

**TULARE COUNTY INDIAN GAMING  
LOCAL COMMUNITY BENEFIT COMMITTEE**

**10:00 A.M. December 14, 2012**

**MEETING NOTICE**

**COUNTY OF TULARE  
BOARD OF SUPERVISORS CHAMBERS  
2800 W. BURREL AVE  
VISALIA, CA**

**NOTICE TO THE PUBLIC - PUBLIC COMMENT PERIOD**

At this time, members of the public may comment on any item not appearing on the agenda. Under state law, matters presented under this item cannot be discussed or acted upon by the Committee at this time. For items appearing on the agenda, the public is invited to make comments at the time the item comes up for Committee consideration. Any person addressing the Committee will be limited to a maximum of three (3) minutes so that all interested parties have an opportunity to speak. At all times, please state your name and address for the record.

**AGENDA**

- 1. Call to Order & Roll Call**
- 2. Public Comment**
- 3. Approve Minutes from the October 18, 2012 Meeting**
- 4. Update on Indian Gaming Committee Membership**
- 5. Update on Office of Legislative Counsel Contact**
- 6. Discussion and possible action regarding Committee Legal Representation**
- 7. Next Meeting – TBD: January, February, or March 2013**
- 8. Adjourn**

**Contact Person: Jed Chernabaeff or John Hess, Tulare County Staff (559) 636-5005**

As a courtesy to those in attendance, please turn off or place in alert mode all cell phones and pagers.

Information concerning items on this Agenda is available for public consideration during normal working hours at the Board of Supervisors office at 2800 W. Burrel Ave., Visalia, CA 93291. The staff will assist in answering questions.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Clerk of the Board's Office at (559) 636-5000.

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## CLOSED SESSION

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### NOTICE TO THE PUBLIC CLOSED SESSIONS

As provided in the Ralph M. Brown Act, Government Code sections 54950 et seq., the Tulare County Indian Gaming Local Community Benefit Committee may meet in closed session with members of its staff, employees, and its attorneys. These sessions are not open to the public and may not be attended by members of the public. The matters the Committee will meet on in closed session are identified below or are those matters appropriately identified in open session as requiring immediate attention and arising after the posting of the agenda. Any public reports of action taken in the closed session will be made in accordance with Government Code sections 54957.1

It is the intention of the Committee to meet in closed session concerning:

#### **ITEM A**

#### **CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Significant Exposure to Litigation [(Government Code Section 54956.9 (b)(1)]

Number of Potential Cases: 9

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**Tulare County Indian Gaming Local Community Benefit Committee  
Minutes  
October 18, 2012**

**CITY OF PORTERVILLE: CITY HALL  
291 N. MAIN ST.  
PORTERVILLE, CA**

Present: Mike Ennis, Joe Garcia, Rhoda M. Hunter, Brian Ward, Cameron Hamilton  
Absent: Robin Skiles  
Staff: Jed Chernabaeff, John Hess  
Public: John Lollis, Charmaine McDarment, Stephanie Sierra, Greg Shelton

1. **Call to Order & Roll Call 10:00 AM** – Mike Ennis, Joe Garcia, Rhoda M. Hunter, Brian Ward, and Cameron Hamilton all announced their names for the record.
2. **Public Comment:** There was no comment from the public.
3. **Approval of minutes from August 2, 2012 meeting:** Chairwoman Hunter asked that the absences of committee members be reflected in the minutes. Committee member Mike Ennis indicated that Cameron Hamilton's name should be included as absent from the August 2, 2012 meeting. Chairwoman Hunter said she would also like to see where the meeting was held and requested that location be added to the minutes. Committee member Mike Ennis made the motion to approve the minutes with amendments requested. Committee member Joe Garcia seconded the motion. Committee members Ennis, Garcia, Hunter, and Ward voted to approve the minutes with amendments. Committee member Hamilton abstained. Vote: 4-0-1.
4. **Responses from Questions of August 2, 2012 meeting:**
5. **Update on Indian Gaming Committee Membership:** TCLCBC staff reported that as of October 2, 2012, there are five (5) vacancies on the TCLCBC. The vacancies are: one County Representative – Alternate; one Tule Representative; two Mutually Selected Members; one Mutually Selected Member – Alternate. Committee member Hamilton's term has expired, but is allowed to serve on the Committee until his seat is filled by either a new applicant or if he decides to reapply for a mutually selected seat. To address the vacancies, staff worked with the County Clerk of the Board to post notices of scheduled and unscheduled vacancies and solicited Committee applications through press releases, email notifications, and posts to the County's website. After several

