,000 for water system improvements. According to the application, a pump station in the city needed replacement because the below-ground installation was subject to moisture damage and because a recent roadway expansion had encroached upon the facility. Although repair of the pump station would benefit the local casino, the city's need for the improvements did not relate directly to the impact caused by the casino as called for in the law.

*Three grants totaling almost \$400,000 were unrelated or not proportionally related to any adverse casino impact.*

### **County Procedures for Reviewing Grant Applications Should Be Improved**

When we reviewed the procedures and practices established for grant selection in the seven counties in our sample, we found that the benefit committees in six of the counties approved grant applications only after local tribes reviewed and selected the applications they wished to sponsor. In essence, the tribes made the grant selection and the benefit committees signed off on the selections. In fact, in two counties, applications were submitted directly to the local tribes. The tribes subsequently provided the benefit committees with a list of sponsored applications that matched the total amount of funding available, and the committees were unable to provide documentation of any discussion or public debate about the applications. Because the benefit committees in these counties were not involved in the initial review process, we question what influence they have over the ultimate selection of applications and their ability to ensure that the proposed projects mitigate casino impacts. Although the law contains no explicit direction requiring benefit committees to select grants before obtaining tribal sponsorship, using their current process these benefit committees are only technically fulfilling their duty to select grants, and are not selecting grants prior to tribal sponsorship as the law intended.

In contrast, San Diego County's benefit committee established detailed policies and procedures to ensure that the committee is involved in the process of selecting grants for mitigation projects. The committee first reviews all applications for eligibility before allowing the applicants to make brief presentations to the committee. It then forwards the applications to the tribe for review, after which the committee further discusses grant selections. The county's procedures account for potential disagreement and allow for further tribe and committee consideration. San Diego's process also promotes collaboration between the committee and the tribe, and it ensures public involvement and participation even though the justification for some projects may have weaknesses. Shasta County's process, as described by an administrative analyst, also promotes such collaboration. Although applications are forwarded to the tribe for sponsorship prior to the benefit committee meeting, the applications are provided to all committee members and are discussed at the meeting, regardless of whether they are sponsored by the tribe. This process gives committee members an opportunity to discuss the applications that were not sponsored by the tribes, and ultimately all committee members agree on which applications will be approved.

When we reviewed the procedures used by other benefit committees to select grants, we found that applications are generally provided first to the tribes, whose sponsorship of applications appears to leave little or no opportunity for some committees to provide input on which grants receive funding or to hold public discussion of the relative merits of all applications. As a result, those applications not sponsored by the tribe are not reviewed by the committee. The benefit committees subsequently granted the funds to recipients that could not always demonstrate casinos' impacts. According to our review of minutes from benefit committee meetings, the full benefit committees appear not to have discussed, reviewed, or considered those applications not sponsored by the tribes that may or may not have been able to demonstrate measurable impacts from casinos. According to its county counsel, Amador County's process differs in that the applications are submitted directly to the chief executive officer of the local casino but are then reviewed by the benefit committee for selection prior to receiving tribal sponsorship. Although the grant application also describes this process, the county did not provide any meeting minutes or written procedures demonstrating how the applications were reviewed and processed.

*Benefit committees must select only grant applications that mitigate impacts from casinos on local jurisdictions.*

The law establishing the distribution fund directs the benefit committees to consider the impact of casinos when selecting grants. Specifically, the law states that the benefit committees shall select only grant applications that mitigate impacts from casinos on local jurisdictions. Additionally, the law requires that

if a local jurisdiction approves an expenditure that mitigates a casino's impact and that also provides other benefits to the local jurisdiction, the grant selected shall finance only the proportionate share of the expenditure that mitigates the impact from the casino. These requirements encourage the distribution of grant funds in amounts that are sufficient for addressing a casino's impact and allow funds to be used to mitigate several impacts, rather than funding in their entirety expensive mitigation projects that are only partially related to a casino.

Our review of the laws related to grant selection suggests that they intend benefit committees to select grants before obtaining tribal sponsorship of the grants. Our concern regarding the processes being used by the various counties is not intended to suggest that tribal sponsorship is irrelevant or that it cannot add value to the process. Not only is tribal involvement required both by compacts and by state law, but it is also an important aspect of the process. Tribes are involved in selecting the grants, through their membership on the benefit committees, and in evaluating the impact of the casinos on local government, through the sponsorship requirements. However, requiring the benefit committee to select grants before obtaining tribal sponsorship has several inherent benefits. Not only does the consideration of each grant application by the benefit committee in a public meeting allow for discussion and public comment on each application's relative merits, but it also presents the opportunity for an applicant to provide additional information and clarification on the application.

