TRIBAL-STATE COMPACT

BETWEEN THE

LA POSTA BAND OF MISSION INDIANS

AND THE

STATE OF CALIFORNIA

Cited in Rincon Band v. Schwarzenegger,
No. 08-55914 archived on April 23, 2010

TRIBAL-STATE GAMING COMPACT
Between the LA POSTA BAND OF MISSION INDIANS,
a federally recognized Indian Tribe,
and the
STATE OF CALIFORNIA

This Tribal-State Gaming Compact is entered into on a government-to-government basis by and between the La Posta Band of Mission Indians, a federally-recognized sovereign Indian tribe, listed in the Federal Register as the La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California (hereafter "La Posta Tribe" or "Tribe,"), and the State of California, a sovereign State of the United States (hereafter "State"), pursuant to the Indian Gaming Regulatory Act of 1988 (P.L. 100-497, codified at 18 U.S.C. Sec. 1166 et seq. and 25 U.S.C. Sec. 2701 et seq.) (hereafter "IGRA"), and any successor statute or amendments.

PREAMBLE

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A. The State enters into this Compact at this time in recognition that the La Posta Tribe (1) communicated its interest in a compact in May 2000, not long after compacts were signed in 1999 with other California Indian Tribes; (2) possesses Indian lands as defined by IGRA, and (3) will operate no more than 350 Gaming Devices at this time on its Indian land as defined in IGRA, and as described in Appendix A hereto.

B. The La Posta Reservation was established by Executive Order in 1891. (26 Stat. 712-714 c.65.) Congress took certain reservation land into trust on behalf of the La Posta Tribe on February 10, 1893. (*See* Appendix A.)

C. Pursuant to the Indian Reorganization Act, the La Posta Tribe adopted a Constitution on May 3, 1973. Under that Constitution, the La Posta Tribe is governed by a General Council that consists of all adult Tribal members (18 years or older). The General Council exercises the Band's power of self-government and has the power to execute contracts and waive sovereign immunity on behalf of the Tribe. Meetings are held monthly, and decisions are reached by majority vote. The La Posta Tribe does not have a tribal court.

D. Historically, the La Posta Tribe generated limited income primarily by leasing the Reservation's pastureland to non-tribal cattle ranchers. Additional income has come from land claims settlement, leases, easements and other short-term sources.

E. Access and infrastructure issues have continued to impede the La Posta Tribe's efforts at economic development. With limited road access and only one power line running across the edge of the reservation, developers have been

unwilling to make significant investments. The La Posta Tribe strove for over a decade starting in 1985 to nurture a sand-and-gravel operation, which ultimately failed. The Tribe has also investigated business prospects as diverse as wind generation, worm farming, onion storage, hazardous waste incineration, automobile and/or motorcycle racing tracks, and shooting ranges, but none has proven to be commercially viable.

F. Today, the La Posta Tribe provides a range of services to its members. These include medical and dental treatment and other health-related services through the Southern Indian Health Council; housing developed under the Housing Improvement Program; fire protection through a contract with the Campo Indian Reservation Fire Department; sanitation services, maintenance of public buildings, individual homes, and water wells by the Tribal government; and an energy assistance program to subsidize utility bills for needy Tribal members.

G. In 1988, Congress enacted IGRA as the federal statute governing Indian gaming in the United States. The purposes of IGRA are 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; to provide a statutory basis for regulation of Indian gaming adequate to shield it from organized crime and other corrupting influences; to ensure that the Indian tribe is the primary beneficiary of the gaming operation; to ensure that gaming is conducted fairly and honestly by both the operator and players; and to declare that the establishment of an independent federal regulatory authority for gaming on Indian lands, federal standards for gaming on Indian lands, and a National Indian Gaming Commission are necessary to meet congressional concerns.

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H. The system of regulation of Indian gaming fashioned by Congress in IGRA rests on an allocation of regulatory jurisdiction among the three sovereigns involved: the federal government, the state in which a tribe has land, and the tribe itself. IGRA makes Class III gaming activities lawful on the lands of federally-recognized Indian tribes only if such activities are: (1) authorized by a tribal ordinance, (2) located in a state that permits such gaming for any purpose by any person, organization or entity, and (3) conducted in conformity with a gaming compact entered into between the Indian tribe and the state and approved by the Secretary of the Interior.

I. The La Posta Tribe does not currently operate a gaming facility that offers Class III Gaming Activities. However, on or after the effective date of this Compact, the La Posta Tribe will develop and operate a Gaming Facility with up to 350 Gaming Devices within the boundaries of the property described as Trust Patent No. 163394, issued November 28, 1910, in the document attached as Appendix A.

J. The La Posta Tribe and the State share an interest in mitigating off-reservation impacts of Gaming Facilities, as well as an interest in fostering a good

neighbor relationship among the Tribe, the State and the community that borders on the Tribe's reservation land. For these reasons, the La Posta Tribe and the State believe it is in the best interests of the Tribe and the State for the Tribe to enter into enforceable and binding agreements with San Diego County and any other local governmental entity that will either provide services to, or be adversely impact by, the construction or operation of the Gaming Facility to address off-reservation impacts of the La Posta Tribe's Gaming Activities.

K. The exclusive rights that the La Posta Tribe will enjoy under this Compact create a unique opportunity for the La Posta Tribe to operate its Gaming Facility in an economic environment free of competition from the Class III gaming referred to in Section 4.0 of this Compact on non-Indian lands in California. The parties are mindful that this unique economic environment is of great value to the La Posta Tribe and the fact that income from Gaming Devices will represent a substantial portion of the La Posta Tribe's revenues. The parties are also mindful of the fact that the State will bear costs directly related to the regulation and operation of Gaming Activities. In consideration for the exclusive rights enjoyed by the La Posta Tribe, and in further consideration for the State's willingness to enter into this Compact, and to bear such costs, and in light of the meaningful concessions offered by the State in good faith negotiations, the La Posta Tribe has agreed to provide to the State, on a sovereign-to-sovereign basis, a portion of its revenue from Gaming Devices.

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L. The State has a legitimate interest in promoting the purposes of IGRA for all federally recognized Indian tribes in California, whether gaming or non-gaming. The State also has a legitimate sovereign interest in regulating the growth of Class III Gaming Activities in California. The La Posta Tribe and the State share a joint sovereign interest in ensuring that tribal gaming activities are free from criminal and other undesirable elements.

M. The State also enters into this Compact out of a respect for the sentiment of the voters of California who, in approving Propositions 5 and 1A, expressed their belief that the forms of gaming authorized herein should be allowed.