stories were published in the local media, staff received applications from three people: Gilbert Ynigues of Porterville; Larry Gonzales of Visalia; and Ronald Schwartzenberger of Strathmore. Staff provided a copy of the applications to each Committee member. Prior to the next meeting, the Tule Tribe and County should review the applications and go through a process to make a recommendation to appoint the applicants.

Committee member Ennis said the County will take a look at the applications and make a recommendation regarding the Mutually Selected member seats.

Committee member Ward raised a question regarding the original bylaws, which states there is only one alternate that belongs to the Tribe. Committee member Ward said he researched previous minutes and could not find any evidence that the Mutually Selected alternate or County alternate positions were ever approved by the Committee.

Staff said they would research the minutes and verify that the Committee did amend the bylaws and include the alternate positions in question.

Chairwoman Hunter asked that Tule River Tribe legal staff research the issue as well.

6. **Approve Indian Gaming Special Distribution Fund Annual Report Fiscal Year 2011-12:** Staff reported that pursuant to SB 621 (Chapter 858 Statutes 2003) the Tulare County Indian Gaming Local Community Benefit Committee (TCLCBC) is required to report to the Legislature by October 1 of each calendar year concerning the use of Indian Gaming Special Distribution Funds (SDF) awarded by the committee.

An appropriation of \$9.1 million from the SDF was made in Fiscal Year 2011-12 (AB 1417 – Hall: Chapter 736, Statutes of 2011). Therefore, Counties must report on all new grants made in FY 2011-12 as well as on multi-year grants. In FY 2011-12, Tulare County requested the release and received \$273,473 from the Tule River Reservation Individual Tribal Casino Account. The TCLCBC approved five grants in the amount of \$268,000 with \$5,473 allocated for Tulare County administrative costs in FY 2011-12.

The annual report for Tulare County includes the following information for grants awarded in Fiscal Year 2011/2012: description of Projects that were funded; total funding and expenditures to date; detailed information on how the money was spent and remaining funds; detailed information on how and when the remainder of the grant funding will be spent;

detailed information regarding ongoing projects that received funding in previous fiscal years.

Per Senate Bill 288, copies of the annual reports are required to be sent to: Chairperson of the Joint Legislative Budget Committee; Chairperson of the Senate Committee on Governmental Organization; Chairperson of the Assembly Committee on Governmental Organization; and the California Gambling Control Commission. As a courtesy, the report is also sent to staff at the California State Association of Counties (CSAC).

Staff asked that the Committee ratify and approve the Indian Gaming Special Distribution Fund Annual Report Fiscal Year 2011-12 and pointed out that submitting an Annual Report allows a County to be eligible for funding in future years. A County that does not submit an Annual Report will not be eligible for funding should an appropriation be made in the future.

Staff explained that the report is composed of individual reports submitted by each jurisdiction awarded a grant. Staff then gathers that information and combines it into one report to the State.

Chairwoman Hunter asked if there was a resolution number for the item. Staff said the resolution would be filled in prior to the Chairperson signing it.

Chairwoman Hunter asked that if it would hurt the Committee if the grant recipients did not spend the funding as of the October 1 date. Staff explained that the jurisdictions do not have to spend the funding prior to the deadline. However, they must indicate how they will spend it in the future. In addition, when a grant recipient does expend the grant funds, they must report on how they spent it in future reports to the State.

Committee member Garcia made a motion to ratify and approve the Indian Gaming Special Distribution Fund Annual Report Fiscal Year 2011-12. Committee member Hamilton seconded the motion. The Committee unanimously approved the item.