Further, delegating these responsibilities to the tribes appears to encourage the belief among participants that these are tribal funds and that the tribes decide who should receive distribution fund grants. In fact, after being approached by the tribe, the city of Desert Hot Springs applied for a grant that, according to a management analyst in the police department that administered the grant, was to provide child care for casino employees. In this case, a representative from the city of Desert Hot Springs stated that it used the funds to provide children's science fairs and camps instead of the services described in its grant application. The city notified the tribe of how city residents would benefit, and the city requested the tribe's assistance to ensure that city residents employed by the casino would be notified. In another instance, Yolo County approved grant funding to a local school district, which is an ineligible entity, because the tribe expressed a desire for the funds to be awarded to the school district. We discuss this grant in more detail in a later section of this report.

*Grant recipients failed to provide evidence that quantified the casinos' impacts and thus, recipients may be receiving far more or far less funding than is necessary to mitigate particular impacts.*

Although many local governments could not quantify their respective casinos' impacts, we acknowledge that these and other purchases are beneficial to the local governments. The grants that we reviewed were used to purchase a new fire truck, improve police departments' communications systems, allow better law enforcement coverage, provide hot lunches for senior citizens, and fund shortfalls to ensure that existing services and programs, such as a science camp for local students and fire protection services, could continue. Many of the applications for these grants provided logical arguments regarding how the grant recipients might be affected by the casinos. However, these grant recipients failed to provide evidence that quantified the casinos' impacts. Without such evidence, recipients may be receiving far more or far less funding than is necessary to mitigate particular impacts. If distribution funds are used for a project that does not bear a relationship to the impact of a casino, other local governments in the area are unable to fund mitigation projects. Further, the true impact of the casino is not clear. If benefit committees were able to communicate in their annual reports the number of applications with quantifiable casino impacts that the committees were unable to fund, the Legislature might better understand the local governments' need for funding to mitigate these impacts.

In addition, a more rigorous review of grant applications may be in order, given the proportion of grants we reviewed that did not quantify the impact of a casino. Specifically, such a review should focus on the evidence the grant application provides of the casino's impact and on the relationship between the increased workload due to the impact and the proportion of the grantee's overall funding that is provided by the grant. Such a review would ideally be conducted by an individual with some degree of independence and impartiality. Because counties are already reimbursed for up to 2 percent of the amount awarded to administer grants, they may be better served by using these funds to reimburse the county auditor or controller—positions that require a degree of independence and skill in assessing quantifiable subjects—to review the grant applications and certify those that quantify the casino's impact and fund projects in proportion to the casino's impact.

### **Some Cities and Counties Did Not Receive the Amounts That the Law Set Aside for Them**

We found that in some cases benefit committees awarded cities and counties less money than the law set aside for them. The nexus tests—tests of geographical proximity established in law—determine the minimum amount that certain cities and counties should receive from the individual tribal casino accounts in each county (nexus set-aside). Five of the seven counties we sampled

were required to perform a nexus test, but four cities in three of these counties, and two separate set-asides for one of the counties, did not receive the full amount the nexus test set aside for them. Because some cities and counties did not receive their full nexus set-aside, they may not have been able to fully mitigate the impact of neighboring casinos.

California courts define an appropriation as an authorization by the Legislature for the expenditure of a certain amount of money for a specific purpose. The purpose of the fiscal year 2008–09 appropriation for distribution fund grants was for grants described in Section 12715 of the California Government Code (Government Code), which includes several requirements. One of these requirements is the nexus test. Specifically, the law requires benefit committees in counties with tribes that pay into the distribution fund to conduct a nexus test based on the criteria shown in Figure 5 on page 17 in the Introduction. Sixty percent of the distribution fund money in each individual tribal casino account in those counties is appropriated for the benefit committee to allocate to cities and counties through the nexus test, which uses various criteria to determine a local government's proximity to a casino and sets aside minimum amounts for those cities and counties that meet a certain number of the nexus criteria. This process should guarantee that cities and counties close to a casino receive the majority of the funds in a particular county. However, we found that benefit committees in several counties did not award cities and counties the full amount that the law set aside for their nexus grants.