N. The parties to this Compact recognize each other's respective lawful governmental interests, and further recognize that any and all obligations, waivers of jurisdictional immunities or agreements to abide by governmental laws and regulations arising from this Compact are solely by means of this contractual agreement, which is an exercise of the governmental authority of the parties. Except as provided in this Compact, nothing herein contained shall be construed as actual or implied derogation or shall be applied so as to hinder, any and all powers of internal self-government of the La Posta Tribe or the State of California, or their respective governmental standing.

Section 1.0. PURPOSES AND OBJECTIVES.

The terms of this Compact are designed and intended to:

(a) Evidence the goodwill and cooperation of the La Posta Tribe and the State in fostering a mutually respectful government-to-government relationship that will serve the mutual interests of the parties.

(b) Develop and implement a means of regulating Class III gaming, and only Class III gaming, on the La Posta Tribe's Indian lands to ensure its fair and honest operation in accordance with IGRA, and through that regulated Class III gaming, enable the La Posta Tribe to develop self-sufficiency, promote tribal economic development, and generate jobs and revenues to support the La Posta Tribe's government and governmental services and programs.

(c) Promote ethical practices in conjunction with that gaming, through the licensing and control of persons and entities employed in, or providing goods and services to, the La Posta Tribe's Gaming Operation and protecting against the presence or participation of persons whose criminal backgrounds, reputations, character, or associations make them unsuitable for participation in gaming, thereby maintaining a high level of integrity in tribal government gaming.

Section 2.0. DEFINITIONS.

Sec. 2.1. "Applicant" means an individual or entity that applies for a La Posta Tribal license or State certification.

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Sec. 2.2. "Association" means an association of California tribal and state gaming regulators, the membership of which comprises up to two representatives from each tribal gaming agency of those tribes with whom the State has a gaming compact under IGRA, and up to two delegates each from the Division of Gambling Control in the California Department of Justice and the California Gambling Control Commission.

Sec. 2.3. "Class III gaming" means the forms of Class III gaming defined as such in 25 U.S.C. Sec. 2703(8) and by regulations of the National Indian Gaming Commission.

Sec. 2.3.1. "Coordinator" means the Office of the American Indian Coordinator in the Office of the Governor.

Sec. 2.4. "Gaming Activities" means the Class III gaming activities authorized under this Gaming Compact.

Sec. 2.5. "Gaming Compact" or "Compact" means this compact.

Sec. 2.6. "Gaming Device" means a slot machine, including an electronic, electromechanical, electrical, or video device that, for consideration, permits: individual play with or against that device or the participation in any electronic, electromechanical, electrical, or video system to which that device is connected; the playing of games thereon or therewith, including, but not limited to, the playing of facsimiles of games of chance or skill; the possible delivery of, or entitlement by

the player to, a prize or something of value as a result of the application of an element of chance; and a method for viewing the outcome, prize won, and other information regarding the playing of games thereon or therewith.

Sec. 2.7. "Gaming Employee" means any natural person who (a) operates, maintains, repairs, assists in any Class III gaming activity, or is in any way responsible for supervising such Gaming Activities or persons who conduct, operate, account for, or supervise any such gaming activity, (b) is in a category under federal or tribal gaming law requiring licensing, (c) is an employee of the Tribal Gaming Agency with access to confidential information, or (d) is a person whose employment duties require or authorize access to areas of the Gaming Facility that are not open to the public.

Sec. 2.8. "Gaming Facility" or "Facility" means any building in which Class III gaming activities or gaming operations occur, or in which the business records, receipts, or other funds of the gaming operation are maintained (but excluding offsite facilities primarily dedicated to storage of those records, and financial institutions), and all rooms, buildings, and areas, including parking lots and walkways, a principal purpose of which is to serve the activities of the Gaming Operation, provided that nothing herein prevents the conduct of Class II gaming (as defined under IGRA) therein.

Sec. 2.9. "Gaming Operation" means the business enterprise that offers and Operates Class III Gaming Activities, whether exclusively or otherwise.

Sec. 2.10. "Gaming Ordinance" means a tribal ordinance or resolution duly authorizing the conduct of Class III Gaming Activities on the La Posta Tribe's Indian lands and approved under IGRA.

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Sec. 2.11. "Gaming Resources" means any goods or services provided or used in connection with Class III Gaming Activities, whether exclusively or otherwise, including, but not limited to, equipment, furniture, gambling devices and ancillary equipment, implements of gaming activities such as playing cards and dice, furniture designed primarily for Class III gaming activities, maintenance or security equipment and services, and Class III gaming consulting services. "Gaming Resources" does not include professional accounting and legal services.

Sec. 2.12. "Gaming Resource Supplier" means any person or entity who, directly or indirectly, manufactures, distributes, supplies, vends, leases, or otherwise purveys Gaming Resources to the Gaming Operation or Gaming Facility, provided that the Tribal Gaming Agency may exclude a purveyor of equipment or furniture that is not specifically designed for, and is distributed generally for use other than in connection with, Gaming Activities, if the purveyor is not otherwise a Gaming Resource Supplier as described by of Section 6.4.5, the compensation received by the purveyor is not grossly disproportionate to the value of the goods or services provided, and the purveyor is not otherwise a person who exercises a significant influence over the Gambling Operation.

Sec. 2.13. "IGRA" means the Indian Gaming Regulatory Act of 1988 (P.L. 100-497, 18 U.S.C. Sec. 1166 et seq. and *25* U.S.C. Sec. 2701 et seq.) any amendments thereto, and all regulations promulgated thereunder.

Sec. 2.13.1. "La Posta Tribe" or "Tribe" means the La Posta Band of Mission Indians, a federally-recognized Indian tribe listed in the Federal Register as the La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California, or an authorized official or agency thereof.

Sec. 2.14. "Management Contractor" means any Gaming Resource Supplier with whom the La Posta Tribe has contracted for the management of any Gaming Activity or Gaming Facility, including, but not limited to, any person who would be regarded as a management contractor under IGRA.

Sec. 2.15. "Net Win" means "net win" as defined by American Institute of Certified Public Accountants.[1]

Sec. 2.16. "NIGC" means the National Indian Gaming Commission.

Sec. 2.17. "State" means the State of California or an authorized official or agency thereof designated by this Compact or by the Governor.

Sec. 2.18. "State Gaming Agency" means the entities authorized to investigate, approve, and regulate gaming licenses and regulate gaming pursuant to the Gambling Control Act (Chapter 5 (commencing with Section 19800) of Division 8 of the Business and Professions Code).