7. **Report on future Indian Gaming funding:** Staff reported that on August 30, 2012, The State Legislature passed Assembly Bill 2515 (Hall), which the Governor signed into law on September 28, 2012. AB 2515 appropriates \$9.1 million in SDF funds for Fiscal Year 2012-13. This is the same amount of funding that was provided by the State Legislature for Fiscal Year 2011-12 (AB 1417).

Staff also explained that State would monitor the awarding of grants with more scrutiny. In February 2011, the California Bureau of State Audits prepared a report titled, "The Indian Gaming Special Distribution Fund" (Report 2010-036). According to the author of AB 2515, this legislation includes new requirements as a result of the findings of this report. The report indicated that Counties were not reporting and the state "could not determine whether the share provided from the SDF was proportional to the casino's impact, as required by state law" and that the use of SDF funds did not clearly demonstrate how the funds mitigate these impacts.

Consequently, AB 2515 increases the requirements governing the awarding of grants from the SDF by the IGLCBC to ensure that the funds are properly used to mitigate costs associated with Indian Gaming. The following statement has been added to California Government Code Section 12715(b) (1) (a) as part of AB 2515, "each grant application shall clearly show how the grant will mitigate the impact of the casino on the grant applicant."

The CGCC and State Controller's Office will initiate the process of determining individual IGLCBC allocations which should be complete by January 1, 2013. This will allow the IGLCBC to begin the process of seeking applicants in January 2013. As a result of the new requirements of AB 2515, staff will be incorporating methodology of demonstrating the mitigation of the impacts of the casino into the 2012-13 Grant Application for review by the IGLCBC.

Committee member Ward asked staff where the interpretation of the new legislation came from. Staff said the interpretation came from CSAC and the Legislative Counsel's Digest. Committee member Ward said his concern was that anything that was reviewed or brought back with language that is legal should be reviewed by the Committee's legal team. At this point, the Committee does not have legal counsel. Committee member Ward said his first priority is seeking legal counsel.

8. **Approve Amendments to Committee Bylaws:** Staff reported during the August 2, 2012 Committee Meeting, staff presented and the Committee discussed various amendments to the Bylaws. Staff requested that the Committee provide proposed amendments and revisions to the Bylaws by 5 p.m. on September 4, 2012. Staff received comments from two members and provided recommended comments.

Committee member Ward said he does not feel comfortable changing bylaws without legal representation.

Committee member Garcia said the committee should move forward to the next item to discuss legal representation.

Committee member Hamilton asked if the committee could consult with County Counsel to provide legal services again and was confused as to why they weren't representing the committee anymore.

Staff indicated that County Counsel removed their representation, citing Professional Code 6-300, an ethical standard they have to comply with.

Committee member Ward said that in the educational world, if legal counsel withdraws, they have a legal obligation to find someone to take their place.

Committee member Garcia said part of County Counsel's withdraw was because the Committee went against their recommendation to award grants to specific jurisdictions.

Chairwoman Hunter said the Committee can consider the recommendation, but does not necessarily have to agree with the recommendation.

Committee member Garcia said if the Committee does not follow its own legal representation, then who should the Committee go to seek legal representation and opinions.

Committee member Ward said that if there is a potential conflict, the County Counsel can recues themselves, but still has to find a replacement to provide legal services.

Committee member Garcia said he doesn't disagree, but asked who should the Committee go to when problems arise with a legal counsel's opinion.

Committee member Ward said at the last meeting the Committee discussed approaching State legal counsel for an opinion.

Committee member Ennis said that would clear everything up. Committee member Ennis said seeking an opinion would preserve the integrity of the Committee and added that it would ensure that some jurisdictions wouldn't have to repay grant funds awarded.

Committee member Garcia said that he would like a clear path as to who provides the final legal say in matters that come before the Committee.

Committee member Hamilton said he thought the Committee already asked the Attorney General for an opinion.

Staff indicated the Committee asked staff to send a letter seeking clarification to the State Auditor's Office. The State Auditor's Office responded and said they do not issue legal opinions. In addition, the Auditor's Office recommended staff contact a local legislator regarding the issue to seek a legal opinion from Office of Legislative Counsel.