In total, we identified five local governments that received \$1.2 million less than the nexus test set aside for them. For example, in Santa Barbara County, the nexus set-aside for the city of Solvang (Solvang) was \$397,000, but Solvang was awarded only \$173,000. Similarly, in Amador County, the nexus set-aside for the city of Sutter Creek was \$65,000, but the city was awarded only \$31,000. Finally, in Riverside County, nexus set-asides for two cities and two different nexus set-asides from different casinos for the county totaled \$3.5 million, but the funds awarded to those entities from these individual tribal casino accounts totaled \$2.5 million. In all but one case, cities and counties received some level of funding; however, the amounts were less than the nexus set-asides and the money was instead awarded to other cities and counties.

The counties described several reasons for not awarding cities and counties the full amount of their nexus set-asides. In Riverside, according to a county representative, the Indian tribes did not sponsor the full amount of the applications in two instances related to the county and one related to the city of Temecula. In a fourth case, according to a city representative, it appears that the city of Palm Desert did not apply for a grant. In another instance,

*We identified five local governments that received \$1.2 million less than the nexus test set aside for them.*

*One county indicated that they were unaware of how to correctly compute the full amount of the nexus set-aside because of an oversight when reviewing the law.*

according to a county representative, Amador County—because of contradicting documentation and no direct knowledge of county deliberations or decisions—could not explain how the nexus determinations were made or why projects were funded in the amounts granted. In the third county, Santa Barbara, the assistant to the county executive officer stated that the benefit committee chose to partially fund Solvang’s grant after weighing the perceived benefit of the project as well as the casino’s impact on other local jurisdictions in the county. Furthermore, according to the assistant to the county executive officer, they were unaware of how to correctly compute the full amount of the nexus set-aside for Solvang because of an oversight when reviewing the law. Although Riverside informed cities and county departments of the amounts of the nexus set-asides, neither Amador nor Santa Barbara could provide us with documentation of such notification. If cities and counties are not aware of the amounts of their nexus set-asides, they may not apply for the full amount of grant funding or raise an objection if they are not awarded the full amount. This lack of awareness likely reduces pressure on benefit committees to award funds according to the nexus test.

While benefit committees should award grants only for purposes that mitigate the impacts of casinos, awarding to a local government entity the money set aside at the direction of the Legislature for a different specific local government entity means that the money is not being spent for the purpose, and in the amount, authorized by the Legislature. Throughout Government Code, Section 12715—the section of law describing the use and allocation of distribution fund grants—the Legislature generally requires that funds not spent for authorized purposes revert back to the distribution fund. For example, funds not awarded from a county tribal casino account or an individual tribal casino account by the end of each fiscal year are required to revert back to the distribution fund. Likewise, if a grant recipient uses grant funds for an unrelated purpose, the grant terminates immediately and the amount of the grant not yet spent reverts back to the distribution fund. Although the law contains no such express requirement for nexus funds that are not awarded as the law directs, we believe it is reasonable to expect that funds not used for the purpose authorized by the Legislature should return to the fund from which they were appropriated. Therefore, the Legislature should clarify the law if it wishes to require that nexus set-aside funds revert back to the distribution fund when benefit committees are not able, or choose not, to award the full nexus set-aside to the appropriate cities and counties.

### **One Grant Benefited a School District That Was Ineligible for Funding**

Our review also identified a concern with the eligibility of the grant recipient in one case. In Yolo County, the benefit committee awarded a \$336,000 grant to the Esparto Unified School District despite a state law excluding school districts from the local jurisdictions allowed to receive funds. The awarding of this grant appears to have several causes. Although he was not filling the role at that time, Yolo County's county-tribe coordinator told us that he was unaware that school districts were ineligible by law for mitigation grants. He also told us that the county did not solicit grant applications and that it simply discussed possible grants with the tribe in advance of the benefit committee's meeting to select the grant. According to internal county e-mail messages, the tribe expressed a desire to award the grant to the Esparto Unified School District. The proposal memo written by the county-tribe coordinator stated that the grant funds would be used to restore programs to which cuts would be made, such as computer education, Academic Decathlon, athletics, and student transportation. Because school districts are not eligible to receive distribution fund grants, the benefit committee's award of a grant to supplant educational funding violates the law.