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Sec. 2.19. "Tribal Chairperson" means the person duly elected under the La Posta Tribe's Constitution to serve as the primary spokesperson for the La Posta Tribe.

Sec. 2.20. "Tribal Gaming Agency" means the person, agency, board, committee, commission, or council designated under tribal law, including, but not limited to, an intertribal gaming regulatory agency approved to fulfill those functions by the National Indian Gaming Commission, as primarily responsible for carrying out the La Posta Tribe's regulatory responsibilities under IGRA and the Tribal Gaming Ordinance. No person employed in, or in connection with, the management, supervision, or conduct of any gaming activity may be a member or employee of the Tribal Gaming Agency.

Section 3.0. CLASS III GAMING AUTHORIZED AND PERMITTED. The La Posta Tribe is hereby authorized and permitted to engage in only the Class III Gaming Activities expressly referred to in Section 4.0 and shall not engage in Class III gaming that is not expressly authorized in that Section. The Gaming Activities herein referred are authorized to be conducted at a Gaming Facility situated on the Tribe's Indian lands within the meaning of IGRA, located within

[1] See Addendum regarding the Meaning of Terms.

the boundaries of the property described as Trust Patent No. 163394, issued on November 28, 1910, in the document attached as Appendix A.

Section 4.0. SCOPE OF CLASS III GAMING.

Sec. 4.1. Authorized and Permitted Class III Gaming. The La Posta Tribe is hereby authorized and permitted to operate the following Gaming Activities under the terms and conditions set forth in this Gaming Compact:

(a) Gaming Devices.

(b) Any banking or percentage card game.

(c) Any devices or games that are authorized under state law to the California State Lottery, provided that the La Posta Tribe will not offer such games through use of the Internet unless others in the state are permitted to do so under state and federal law.

(d) Nothing herein shall be construed to preclude negotiation of a separate compact governing the conduct of off-track wagering at the La Posta Tribe's Gaming Facility.

(e) In recognition that the scope of gaming permitted to Indian tribes in California under Tribal-State gaming compacts now in existence is governed by uniform language in each compact, the La Posta Tribe and the State acknowledge that the scope of Class III gaming permitted by this Gaming Compact is identical to the scope of Class III gaming permitted to any tribe under any compact now in existence, and will remain so during the duration of this Gaming Compact.

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Sec. 4.2. Authorized Gaming Facilities. The La Posta Tribe may establish and operate one Gaming Facility on the site identified in Appendix A of this Compact, which is located on Indian lands on which gaming may lawfully be conducted under the Indian Gaming Regulatory Act. The La Posta Tribe may combine and operate in this Gaming Facility any forms and kinds of gaming permitted under law, except to the extent limited under IGRA, this Compact, or the La Posta Tribe's Gaming Ordinance. If the La Posta Tribe requests in writing not sooner than one year after the effective date of this Compact that the State negotiate with the La Posta Tribe for a second Gaming Facility on its Indian lands as defined by IGRA, the parties agree to negotiate such request in good faith.

Sec. 4.3. Authorized Number of Gaming Devices

Sec. 4.3.1 (a) The La Posta Tribe may operate no more than 350 Gaming Devices. From and after the first day of operation of its first Gaming Facility, the La Posta Tribe shall pay five percent (5%) of its Net Win from the operation of Gaming Devices to the California Gambling Control Commission, or such other State entity as may be designated by the Governor, for deposit into the General Fund. Payments shall be made on a quarterly basis and shall be determined and made not later than the thirtieth (30th) day following the end of each calendar

quarter. The first payment shall be made at the conclusion of the first full calendar quarter following the first day of operation of any Gaming Device.

(b) Any quarterly payment not paid on or before the date on which such amount is due shall be deemed overdue. If any quarterly payment under subdivision (a) is overdue, the Tribe shall pay, in addition to the overdue quarterly payment, interest on such amount from the date such quarterly payment was due until the date such quarterly payment (together with interest thereon) was actually paid at the rate of 1.0% per month or the maximum rate permitted by state law, whichever is less. Entitlement to such interest shall be in addition to any other remedies the State may have.

(c) At the time each quarterly payment is made, the Tribe shall submit to the California Gambling Control Commission, or such other State entity as may be designated by the Governor, a report (the "Quarterly Net Win Payment Report") certified by an authorized representative of the Tribe reflecting the Net Win, the applicable Percentage of Net Win for the period of filing, and the total amount of the quarterly payment.

(d) If the California Gambling Control Commission, or such other State entity as may be designated by the Governor, causes an audit to be made by or on behalf of the State of the Quarterly Net Win Payment Report submitted pursuant to subdivision (c), and the quarterly Net Win payment for any quarter as reflected on such quarter's Quarterly Net Win Payment Report is found to be understated, the State will promptly notify the Tribe, and the Tribe will either accept the difference or provide a reconciliation satisfactory to the State. If the Tribe accepts the difference or does not provide a reconciliation satisfactory to the State within sixty (60) days of receipt of the notice, the Tribe must immediately pay the amount of the resulting deficiencies in the quarterly payment plus interest on such amounts from the date they were due at the rate of 1.0% per month or the maximum rate permitted by state law, whichever is less.

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(e) The La Posta Tribe shall not conduct any Gaming Activity authorized by this Compact if the La Posta Tribe is more than two (2) quarterly contributions in arrears in its payments to the General Fund.

Sec. 4.3.2. Revenue Sharing with Non-Gaming Tribes.

The parties acknowledge that certain Compacts previously executed contain the following language:

"(a) For the purposes of this Section 4.3.2 and 5.0, the following definitions apply:

(i) A "Compact Tribe" is a tribe having a compact with the State that authorizes the Gaming Activities authorized by this Compact. Federally recognized tribes that are operating fewer than 350 Gaming Devices are "Non-Compact Tribes." Non-Compact Tribes shall be deemed third party beneficiaries of this and other compacts identical in all material respects. A Compact Tribe that becomes a

Non-Compact Tribe may not thereafter return to the status of a Compact Tribe for a period of two (2) years after becoming a Non-Compact Tribe.

(ii) The Revenue Sharing Trust Fund is a fund created by the Legislature and administered by the California Gambling Control Commission, as Trustee, for the receipt, deposit, and distribution of monies paid pursuant to this Section 4.3.2.

(iii) The Special Distribution Fund is a fund created by the Legislature for the receipt, deposit, and distribution of monies paid pursuant to Section 5.0.

Sec. 4.3.2.1. Revenue Sharing Trust Fund.