Committee member Hamilton suggested the Committee seek an opinion from a separate entity. Committee member Ennis agreed.

Committee member Ennis motioned to table the item until a later date. Committee member Garcia seconded the motion. The vote passed unanimously.

**9. Direction to staff regarding Committee Counsel:** Based on the discussion on agenda item 8, staff outlined several options.

- See if County Counsel would be willing to represent the committee again.
- See if County Counsel is obligated to provide legal service, whether it's County Counsel or providing an outside attorney through a separate contract.
- Outside of County Counsel, seeking to contract with outside legal counsel.

Committee member Ennis said he would like to see County Counsel as the Committee's legal representative. Committee member Ennis said he doesn't think County Counsel would represent the committee until a third party opinion on the nexus issue would be resolved.

Chairwoman Hunter directed Tule River Tribe legal staff to look into the nexus issue so they can provide some information as well. She added that County Counsel is out of compliance with the Committee's bylaws.

Committee member Ward made a motion to direct staff to send a letter to Senator Michael Rubio office to ask him, on behalf of the Committee, to seek a legal interpretation regarding the nexus issue. Committee member Hamilton seconded the motion. The vote passed unanimously.

After the vote, Chairwoman Hunter directed staff to set up a special meeting with County Counsel to discuss future legal representation.

10. **Next meeting – TBD**
11. **Adjourned at 11:03 a.m.**





# Tulare County Indian Gaming Local Community Benefit Committee



## **AGENDA ITEM No. 4**

**AGENDA DATE:** December 14, 2012

**SUBJECT:** Update on Indian Gaming Committee Membership

**REQUEST(S):**

That the Local Community Benefit Committee:

Receive update regarding the status of Tulare County Indian Gaming Local Community Benefit Committee membership.

**SUMMARY:**

Article II, Section 1 of the TCLCBC bylaws state the Committee shall be composed of seven (7) members consisting of the following: two (2) representatives from the County, appointed by the Board of Supervisors; three elected representatives from cities located within four miles of a tribal casino in the County, appointed by the Board of Supervisors or, if no such cities are located within four miles of a tribal casino in the County, then by mutual agreement of the County and a majority of tribes operating casinos in the County; and two (2) representatives selected upon the recommendation of a majority of the tribes paying into the Indian Gaming Special Distribution Fund in the County.

Article II, Section 2 of the TCLCBC bylaws state the Committee shall have three (3) alternates: one for each representative classification. The alternates shall not have voting privileges when the appointed members are present. The alternates shall consist of: one representative appointed by the Board of Supervisors; one representative selected by the Tule River Tribe; and, one representative jointly selected by the Board of Supervisors and the Tule River Tribe.

Article II, Section 3 of the TCLCBC bylaws state the terms of office for members and alternates shall be four (4) years expiring on June 30 of the appropriate years and subsequent new terms shall begin July 1 of that year. The terms shall be staggered so that no more than two thirds (2/3) of the terms of the total number of members of the Committee shall expire in any one (1) year period. A member or an alternate whose term of office has expired shall continue to serve in that capacity until a new appointment is made. Committee members appointed by the Board of Supervisors may be removed from the Committee at any time by a majority vote of the County Board of Supervisors. Committee members appointed by the Tule Tribe (the only Tribe currently paying into the Indian Gaming Special Distribution Fund in the County) may be removed from the Committee at any time by a majority vote of Tule River Tribal Council.

Article II, Section 5 of the TCLCBC bylaws state upon any vacancy within the Committee, appointment of the representative selected to fill the vacancy shall be in

**SUBJECT:** Direction to Staff regarding Committee Counsel

**DATE:** December 14, 2012

the same manner as that used in the original appointment of the departing Committee member. A resigning Committee member or alternate shall submit his/her original written resignation to the Committee Chairperson. The Chairperson is responsible for immediately notifying the County's Clerk of the Board of Supervisors of any unscheduled vacancies. The Chairperson will provide the County's Board of Supervisors and the appropriate appointing authority with written notification of vacancies. The County's Board of Supervisors or the appropriate appointing authority will take the necessary action to declare the position vacant and fill the position.