*In Yolo County, the benefit committee awarded a \$336,000 grant to a school district despite a state law excluding school districts from local jurisdictions allowed to receive funds.*

Although we recognize that there are many potential impacts from tribal casinos that local government agencies can mitigate with distribution fund grants, the Legislature has defined which entities are eligible for funding and has established specific purposes for the money distributed by this fund. Providing money to school districts may be a laudable goal; however, state law specifically excludes school districts from the definition of local government agencies eligible to receive distribution funds. Because local governments are unable to impose taxes and fees on tribes, the distribution fund grants offset the increased burden placed on local governments by casino operations, and the requirements established for the granting of these funds help direct the money to those local governments most affected by casino operations. If entities other than the intended local governments are receiving these funds, there is less money available to fund grants for the intended purpose of mitigating casinos' impacts in eligible local governments.

### **Some Benefit Committee Members Failed to Meet Financial Disclosure Requirements**

We found that many county benefit committee members failed to provide timely, accurate statements of economic interests, as required by state law. Four of the counties we reviewed could not provide some required statements of economic interests for members serving on

benefit committees in fiscal year 2008–09. The Political Reform Act of 1974 (political reform act) requires specified state and local officials and employees with decision-making authority to file statements of economic interests that are intended to identify conflicts of interest that an individual might have. The political reform act also requires local government agencies to adopt a conflict-of-interest code, and the act describes various provisions that the code must include. Some counties we reviewed have adopted codes that fail to meet all the required provisions, leaving benefit committee members and county officials unaware of their responsibilities to identify potential conflicts of interest. If benefit committees cannot identify potential conflicts, they increase the risk that their decisions and awards could subsequently be called into question or criticized.

As Table 5 indicates, we identified several concerns related to the statements of economic interests. We received 37 of the 49 required statements of economic interests that we requested for the benefit committee members in the seven counties we reviewed. However, two of the statements we received were filed more than one year after the filing deadline. In addition, 15 benefit committee members filed statements of economic interests because they held other positions that required the statements, but the members did not include their respective benefit committee on their statements when listing the agencies for which they were filing.

We also found that in two counties the benefit committees' conflict-of-interest codes did not meet the requirements of the political reform act. In Santa Barbara County, the code did not identify the committee members as designated individuals required to file statements of economic interests. In Shasta County, the code did not specify any of the provisions required by the political reform act, such as requiring committee members to file statements of economic interests, specifying when members must file, or identifying which financial interests they need to disclose. The benefit committee in Amador County provided a document with a conflict-of-interest code that meets the requirements of the political reform act; however, according to the Amador County clerk of the board, it was on the benefit committee's agenda for a meeting held less than a month before the 2009 filing deadline for statements of economic interests but there is no record that the code received approval.

*We identified several concerns related to the statements of economic interests including two that were filed more than one year after the filing deadline.*



**Table 5**  
**Summary of the Indian Gaming Local Community Benefit Committees' Conflict-of-Interest Codes and Statements of Economic Interests by County**

COUNTY	CONFLICT-OF-INTEREST CODE APPROPRIATELY REQUIRES BENEFIT COMMITTEE MEMBERS TO FILE STATEMENTS OF ECONOMIC INTERESTS	NUMBER WHO FAILED TO FILE	NUMBER OF STATEMENTS OF ECONOMIC INTERESTS FILED	ISSUES WITH STATEMENTS OF ECONOMIC INTERESTS FILED	
				NUMBER WHO FILED MORE THAN 90 DAYS LATE*	NUMBER WHO FAILED TO INDICATE STATEMENTS APPLIED TO BENEFIT COMMITTEE
Amador	Yes	0	7	2	5
Humboldt	Yes	2	5	0	2
Riverside	Yes	0	7	0	1
San Diego	Yes	0	7	0	0
Santa Barbara	No	3	4	0	3
Shasta	No	2	5	0	2
Yolo	Yes	5	2	0	2
<b>Totals</b>		<b>12</b>	<b>37</b>	<b>2</b>	<b>15</b>

Source: Bureau of State Audits' interviews with county officials and review of Indian Gaming Local Community Benefit Committees' conflict-of-interest codes.

\* We used 90 days as the threshold for late filing because this is the deadline after which filing officers are to refer nonfilers to the Fair Political Practices Commission.