(a) The Tribe agrees with all other Compact Tribes that are parties to compacts having this Section 4.3.2, that each Non-Compact Tribe in the State shall receive the sum of $1.1 million per year. In the event there are insufficient monies in the Revenue Sharing Trust Fund to pay $1.1 million per year to each Non-Compact Tribe, any available monies in that Fund shall be distributed to Non-Compact Tribes in equal shares. Monies in excess of the amount necessary to pay $1.1 million to each Non-Compact Tribe in any given year shall remain in the Revenue Sharing Trust Fund available for disbursement in future years.

(b) Payments made to Non-Compact Tribes shall be made quarterly and in equal shares out of the Revenue Sharing Trust Fund. The Commission shall serve as the trustee of the fund. The Commission shall have no discretion with respect to the use or disbursement of the trust funds. Its sole authority shall be to serve as a depository of the trust funds and to disburse them on a quarterly basis to Non-Compact Tribes. In no event shall the State's General Fund be obligated to make up any shortfall or pay any unpaid claims."

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Section 5.0. REVENUE DISTRIBUTION

The parties acknowledge that certain Compacts previously executed contain the following language:

"Sec. 5.1. The parties acknowledge that certain Compact Tribes make contributions to the Special Distribution Fund created by the Legislature.

Sec. 5.2. Use of funds. The Special Distribution Fund is available for appropriation by the Legislature for the following purposes: (a) grants, including any administrative costs, for programs designed to address gambling addiction; (b) grants, including any administrative costs, for the support of state and local government agencies impacted by tribal government gaming; (c) compensation for regulatory costs incurred by the State Gaming Agency and the State Department of Justice in connection with the implementation and administration of the Compact; (d) payment of shortfalls that may occur in the Revenue Sharing Trust Fund; and (e) any other purposes specified by the Legislature."

It is the intent of the parties that the La Posta Tribe will be consulted in the process of identifying purposes for grants made to local governments.

Section 6.0. LICENSING.

Sec. 6.1. Gaming Ordinance and Regulations.

(a) All Gaming Activities conducted under this Gaming Compact shall, at a minimum, comply with a Gaming Ordinance duly adopted by the La Posta Tribe and approved in accordance with IGRA, and with all rules, regulations, procedures, specifications, and standards duly adopted by the Tribal Gaming Agency.

(b) The La Posta Tribe shall transmit a copy of its Gaming Ordinance to the California Gambling Control Commission or such other State entity as may be designated by the Governor, within twenty (20) days following execution of this Compact.

(c) The Tribal Gaming Agency shall transmit a copy of its rules, regulations, procedures, specifications, and standards, and any amendments thereto or to its Gaming Ordinance, to the California Gambling Control Commission or such other State entity as may be designated by the Governor, within twenty (20) days following adoption or amendment.

(d) The documents identified in subdivisions (b) and (c) above applicable to the public shall be made available to any member of the public upon request.

Sec. 6.2. Tribal Ownership, Management, and Control of Gaming Operation. The Gaming Operations authorized under this Gaming Compact shall be owned solely by the La Posta Tribe.

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Sec. 6.3. Prohibition Regarding Minors. The La Posta Tribe shall not permit persons under the age of 21 years to be present in any room or area in which Class III Gaming Activities are being conducted unless the person is en route to a nongaming area of the Gaming Facility.

Sec. 6.4. Licensing Requirements and Procedures.

Sec. 6.4.1. Summary of Licensing Principles. All persons in any way connected with the Gaming Operation or Facility who are required to be licensed or to submit to a background investigation under IGRA, and any others required to be licensed under this Gaming Compact, including, but not limited to, all Gaming Employees and Gaming Resource Suppliers, and any other person having a significant influence over the Gaming Operation must be licensed by the Tribal Gaming Agency. The parties intend that the licensing process provided for in this Gaming Compact shall involve joint cooperation between the Tribal Gaming Agency and the State Gaming Agency, as more particularly described herein.

Sec. 6.4.2. Gaming Facility.

(a) The Gaming Facility authorized by this Gaming Compact shall be licensed by the Tribal Gaming Agency in conformity with the requirements of this Gaming Compact, the Tribal Gaming Ordinance, and IGRA. The license shall be reviewed and renewed, if appropriate, every two (2) years thereafter. The La Posta Tribe shall provide a copy of the initial license and each renewal license to the California Gambling Control Commission or such other State entity as may be

designated by the Governor, within twenty (20) days after issuance of the license and each renewal. The active license or renewal thereof shall be posted in a conspicuous and public place in the Gaming Facility at all times.

(b) In order to protect the health and safety of all Gaming Facility patrons, guests, and employees, all Gaming Facilities of the La Posta Tribe constructed after the effective date of this Gaming Compact, and all expansions or modifications to a Gaming Facility in operation as of the effective date of this Compact, shall meet the building and safety codes of the La Posta Tribe, which, as a condition for engaging in that construction, expansion, modification, or renovation, shall amend its existing building and safety codes if necessary, or enact such codes if there are none, so that they meet the standards of either the building and safety codes of any county within the boundaries of which the site of the Facility is located, or the Uniform Building Codes, including all uniform fire, plumbing, electrical, mechanical, and related codes then in effect provided that nothing herein shall be deemed to confer jurisdiction upon any county or the State with respect to any reference to such building and safety codes. Any such construction, expansion or modification will also comply with the federal Americans with Disabilities Act, P.L. 101-336, as amended, 42 U.S.C. § 12101 et seq.

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(c) Any Gaming Facility in which gaming authorized by this Gaming Compact is conducted shall be issued a certificate of occupancy by the Tribal Gaming Agency prior to occupancy if it was not used for any Gaming Activities under IGRA prior to the effective date of this Gaming Compact, or, if it was so used, within one year thereafter. The issuance of this certificate shall be reviewed by the Tribal Gaming Agency for continuing compliance every two years thereafter. Inspections by qualified building and safety experts shall be conducted under the direction of the Tribal Gaming Agency as the basis for issuing any certificate hereunder. The Tribal Gaming Agency shall determine and certify that, as to new construction or new use for gaming, the Facility meets the La Posta Tribe's building and safety code, or, as to facilities or portions of facilities that were used for the La Posta Tribe's Gaming Activities prior to this Gaming Compact, that the facility or portions thereof do not endanger the health or safety of occupants or the integrity of the Gaming Operation. The La Posta Tribe will not offer Class III gaming in a Facility that is constructed or maintained in a manner that endangers the health or safety of occupants or the integrity of the gaming operation.