The absence of a Committee member from two (2) consecutive meetings of the Committee shall be cause for the Chairman of the Committee to contact the Committee member to discuss participation in the meetings. Whenever a Committee member fails to attend two (2) consecutive meetings or three (3) total meetings in a calendar year, without good cause entered into the minutes, the Committee Chairman shall correspond with the Chairman of the County Board of Supervisors or the appropriate appointing authority and recommend that the Committee member be removed from the Committee.

As of the Committee's last meeting on October 18, 2012, there were five (5) vacancies. Vacancies included: one County Representative – Alternate; one Tule Representative; two Mutually Selected Members; one Mutually Selected Member – Alternate.

To address the vacancies, staff worked with the County Clerk of the Board to post notices of scheduled and unscheduled vacancies and solicited Committee applications through press releases, email notifications, and posts to the County's website.

As of October 31, 2012, TCLCBC staff received a total of seven applications for membership. The applicants included: Lawrence Gonzales; Gary Durham; Ronald Marangi; Gilbert Ynigues; Ronald Schwartzenberger; Cameron Hamilton; and John Crivello. Lawrence Gonzales has withdrawn his application.

Several of the applicants have been appointed to a position on the Committee.

John Crivello was appointed to the County Representative – Alternate position by the Tulare County Board of Supervisors at its November 13, 2012 meeting. (See Attachment A)

Gilbert Ynigues and Cameron Hamilton received recommendations by Tulare County to the Tule River Tribal Council to fill Mutually Selected positions. On Tuesday, November 29, 2012, the Tule River Tribal Council approved the recommendation for appointments for both Ynigues and Hamilton. At the December 11, 2012 Board of Supervisors meeting, Ynigues and Hamilton were both appointed to Mutually Selected positions.

Outside of the pool of applicants, the Tule River Tribal Council appointed Holly

**SUBJECT:** Direction to Staff regarding Committee Counsel

**DATE:** December 14, 2012

“Lara” Bella as the Tule Representative at its November 20, 2012 meeting.

The above listed appointments leave one position vacant: Mutually Selected – Alternate.

TCLCBC staff will work with the County and receive a recommendation to submit to the Tule River Tribal Council.

**FISCAL IMPACT/FINANCING:**

N/A

Attachment(s)

A – Resolution to appoint John Crivello to County Representative – Alternate position

B – Resolution to appoint Cameron Hamilton and Gilbert Ynigues to Mutually Selected positions

C – TCLCBC Roster Update as of December 11, 2012

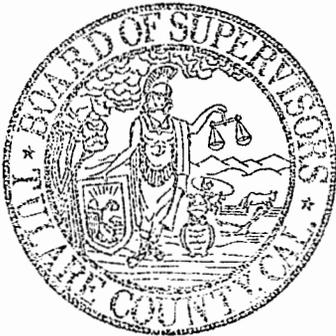


**BEFORE THE BOARD OF SUPERVISORS  
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF: APPOINTMENT )  
TO THE INDIAN GAMING LOCAL ) Resolution No. 2012-0846  
COMMUNITY BENEFIT COMMITTEE )

UPON MOTION OF SUPERVISOR ENNIS, SECONDED BY SUPERVISOR COX, THE FOLLOWING WAS ADOPTED BY THE BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD NOVEMBER 13, 2012, BY THE FOLLOWING VOTE:

AYES: SUPERVISORS ISHIDA, VANDER POEL, COX, WORTHLEY AND ENNIS  
NOES: NONE  
ABSTAIN: NONE  
ABSENT: NONE



ATTEST: JEAN M. ROUSSEAU  
COUNTY ADMINISTRATIVE OFFICER/  
CLERK, BOARD OF SUPERVISORS

BY: Deise A. Ybana  
Deputy Clerk

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Appointed John Crivello, County Representative-Alternate to the Indian Gaming Local Community Benefit Committee for a term ending June 30, 2015.

