



October 25, 2012

Tribal Council

Marshall McKay
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Lawrence Quint, Jr., Bureau Chief
Bureau of Gambling Control
Department of Justice
P.O. Box 168024
Sacramento, California 95816-8024

Stephanie Shimazu, Chairperson
California Gambling Control
Commission
2399 Gateway Oaks Drive, Suite 100
Sacramento, California 95833

RE: YOCHA DEHE CONCERNS OVER ILLEGAL GAMING

Dear Mr. Quint and Commissioner Shimazu:

We write on behalf of the Yocha Dehe Wintun Nation and its Tribal Gaming Agency to memorialize our Tribe's concerns regarding the play of illegal gaming at internet sweepstakes cafés and California cardrooms and our understanding of the status of each issue.

1. INTERNET SWEEPSTAKES CAFÉS

All parties appear to agree these establishments are playing what are effectively illegal slot machines, and therefore must be stopped. To that end, we understand that at the recent meetings between your agencies and representatives from various tribes, the Bureau outlined the steps it and other divisions of the Justice Department are taking to eradicate these cafés. These steps include: (1) efforts to step-up enforcement together with local law enforcement agencies, (2) issuing an advisory establishing the Justice Department's view of the illegality of the games played at the cafés, (3) obtaining a stipulated judgment in a civil action brought under California's unfair competition laws against one of these cafés and then using that judgment as a further tool in enforcement, and (4) evaluating the potential for a legislative solution that would conclusively put the cafés out of business.

The Yocha Dehe representatives who attended the meetings with your agencies also explained to us that the Justice Department is exploring other measures to remedy the current situation, though it was not free to discuss the particulars of those measures. We heartily encourage the Bureau and the Justice Department generally to aggressively continue their enforcement efforts and to implement with all due haste any additional measures that would eliminate internet sweepstakes cafés. As you might imagine, the existence of these establishments poses a threat to Indian gaming and, to the extent the State tolerates them, violate our rights of exclusivity guaranteed by California's Constitution and for which we and other tribes negotiated in our compacts.

2. CALIFORNIA CARDROOMS

A more serious issue is the play of illegal games at California cardrooms. We have reviewed the October 3, 2012 letters the Pala Band of Mission Indians and the United Auburn Indian Community sent to the Bureau regarding this subject. We agree with the content of those letters, but want to emphasize the problem is a pervasive one that spreads well beyond the two specific cardrooms which were the subjects of those letters.

From our perspective, this is a two-pronged problem. The first prong is that the State has allowed the cardrooms to play illegal games. Specifically, we now know many cardrooms are playing Blackjack and Baccarat. We believe the play of both games in cardrooms is Constitutionally impermissible, as they are games of the type played in Nevada and New Jersey casinos. Moreover, the California Penal Code expressly names "twenty-one" – that is, Blackjack – as a prohibited game. We understand that with respect to Blackjack, at least, the Bureau has previously asserted that the rules of the games it has permitted differ from those of the game traditionally played in casinos. There are at least two problems with this assertion. First and most obvious, the cardrooms expressly advertise both on billboards and on their websites that they play "Blackjack." If the cardrooms are not playing Blackjack, the state should not allow them to advertise that they are, and the games should not bear the word "Blackjack" in their title.

Another issue is that the distinction between the rules the Bureau has approved and those of traditional Blackjack is effectively non-existent. For example, the Bureau has approved a game known as Pure 21.5 Blackjack. It appears the primary difference between this game and standard Blackjack is that the face and ten cards have a value of

10.5 when dealt with an ace, rather than the standard value of 10. Thus, when paired with an ace, these cards add up to 21.5, rather than 21. As United Auburn's October 3 letter noted, when cardroom guests ask how to play the game, they are told it plays just the same as regular Blackjack. That is exactly our point.