(d) The State shall designate an agent or agents to be given reasonable notice of each inspection by the Tribal Gaming Agency's experts, which state agents may accompany any such inspection. The La Posta Tribe agrees to correct any Gaming Facility condition noted in an inspection that does not meet the standards set forth in subdivisions (b) and (c). The Tribal Gaming Agency and the State's designated

agent or agents shall exchange any reports of an inspection within ten (10) days after completion of the report, which reports shall also be separately and simultaneously forwarded by both agencies to the Tribal Chairperson. Upon certification by the Tribal Gaming Agency's experts that a Gaming Facility meets applicable standards, the Tribal Gaming Agency shall forward the experts' certification to the State within ten (10) days of issuance. If the State's agent objects to that certification, the La Posta Tribe shall make a good faith effort to address the State's concerns, but if the State does not withdraw its objection, the matter will be resolved in accordance with the dispute resolution provisions of Section 9.0.

Sec. 6.4.3. Suitability Standard Regarding Gaming Licenses. In reviewing an application for a gaming license, and in addition to any standards set forth in the Tribal Gaming Ordinance, the Tribal Gaming Agency shall consider whether issuance of the license is inimical to public health, safety, or welfare, and whether issuance of the license will undermine public trust that the La Posta Tribe's Gaming Operations, or tribal government gaming generally, are free from criminal and dishonest elements and would be conducted honestly. A license may not be issued unless, based on all information and documents submitted, the Tribal Gaming Agency is satisfied that the applicant is all of the following, in addition to any other criteria in IGRA or the Tribal Gaming Ordinance:

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(a) A person of good character, honesty, and integrity.

(b) A person whose prior activities, criminal record (if any), reputation, habits, and associations do not pose a threat to the public interest or to the effective regulation and control of gambling, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of gambling, or in the carrying on of the business and financial arrangements incidental thereto.

(c) A person who is in all other respects qualified to be licensed as provided in this Gaming Compact, IGRA, the Tribal Gaming Ordinance, and any other criteria adopted by the Tribal Gaming Agency or the La Posta Tribe. An applicant shall not be found to be unsuitable solely on the ground that the applicant was an employee of a tribal gaming operation in California that was conducted prior to the effective date of this Compact.

Sec. 6.4.4. Gaming Employees. (a) Every Gaming Employee shall obtain, and thereafter maintain current, a valid tribal gaming license, which shall be subject to biennial renewal; provided that in accordance with Section 6.4.9, those persons may be employed on a temporary or conditional basis pending completion of the licensing process.

(b) Except as provided in subdivisions (c) and (d), the La Posta Tribe will not employ or continue to employ, any person whose application to the State Gaming Agency for a determination of suitability, or for a renewal of such a determination, has been denied or has expired without renewal.

(c) Notwithstanding subdivision (a), the La Posta Tribe may retain in its employ a person whose application for a determination of suitability, or for a renewal of such a determination, has been denied by the State Gaming Agency, if: (i) the person holds a valid and current license issued by the Tribal Gaming Agency that must be renewed at least biennially; (ii) the denial of the application by the State Gaming Agency is based solely on activities, conduct, or associations that antedate the filing of the person's initial application to the State Gaming Agency for a determination of suitability; (iii) the person is not an employee or agent of any other gaming operation; and (iv) the person has been in the continuous employ of the La Posta Tribe for at least three years prior to the effective date of this Compact.

(d)(1) Notwithstanding subdivision (a), the La Posta Tribe may employ or retain in its employ a person whose application for a determination of suitability, or for a renewal of such a determination, has been denied by the State Gaming Agency, if the person is an enrolled member of the La Posta Tribe, as defined in this subdivision, and if (A) the person holds a valid and current license issued by the Tribal Gaming Agency that must be renewed at least biennially; (B) the denial of the application by the State Gaming Agency is based solely on activities, conduct, or associations that antedate the filing of the person's initial application to the State Gaming Agency for a determination of suitability; and (C) the person is not an employee or agent of any other gaming operation.

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(2) For purposes of this subdivision, "enrolled member" means a person who is recognized by the La Posta Tribe as being a member pursuant to its Tribal Constitution.

(e) Nothing herein shall be construed to relieve any person of the obligation to apply for a renewal of a determination of suitability as required by Section 6.5.6.

Sec. 6.4.5. Gaming Resource Supplier. Any Gaming Resource Supplier who, directly or indirectly, provides, has provided, or is deemed likely to provide at least twenty-five thousand dollars ($25,000) in Gaming Resources in any 12-month period, or who has received at least twenty-five thousand dollars ($25,000) in any consecutive 12-month period within the 24-month period immediately preceding application, shall be licensed by the Tribal Gaming Agency prior to the sale, lease, or distribution, or further sale, lease, or distribution, of any such Gaming Resources to or in connection with the La Posta Tribe's Operation or Facility. These licenses shall be reviewed at least every two years for continuing compliance. In connection with such a review, the Tribal Gaming Agency shall require the Supplier to update all information provided in the previous application. For purposes of Section 6.5.2, such a review shall be deemed to constitute an application for renewal. The La Posta Tribe shall not enter into, or continue to make payments pursuant to, any contract or agreement for the provision of Gaming Resources with any person whose application to the State Gaming Agency for a

determination of suitability has been denied or has expired without renewal. Any agreement between the La Posta Tribe and a Gaming Resource Supplier shall be deemed to include a provision for its termination without further liability on the part of the La Posta Tribe, except for the bona fide repayment of all outstanding sums (exclusive of interest) owed as of, or payment for services or materials received up to, the date of termination, upon revocation or non-renewal of the Supplier's license by the Tribal Gaming Agency based on a determination of unsuitability by the State Gaming Agency.

Sec. 6.4.6, Financial Sources. Any person extending financing, directly or indirectly, to the La Posta Tribe's Gaming Facility or Gaming Operation shall be licensed by the Tribal Gaming Agency prior to extending that financing, provided that any person who is extending financing at the time of the execution of this Compact shall be licensed by the Tribal Gaming Agency within ninety (90) days of such execution. These licenses shall be reviewed at least every two years for continuing compliance. In connection with such a review, the Tribal Gaming Agency shall require the Financial Source to update all information provided in the previous application. For purposes of Section 6.5.2, such a review shall be deemed to constitute an application for renewal. Any agreement between the La Posta Tribe and a Financial Source shall be deemed to include a provision for its termination without further liability on the part of the La Posta Tribe, except for the bona fide repayment of all outstanding sums (exclusive of interest) owed as of the date of termination, upon revocation or non-renewal of the Financial Source's license by the Tribal Gaming Agency based on a determination of unsuitability by the State Gaming Agency. The La Posta Tribe shall not enter into, or continue to make payments pursuant to, any contract or agreement for the provision of financing with any person whose application to the State Gaming Agency for a determination of suitability has been denied or has expired without renewal. A Gaming Resource Supplier who provides financing exclusively in connection with the sale or lease of Gaming Resources obtained from that Supplier may be licensed solely in accordance with licensing procedures applicable, if at all, to Gaming Resource Suppliers. The Tribal Gaming Agency may, at its discretion, exclude from the licensing requirements of this section, financing provided by a federally- or state-regulated bank, savings and loan, or other federally- or state-regulated lending institution; or any agency of the federal, state, or local government; or any investor who, alone or in conjunction with others, holds less than 10% of any outstanding indebtedness evidenced by bonds issued by the La Posta Tribe.