Indian Gaming Local Community Benefit Committee  
Deputy Clerk

DAY  
11/13/12

**BEFORE THE BOARD OF SUPERVISORS  
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF: REAPPOINTMENT TO )  
THE INDIAN GAMING LOCAL BENEFIT ) Resolution No. 2012-0895  
COMMITTEE )

UPON MOTION OF SUPERVISOR WORTHLEY, SECONDED BY  
SUPERVISOR ENNIS, THE FOLLOWING WAS ADOPTED BY THE BOARD OF  
SUPERVISORS, AT AN OFFICIAL MEETING HELD DECEMBER 11, 2012, BY THE  
FOLLOWING VOTE:

AYES: SUPERVISORS ISHIDA, VANDER POEL, COX, WORTHLEY AND ENNIS  
NOES: NONE  
ABSTAIN: NONE  
ABSENT: NONE



ATTEST: JEAN M. ROUSSEAU  
COUNTY ADMINISTRATIVE OFFICER/  
CLERK, BOARD OF SUPERVISORS

BY: *Daniel A. Ybana*  
Deputy Clerk

\* \* \* \* \*

Reappoint Cameron Hamilton, Mutually Selected Member for a term ending June 30, 2017 and appoint Gilbert Ynigues, Mutually Selected Member-Alternate for a term ending June 30, 2016 to the Indian Gaming Local Benefit Committee.

Indian Gaming Local Benefit Committee  
Deputy Clerk

DAY  
12/11/12

<b>2012 Indian Gaming Committee - Roster/Status (12/11/2012)</b>	<b>Name</b>	<b>Appointed or Reappointed</b>	<b>Term Ends</b>
County Representative	Joe Garcia	6/30/2012	6/30/2015
County Representative	Robin Skiles	5/10/2011	6/30/2014
County Representative - Alternate	John Crivello	11/13/2012	6/30/2015

Tule Representative	Rhoda Hunter		
Tule Representative	Holly Bella	11/20/2012	6/30/2015
Tule Representative - Alternate	Brian Ward	8/2/2012	6/30/2015

Mutually Selected Member	Cameron Hamilton	12/11/2012	6/30/2017
Mutually Selected Member	Mike Ennis	1/27/2012	6/30/2013
Mutually Selected Member	Gilbert Ynigues	12/11/2012	6/30/2016
Mutually Selected Member - Alternate	Vacant		


Notes







# Tulare County Indian Gaming Local Community Benefit Committee



## **AGENDA ITEM No. 5**

**AGENDA DATE:** December 14, 2012

**SUBJECT:** Update on Office of Legislative Counsel Contact

**REQUEST(S):**  
That the Local Community Benefit Committee:

Receive an Update regarding the contacting of the Senator Rubio's office and the Office of Legislative Counsel for interpretation of State statute.

**SUMMARY:**

On October 18, 2012, the Committee directed staff to contact Senator Rubio's office to request that the Senator contact the Office of Legislative Counsel for assistance on the interpretation of statute. Staff submitted a letter to Sen. Rubio's office on October 26, 2012 outlining the Committee's questions. Thereafter, staff and the Committee Chairwoman met with Sen. Rubio's District Director, Esmaralda Soria, on November 9, 2012 to discuss the matter in greater detail. Staff and the Committee Chairwoman discussed the four questions that were submitted to the State Auditor's Office on June 5, 2012 and the need for assistance in interpreting Indian Gaming legislation. After this meeting, Ms. Soria relayed the Committee's request to Sen. Rubio.

On November 21, 2012, Ms. Soria communicated to staff and the Committee Chairwoman that Sen. Rubio approved the Committee's request. The questions were then submitted to the Office of Legislative Counsel on November 26, 2012 by Sen. Rubio's office. Staff and the Committee Chairwoman indicated the urgency of this matter and requested that a response be provided as promptly as possible so that grants may be issued for Fiscal Year 2012/13. As soon as a response is received from the Office of Legislative Counsel, staff will forward the information to the Committee.