The second prong of the problem here concerns the so-called third-party proposition players, or TPPs. This is a multi-layered issue. One layer is, again, the illegality of the games as they have developed under the TPP system. As representatives from the Yocha Dehe Tribal Gaming Agency have explained to you during the recent meetings between the parties, on more than one occasion they have visited Sacramento area cardrooms and witnessed the games being banked by a single individual – the TPP sitting at each table. Whether the TPP ever offered the bank for rotation is irrelevant (and for the most part, the TPP did not offer to rotate the bank).¹ As our representatives explained at the October 9, 2012 meeting at Thunder Valley, we believe California law requires the continuous and systematic rotation of the bank, not the *offer* to rotate the bank. As a practical matter, offering to rotate the bank is an empty gesture, as, in our experience, virtually no player will want to take on the task. We note the Bureau appears to agree with our position. The rules for the game of EZ Baccarat posted on the Bureau's website explain that "a single player cannot repeatedly act as the player/dealer," and cite the relevant decisional and statutory law for that proposition. The failure to rotate the bank means the games played at the cardrooms are prohibited by the California Constitution, the Penal Code, and violate tribal exclusivity.

Not only are the cardrooms playing illegal banked games, they are effectively *house-banked* games. The Bureau will apparently not grant us access to the contracts between the TPP entities and the cardrooms. However, from the regulations the CGCC implemented, as well as from the recent meetings with Bureau and Commission representatives, we have learned that as part of their contracts, the TPPs are allowed to pay for equipment (such as surveillance cameras and monitors, cards, and shuffling machines), services, facilities and advertising. We trust all would agree those items are among the traditional incidents of running a business. It seems, then, that the TPPs become a form of partner with the cardroom and thus, to some extent, they become the house.

A related issue is the virtual disappearance of the player collection fee. Before the advent of the TPP, this fee was the method by which cardrooms made a profit. From

¹ Any reluctance by the TPPs to rotate the bank is understandable. After all, it appears the TPP compensation is based on the number of hands banked, thereby creating an inherent financial disincentive to bank rotation.

our representatives' recent visits at various cardrooms, the TPP paid a per-hand collection fee, but the other players did not. While the Bureau has explained that collection fees are not mandatory, it surely must recognize that the system the State has created allows the TPPs to compensate the cardrooms in other ways to make up for the loss of the collection fees. The net effect from the players' perspective is to create a no-collection game resembling in every respect the experience at a casino. Moreover, even if nothing prohibits a cardroom from eliminating a collection from all players, having a different collection for TPPs and other players *is* prohibited, and that appears to be the system in place.

Another pernicious outgrowth of the TPP system has been the "cross-banking" the Bureau and Commission have allowed to flourish. In effect, two cardrooms become licensed TPPs and then bank each other's games. This process not only appears improper, we believe it violates California law.

The point here is relatively simple. The cardrooms have, over time, manipulated the system the State put in place and have been allowed to advertise and play illegal games in a way that is indistinguishable from those played at Indian casinos. The effect of this manipulation has been a noticeable and measurable decline in the business at those casinos. While the cardrooms' ambitions are certainly understandable, they can no longer be tolerated.

This leaves us with the most important question: What does the State intend to do about this problem? We recognize this problem developed over a period of time and involves complex issues resistant to a quick solution. That said, we first addressed this issue at the April 12, 2012 Tribal-State Association meeting and now, after several months and meetings have passed, cannot yet point to concrete steps by the State marking progress toward a solution. We understand the Bureau has acknowledged that a problem exists (always the first step toward a solution), and has advised our representatives that it is evaluating a number of the issues raised at the meetings, but could commit to no particular action or timeline. Nevertheless, the Bureau did say at the October 9 meeting that it would begin a review of the rules of the games it has approved, and that such review might result in changes to the collection fee and game-rotation issues addressed above. From the Commission's perspective, we understand it has acknowledged the need to "clean-up" the TPP regulations and, to that end, to schedule workshops to begin the process.

It is important to understand that the cardrooms' actions, which the state has either tacitly or expressly allowed, daily affect both our business and the exclusivity to which

we are entitled by virtue of California's Constitution and the compact we negotiated with the State. We therefore would greatly appreciate it if the State could answer the question posed above, with as much specificity as possible, as well as provide us some idea of the timeframe involved. We simply cannot allow the current situation to continue indefinitely.

Thank you, and we look forward to hearing from you.

Sincerely,



Marshall McKay
Chairman
Yocha Dehe Wintun Nation



Leland Kinter
Chairman
Yocha Dehe Tribal Gaming Agency

cc: Martin Horan, Assistant Bureau Chief, Bureau of Gambling Control
Tiffany Conklin, Commissioner, California Gambling Control Commission
Lauren Hammond, Commissioner, California Gambling Control Commission
Richard Schuetz, Commissioner, California Gambling Control Commission
Joe Dhillon, General Counsel, California Gambling Control Commission