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Sec. 6.4.7. Processing Tribal Gaming License Applications. Each applicant for a tribal gaming license shall submit the completed application along with the required information and an application fee, if required, to the Tribal Gaming Agency in accordance with the rules and regulations of that agency. At a minimum, the Tribal Gaming Agency shall require submission and consideration

of all information required under IGRA, including Section 556.4 of Title 25 of the Code of Federal Regulations, for licensing primary management officials and key employees. For applicants who are business entities, these licensing provisions shall apply to the entity as well as: (i) each of its officers and directors; (ii) each of its principal management employees, including any chief executive officer, chief financial officer, chief operating officer, and general manager; (iii) each of its owners or partners, if an unincorporated business; (iv) each of its shareholders who owns more than 10 percent of the shares of the corporation, if a corporation; and (v) each person or entity (other than a financial institution that the Tribal Gaming Agency has determined does not require a license under the preceding section) that, alone or in combination with others, has provided financing in connection with any gaming authorized under this Gaming Compact, if that person or entity provided more than 10 percent of (a) the start-up capital, (b) the operating capital over a 12-month period, or (c) a combination thereof. For purposes of this Section, where there is any commonality of the characteristics identified in clauses (i) to (v), inclusive, between any two or more entities, those entities may be deemed to be a single entity. Nothing herein precludes the La Posta Tribe or Tribal Gaming Agency from requiring more stringent licensing requirements.

Sec. 6.4.8. Background Investigations of Applicants. The Tribal Gaming Agency shall conduct or cause to be conducted all necessary background investigations reasonably required to determine that the applicant is qualified for a gaming license under the standards set forth in Section 6.4.3, and to fulfill all requirements for licensing under IGRA, the Tribal Gaming Ordinance, and this Gaming Compact. The Tribal Gaming Agency shall not issue other than a temporary license until a determination is made that those qualifications have been met. In lieu of completing its own background investigation, and to the extent that doing so does not conflict with or violate IGRA or the Tribal Gaming Ordinance, the Tribal Gaming Agency may contract with the State Gaming Agency for the conduct of background investigations, may rely on a state certification of non-objection previously issued under a gaming compact involving another tribe, or may rely on a State gaming license previously issued to the applicant, to fulfill some or all of the Tribal Gaming Agency's background investigation obligation. An applicant for a tribal gaming license shall be required to provide releases to the State Gaming Agency to make available to the Tribal Gaming Agency background information regarding the applicant. The State Gaming Agency shall cooperate in furnishing to the Tribal Gaming Agency that information, unless doing so would violate any agreement the State Gaming Agency has with a source of the information other than the applicant, or would impair or impede a criminal investigation, or unless the Tribal Gaming Agency cannot provide sufficient safeguards to assure the State Gaming Agency that the information will remain confidential or that provision of the information would violate state or federal law.

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If the La Posta Tribe adopts an ordinance confirming that Article 6 (commencing with section 11140) of Chapter 1 of Title 1 of Part 4 of the California Penal Code is applicable to members, investigators, and staff of the Tribal Gaming Agency, and those members, investigators, and staff thereafter comply with that ordinance, then, for purposes of carrying out its obligations under this Section, the Tribal Gaming Agency shall be considered to be an entity entitled to receive state summary criminal history information within the meaning of subdivision (b)(12) of section 11105 of the California Penal Code. The California Department of Justice shall provide services to the Tribal Gaming Agency through the California Law Enforcement Telecommunications System (CLETS), subject to a determination by the CLETS advisory committee that the Tribal Gaming Agency is qualified for receipt of such services, and on such terns and conditions as are deemed reasonable by that advisory committee.

Sec. 6.4.9. Temporary Licensing of Gaming Employees. Notwithstanding anything herein to the contrary, if the applicant has completed a license application in a manner satisfactory to the Tribal Gaming Agency, and that agency has conducted a preliminary background investigation, and the investigation or other information held by that agency does not indicate that the applicant has a criminal history or other information in his or her background that would either automatically disqualify the applicant from obtaining a license or cause a reasonable person to investigate further before issuing a license, or is otherwise unsuitable for licensing, the Tribal Gaming Agency may issue a temporary license and may impose such specific conditions thereon pending completion of the applicant's background investigation, as the Tribal Gaming Agency in its sole discretion shall determine. Special fees may be required by the Tribal Gaming Agency to issue or maintain a temporary license. A temporary license shall remain in effect until suspended or revoked, or a final determination is made on the application. At any time after issuance of a temporary license, the Tribal Gaming Agency may suspend or revoke it in accordance with Sections 6.5.1 or 6.5.5, and the State Gaming Agency may request suspension or revocation in accordance with subdivision (d) of Section 6.5.6. Nothing herein shall be construed to relieve the La Posta Tribe of any obligation under Part 558 of Title 25 of the Code of Federal Regulations.

Sec. 6.5. Gaming License Issuance. Upon completion of the necessary background investigation, the Tribal Gaming Agency may issue a license on a conditional or unconditional basis. Nothing herein shall create a property or other right of an applicant in an opportunity to be licensed, or in a license itself, both of which shall be considered to be privileges granted to the applicant in the sole discretion of the Tribal Gaming Agency.

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Sec. 6.5.1. Denial, Suspension, or Revocation of Licenses.

(a) Any application for a gaming license may be denied, and any license issued may be revoked, if the Tribal Gaming Agency determines that the application is incomplete or deficient, or if the applicant is determined to be unsuitable or otherwise unqualified for a gaming license. Pending consideration of revocation, the Tribal Gaming Agency may suspend a license in accordance with Section 6.5.5. All rights to notice and hearing shall be governed by tribal law, as to which the applicant will be notified in writing along with notice of an intent to suspend or revoke the license.