**FISCAL IMPACT/FINANCING:**

N/A

Attachment(s) October 26, 2012 Letter to Senator Rubio





# Tulare County Indian Gaming Local Community Benefit Committee



**Committee Members**

- Mike Ennis  
Mutually Selected
- Joe Garcia  
Tulare County Representative
- Cameron Hamilton  
Mutually Selected
- Rhoda Hunter, *Chairwoman*  
Tule Tribe Representative
- Robin Skiles  
Tulare County Representative
- Vacant  
Tule Tribe Representative
- Vacant  
Mutually Selected

**Alternate Members**

- Vacant  
Mutually Selected
- Vacant  
Tulare County Representative
- Brian Ward  
Tule Tribe Representative

**Committee Staff**

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

October 26, 2012

Senator Michael J. Rubio  
1122 Truxtun Ave., Suite 100  
Bakersfield, CA 93301

Re: SB 621 Tulare County Indian Gaming Local Community Benefit Committee. Grants of Indian Gaming Revenue to Local Government Agencies. California Government Code §§ 12710, et. seq. Our File No. 2004486.

The Honorable Michael J. Rubio,

The Tulare County Indian Gaming Local Community Benefit Committee (TCLCBC) would like to formally request an opinion of the Office of Legislative Counsel of the State of California as to whether the distribution of grants made by the TCLCBC were made appropriately. The four items below were sent to the Chief Counsel of the California State Auditor’s office on June 5, 2012. The State Auditor’s office indicated that they are not able to make these types of interpretations and recommended that the TCLCBC contact the Office of Legislative Counsel regarding this matter.

On April 5, 2012, the TCLCBC issued grants to the following entities: the County of Tulare, the Kaweah Delta Health Care District, the Sierra View District Hospital, and the City of Porterville. At subsequent meetings of the TCLCBC in August and October 2012, the Committee discussed the matter of which jurisdictions are eligible to receive grant funding and would like to receive an interpretation of the four items below.

The following issues were considered at the TCLCBC’s April 5, 2012 meeting to distribute grants and on the meetings of August 2, 2012 and October 18, 2012 thereafter:

1. California Government Code § 12715 (c) states that sixty percent (60%) of all grant monies in the County Tribal Casino Account are awarded to city and county applicants by applying geographical proximity criteria. The geographical proximity criteria (“nexus test”) are based on how much of the individual Indian land, on which the tribal casino is located, is touched or surrounded by the local government jurisdiction. On April 5, 2012, TCLCBC awarded the City of Porterville grant monies from the 60% fund due to a warehouse and shuttle stop located on property

located within the City of Porterville, which the Tule River Indian Tribe (“Tribe”) owns in fee title (the Tule River Economic Development Corporation Industrial Park (TREDICIP)). The TREDICIP is located about 9 miles from the Tribe’s Eagle Mountain Casino (“Casino”). The Casino is located on the Tule River Indian Reservation (“Reservation”) near Springville, within County boundaries. The question is whether “Indian lands” can include property that is owned in fee title by the Tribe, and that is not reservation, federal trust or restricted alienation land pursuant to 25 U.S.C. §2703(4) and 25 C.F.R. § 502.12 (Cheyenne River Sioux Tribe v. State of S.D. (1993) 3 F.3d 273).

2. Further, does a warehouse and shuttle stop (part of TREDICIP) located approximately 9 miles from the Reservation, that serves the Casino on the Reservation, qualify as a “casino” pursuant to Gov. Code §12715(c)(1) (C) and (D)?

3. Another question is whether Tulare County “borders the Indian lands on all sides” pursuant to Gov. Code §12715(c)(1)(A). Tulare County’s boundaries are set forth in Gov. Code §23154 and include the Reservation, however also includes Bureau of Land Management and Giant Sequoia National Monument jurisdiction that borders the Reservation. Does this preclude Tulare County from bordering the Indian lands (Reservation) on all sides?

4. Lastly, is the TCLCBC required to only grant monies from the County Tribal Casino Account to grant applications that provide a percentage of impacts from the Casino, or any casino, and how the mitigation will be proportionate to that percentage? Are there other ways to “quantify” the impacts from the Casino or any casino, as required in State Auditor Report 2010-036 dated February 15, 2011?

Your timely response would be greatly appreciated to ensure we are in accordance with all legal requirements and are able to issue grants in Fiscal Year 2012/13. Thank you and please feel free to contact John Hess or Jed Chernabaeff at (559) 636-5005 for further information.