The political reform act, which seeks to bar public officials from using their positions to influence government actions in which they may have a financial interest, establishes various requirements related to conflicts of interest. For example, it requires each employee position designated by an agency to file with that agency a statement of economic interests disclosing annually, and within 30 days of assuming or leaving office, his or her reportable investments, business positions, interests in real property, and income. The statements require filers with no reportable financial interests to declare that fact on the cover page. Additionally, the statements require filers to list the agency or agencies to which the statement applies. The political reform act also requires local government agencies, of which benefit committees are a type, to adopt conflict-of-interest codes. The codes must designate the employee positions that must file statements of economic interests.

County officials cited various reasons for their shortcomings in this area. For example, the filing officer for Shasta County said she was unaware of the requirement for committee members to file, and a county administrator in Santa Barbara County believed the members filed directly with the county elections board due to their other responsibilities. However, because the benefit committee members were not designated individuals under the conflict-of-interest code, the elections board was not

aware that members were to file statements with the board. Santa Barbara County has since added the benefit committee to its conflict-of-interest code for county departments.

In Humboldt and Yolo counties, the filing officers did not follow Fair Political Practices Commission (FPPC) guidelines. For example, according to the former benefit committee filing officer in Yolo County, the individual holding the filing officer position for the benefit committee changed several times in a short period, and the former filing officer did not receive instruction on this part of her duties. The former filing officer stated that she did not take the steps recommended by the FPPC to ensure that designated individuals filed statements on time or at all. These steps include notifying benefit committee members about the deadline to file statements of economic interests or following up when the deadline had passed without a member filing a statement. The Amador County filing officer was unable to provide any details about efforts to collect statements from benefit committee members who failed to file on time.

The failure to follow the provisions of the political reform act and to provide accurate statements of economic interests is troubling for several reasons. When designated individuals do not file statements of economic interests, benefit committees may be unaware of conflicts of interest. In addition, the failure to provide accurate statements in a timely manner not only may be perceived by the public as an effort to conceal conflicts of interest, but may also prohibit public review of the documents, which is a key aspect of oversight. Finally, if benefit committees cannot identify potential conflicts, they increase the risk that their decisions and awards may subsequently be questioned or criticized.

### **Recommendations**

The Legislature should consider amending the law to prohibit projects that are unrelated to casino impacts or are not proportionally related to casino impacts. The amendment should require that counties forfeit equivalent amounts of future money from the distribution fund if their benefit committees approve grant applications that fail to provide evidence that projects are funded in proportion to casinos' impacts. To make certain that the projects' eligibility, merit, and relevance are discussed in a public forum during the projects' selection, the Legislature should also clarify that benefit committees should meet to consider applications before submitting them for tribal sponsorship.

Alternatively, the Legislature could emphasize local priorities by amending the law to allow benefit committees to approve any applications that are submitted to them for public debate and committee approval before tribal sponsorship, regardless of the proportionality of a casino's impact.

To provide an incentive for benefit committees to award cities and counties the amounts that the Legislature has appropriated to them for mitigating casino impacts, the Legislature should require that grant funds allocated for each city and county according to the nexus test revert to the distribution fund if they are not awarded to that city or county.

To help ensure that they meet the grant requirements established in the Government Code, counties should take the following steps:

- Require that the county auditor review each grant application to ensure a rigorous analysis of a casino's impact and of the proportion of funding for the project provided by the grant. Benefit committees should consider a grant application only when the county auditor certifies that the applicant has quantified the impact of the casino and verifies that the grant funds requested will be proportional to the casino's impact.
- Review the law for changes that may affect applicants' eligibility for distribution fund grants before awarding the grants so that ineligible entities do not receive grants.
- More rigorously review applications that are to be administered and spent by an entity other than the local government that applies for the funds. Specifically, benefit committees should require that each grant application clearly show how the grant will mitigate the impact of the casino on the applicant agency.
- Ensure that eligible cities and counties receive the proportional share of funding they are set aside according to the nexus test by making the governments aware of available distribution fund grants and of the minimum grant amounts that are set aside for them under the nexus test.
- Encourage eligible local governments to submit multiple applications so that the benefit committees can choose appropriate projects while ensuring that local governments are awarded the amount defined in law.
- Require benefit committee filing officers to avail themselves of the free training provided by the FPPC so that the filing officers are aware of and meet their responsibilities under the

political reform act. Counties should also adhere to FPPC guidelines for notifying filers of the need to submit statements of economic interests.

- Ensure that benefit committees' conflict-of-interest codes comply with the political reform act by reviewing the act and their codes, and changing the codes as necessary to meet the act's requirements.