(b) (i) Except as provided in paragraph (ii) below, upon receipt of notice that the State Gaming Agency has determined that a person would be unsuitable for licensure in a gambling establishment subject to the jurisdiction of the State Gaming Agency, the Tribal Gaming Agency shall promptly revoke any license that has theretofore been issued to the person; provided that the Tribal Gaming Agency may, in its discretion, re-issue a license to the person following entry of a final judgment reversing the determination of the State Gaming Agency in a proceeding in state court conducted pursuant to section 1085 of the California Civil Code.

(ii) Notwithstanding a determination of unsuitability by the State Gaming Agency, the Tribal Gaming Agency may, in its discretion, decline to revoke a tribal license issued to a person employed by the La Posta Tribe pursuant to Section 6.4.4(c) or Section 6.4.4(d).

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Sec. 6.5.2. Renewal of Licenses; Extensions; Further Investigation. The term of a tribal gaming license shall not exceed two years, and application for renewal of a license must be made prior to its expiration. Applicants for renewal of a license shall provide updated material as requested, on the appropriate renewal forms, but, at the discretion of the Tribal Gaming Agency, may not be required to resubmit historical data previously submitted or that is otherwise available to the Tribal Gaming Agency. At the discretion of the Tribal Gaming Agency, an additional background investigation may be required at any time if the Tribal Gaming Agency determines the need for further information concerning the applicant's continuing suitability or eligibility for a license. Prior to renewing a license, the Tribal Gaming Agency shall deliver to the State Gaming Agency copies of all information and documents received in connection with the application for renewal.

Sec. 6.5.3. Identification Cards. The Tribal Gaming Agency shall require that all persons who are required to be licensed wear, in plain view at chest height at all times while in the Gaming Facility, identification badges issued by the Tribal Gaming Agency. Identification badges must display information including, but not limited to, a photograph and an identification number that is adequate to enable members of the public and agents of the Tribal Gaming Agency to readily identify the person and determine the validity and date of expiration of his or her license.

Sec. 6.5.4. Fees for Tribal License. The fees for all tribal licenses shall be set by the Tribal Gaming Agency.

Sec. 6.5.5. Suspension of Tribal License. The Tribal Gaming Agency may summarily suspend the license of any employee if the Tribal Gaming Agency determines that the continued licensing of the person or entity could constitute a threat to the public health or safety or may violate the Tribal Gaming Agency's licensing or other standards. Any right to notice or hearing in regard thereto shall be governed by Tribal law.

Sec. 6.5.6. State Certification Process. (a) Upon receipt of a completed license application and a determination by the Tribal Gaming Agency that it intends to issue the earlier of a temporary or permanent license, the Tribal Gaming Agency shall transmit to the State Gaming Agency a notice of intent to license the applicant, together with all of the following: (i) a copy of all tribal license application materials and information received by the Tribal Gaming Agency from the applicant; (ii) an original set of fingerprint cards, accompanied by generally applicable state and federal fingerprint fees; (iii) a current photograph; and (iv) except to the extent waived by the State Gaming Agency, such releases of information, waivers, and other completed and executed forms as have been obtained by the Tribal Gaming Agency. Except for an applicant for licensing as a non-key Gaming Employee, as defined by agreement between the Tribal Gaming Agency and the State Gaming Agency, the Tribal Gaming Agency shall require the applicant also to file an application with the State Gaming Agency, prior to issuance of a temporary or permanent tribal gaming license, for a determination of suitability for licensure under the California Gambling Control Act. Investigation and disposition of that application shall be governed entirely by state law, and the State Gaming Agency shall determine whether the applicant would be found suitable for licensure in a gambling establishment subject to that Agency's jurisdiction. Additional information may be required by the State Gaming Agency to assist it in its background investigation, provided that such State Gaming Agency requirement shall be no greater than that which may be required of applicants for a State gaming license in connection with nontribal gaming activities and at a similar level of participation or employment. A determination of suitability is valid for the term of the tribal license held by the applicant, and the Tribal Gaming Agency shall require a licensee to apply for renewal of a determination of suitability at such time as the licensee applies for renewal of a tribal gaming license. The State Gaming Agency and the Tribal Gaming Agency (together with tribal gaming agencies under other gaming compacts) shall cooperate in developing standard licensing forms for tribal gaming license applicants, on a statewide basis, that reduce or eliminate duplicative or excessive paperwork, which forms and procedures shall take into account the La Posta Tribe's requirements under IGRA and the expense thereof.

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(b) Background Investigations of Applicants. Upon receipt of completed license application information from the Tribal Gaming Agency, the State Gaming Agency may conduct a background investigation pursuant to state law to determine whether the applicant would be suitable to be licensed for association with a gambling establishment subject to the jurisdiction of the State Gaming Agency. If further investigation is required to supplement the investigation conducted by the Tribal Gaming Agency, the applicant will be required to pay the statutory application fee charged by the State Gaming Agency pursuant to California Business and Professions Code section 19951(a), as it may be amended from time to time, but any deposit requested by the State Gaming Agency pursuant to section 19867 of that Code, as it may be amended from time to time, shall take into account reports of the background investigation already conducted by the Tribal Gaming Agency and the NIGC, if any. Failure to pay the application fee or deposit may be grounds for denial of the application by the State Gaming Agency. The State Gaming Agency and Tribal Gaming Agency shall cooperate in sharing as much background information as possible, both to maximize investigative efficiency and thoroughness, and to minimize investigative costs. Upon completion of the necessary background investigation or other verification of suitability, the State Gaming Agency shall issue a notice to the Tribal Gaming Agency certifying that the State has determined that the applicant would be suitable, or that the applicant would be unsuitable for licensure in a gambling establishment subject to the jurisdiction of the State Gaming Agency and, if unsuitable, stating the reasons therefor.

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(c) The La Posta Tribe shall monthly provide the State Gaming Agency with the name, badge identification number, and job descriptions of all non-key Gaming Employees.

(d) Prior to denying an application for a determination of suitability, the State Gaming Agency shall notify the Tribal Gaming Agency and afford the La Posta Tribe an opportunity to be heard. If the State Gaming Agency denies an application for a determination of suitability, that Agency shall provide the applicant with written notice of all appeal rights available under state law.

Section 7.0. GAMING COMPLIANCE ENFORCEMENT.