Sincerely,



Rhoda M. Hunter, Chairperson  
Tulare County Indian Gaming Local Community Benefit Committee



# Tulare County Indian Gaming Local Community Benefit Committee



## **AGENDA ITEM No. 6**

**AGENDA DATE:** December 14, 2012

**SUBJECT:** Discussion and possible action regarding Committee Legal Representation

**REQUEST(S):**  
That the Local Community Benefit Committee:

1. Discuss Committee Legal Representation.
2. Provide direction to Staff regarding Committee Legal Representation.

### **SUMMARY:**

On June 4, 2012, Tulare County Counsel withdrew their legal representation of the Tulare County Indian Gaming Local Community Benefit Committee citing "Rule of Professional Conduct, Rule 3-600." The Committee has not had legal representation since that time. The lack of legal representation has created several challenges in achieving the Committee's primary mission and progressing forward with the Fiscal Year 2012/13 grant process.

At the October 18, 2012 meeting, the Committee requested a special meeting with County Counsel to discuss their office's withdrawal in detail. The Committee also requested that Staff submit several questions for clarification to the Office of Legislative Counsel (OLC) regarding this matter, which staff did on November 26, 2012 (which is discussed in Agenda Item No. 5).

Staff believes that Assembly Bill 2515, which provides funding to the Special Distribution Fund (SDF) for Fiscal Year 2012/13, requires grant applicants to demonstrate the manner by which the SDF funds will mitigate the impacts of Indian Gaming and, therefore, identify the impacts of Indian Gaming on the proposed grant-funded activity. At this time, the Grant Application format does not provide a mechanism for this type of demonstration and awards in prior years were not contingent upon such a demonstration.

Therefore, Staff believes that the Grant Application format must be modified by the Committee in order to issue grants for Fiscal Year 2012/13 and be in compliance with California Government Code Section 12715(b)(1)(a) as enacted by AB 2515. At the October 18, 2012 meeting, the Committee indicated that they would not modify the Grant Application format without legal review to determine if such a modification is necessary. Staff believes that, the Committee should not issue grant awards without modification to the Grant Application pursuant to AB 2515.

**SUBJECT:** Direction to Staff regarding Committee Counsel

**DATE:** December 14, 2012

It is anticipated that the Committee will receive approximately \$260,000 to award to applicants in Fiscal Year 2012/13. This funding must be allocated and reported to the State Controller's Office (SCO) by May 31, 2013. In order to meet the deadline of May 31, 2013, it is recommended the Fiscal Year 2012/13 Grant Process begin no later than March 1, 2013 to allow adequate time for: grant format approval, application period, application review, Tribal sponsorship, funding recommendations, grant awards, and report preparation. If the funds are not allocated to recipients and reported to the SCO by May 31, 2013, the funds will be returned to the State and will not be available for any jurisdictions impacted by Indian Gaming.

To that end, Staff also requests that the Committee provide direction to Staff regarding securing legal representation in order to be able to issue grant awards in Fiscal Year 2012/13 and progress with the Committee's primary mission.

Please be advised that County Counsel is not able to provide legal advice to the Committee at this time.

**FISCAL IMPACT/FINANCING:**

N/A

Attachment(s) N/A

**BEFORE THE TULARE COUNTY  
INDIAN GAMING LOCAL COMMUNITY  
BENEFIT COMMITTEE**

IN THE MATTER OF PROVIDING )  
DIRECTION TO STAFF REGARDING ) RESOLUTION NO. 2012-  
COMMITTEE COUNSEL )

UPON MOTION OF MEMBER \_\_\_\_\_, SECONDED BY MEMBER \_\_\_\_\_, THE FOLLOWING WAS ADOPTED BY THE TULARE COUNTY INDIAN GAMING LOCAL COMMUNITY BENEFIT COMMITTEE, AT AN OFFICIAL MEETING HELD DECEMBER 14, 2012, BY THE FOLLOWING VOTE:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

BY: \_\_\_\_\_  
Chairman

\* \* \* \* \*

1. Discussed Committee Legal Representation.
2. Provided direction to Staff regarding Committee Legal Representation.