Sec. 7.1. On-Site Regulation. It is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of this Gaming Compact, IGRA, and the Tribal Gaming Ordinance with respect to Gaming Operation and Facility compliance, and to protect the integrity of the Gaming Activities, the reputation of the La Posta Tribe and the Gaming Operation for honesty and fairness, and the confidence of patrons that tribal government gaming in California meets the highest standards of regulation and

internal controls. To meet those responsibilities, the Tribal Gaming Agency shall adopt and enforce regulations, procedures, and practices as set forth herein.

Sec. 7.2. Investigation and Sanctions. The Tribal Gaming Agency shall investigate any reported violation of this Gaming Compact and shall require the Gaming Operation to correct the violation upon such terns and conditions as the Tribal Gaming Agency determines are necessary. The Tribal Gaming Agency shall be empowered by the Tribal Gaming Ordinance to impose fines or other sanctions within the jurisdiction of the La Posta Tribe against gaming licensees or other persons who interfere with or violate the La Posta Tribe's gaming regulatory requirements and obligations under IGRA, the Tribal Gaming Ordinance, or this Gaming Compact. The Tribal Gaming Agency shall report significant or continued violations of this Compact or failures to comply with its orders to the State Gaming Agency.

Sec. 7.3. Assistance by State Gaming Agency. The La Posta Tribe may request the assistance of the State Gaming Agency whenever it reasonably appears that such assistance may be necessary to carry out the purposes described in Section 7.1, or otherwise to protect public health, safety, or welfare. If requested by the La Posta Tribe or Tribal Gaming Agency, the State Gaming Agency shall provide requested services to ensure proper compliance with this Gaming Compact. The State shall be reimbursed for its actual and reasonable costs of that assistance, if the assistance required expenditure of extraordinary costs.

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Sec. 7.4. Access to Premises by State Gaming Agency; Notification; Inspections. Notwithstanding that the La Posta Tribe and its Tribal Gaming Agency have the primary responsibility to administer and enforce the regulatory requirements of this Compact, the State Gaming Agency shall have the right to inspect the La Posta Tribe's Gaming Facility with respect to Class III Gaming Activities only, and all Gaming Operation or Facility records relating thereto, subject to the following conditions:

Sec. 7.4.1. Inspection of public areas of a Gaming Facility may be made at any time without prior notice during normal Gaming Facility business hours.

Sec. 7.4.2. Inspection of areas of a Gaming Facility not normally accessible to the public may be made at any time during normal Gaming Facility business hours, immediately after the State Gaming Agency's authorized inspector notifies the Tribal Gaming Agency of his or her presence on the premises, presents proper identification, and requests access to the non-public areas of the Gaming Facility. The Tribal Gaming Agency, in its sole discretion, may require a member of the Tribal Gaming Agency to accompany the State Gaming Agency inspector at all times that the State Gaming Agency inspector is in a non-public area of the Gaming Facility. If the Tribal Gaming Agency imposes such a requirement, it shall require such member to be available at all times for those purposes and shall ensure that the member has the ability to gain immediate access to all non-public

areas of the Gaming Facility. Nothing in this Compact shall be construed to limit the State Gaming Agency to one inspector during inspections.

Sec. 7.4.3. (a) Inspection and copying of Gaming Operation papers, books, and records may occur at any time, immediately after notice to the Tribal Gaming Agency, during the normal hours of the Gaming Facility's business office, provided that the inspection and copying of those papers, books or records shall not unreasonably interfere with the normal functioning of the Gaming Operation or Facility. Notwithstanding any other provision of California law, all information and records that the State Gaming Agency obtains, inspects, or copies pursuant to this Gaming Compact shall be, and remain, the property solely of the La Posta Tribe; provided that such records and copies may be retained by the State Gaming Agency as reasonably necessary for completion of any investigation of the La Posta Tribe's compliance with this Compact.

(b)(i) The State Gaming Agency will exercise the utmost care in the preservation of the confidentiality of any and all non-public information and documents received from the La Posta Tribe, and will apply the highest standards of confidentiality expected under state law to preserve such non-public information and documents from disclosure. The La Posta Tribe may avail itself of any and all remedies under state law for improper disclosure of non-public information or documents. To the extent reasonably feasible, the State Gaming Agency will consult with representatives of the La Posta Tribe prior to disclosure of any non-public documents received from the La Posta Tribe, or any non-public documents compiled from such documents or from information received from the La Posta Tribe, including any disclosure compelled by judicial process, and, in the case of any disclosure compelled by judicial process, will endeavor to give the La Posta Tribe immediate notice of the order compelling disclosure and a reasonable opportunity to interpose an objection thereto with the court.

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(ii) The Tribal Gaming Agency and the State Gaming Agency shall confer and agree upon protocols for release to other law enforcement agencies of information obtained during the course of background investigations.

(c) Records received by the State Gaming Agency from the La Posta Tribe in compliance with this Compact, or information compiled by the State Gaming Agency from those records, shall be exempt from disclosure under the California Public Records Act.

Sec. 7.4.4. Notwithstanding any other provision of this Compact, the State Gaming Agency shall not be denied access to papers, books, records, equipment, or places where such access is reasonably necessary to ensure compliance with this Compact.

Sec. 7.4.5. (a) Subject to the provisions of subdivision (b), the Tribal Gaming Agency shall not permit any Gaming Device to be transported to or from the La Posta Tribe's land except in accordance with procedures established by

agreement between the State Gaming Agency and the Tribal Gaming Agency and upon at least ten (10) days' notice to the Sheriffs Department for the county in which the land is located.

(b) Transportation of a Gaming Device from the Gaming Facility within California is permissible only if: (i) The final destination of the device is a gaming facility of any tribe in California that has a compact with the State; (ii) The final destination of the device is any other state in which possession of the device or devices is made lawful by state law or by tribal-state compact; (iii) The final destination of the device is another country, or any state or province of another country, wherein possession of the device is lawful; or (iv) The final destination is a location within California for testing, repair, maintenance, or storage by a person or entity that has been licensed by the Tribal Gaming Agency and has been found suitable for licensure by the State Gaming Agency.

(c) Any Gaming Device transported off the La Posta Tribe's land in violation of this Section 7.4.5 or in violation of any permit issued pursuant thereto is subject to summary seizure by California peace officers.

Section 8.0. RULES AND REGULATIONS FOR THE OPERATION AND MANAGEMENT OF THE TRIBAL GAMING OPERATION.

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Sec. 8.1. Adoption of Regulations for Operation and Management; Minimum Standards. In order to meet the goals set forth in this Gaming Compact and required of the La Posta Tribe by law, the Tribal Gaming Agency shall be vested with the authority to promulgate, and shall promulgate, at a minimum, rules and regulations or specifications governing the following subjects, and to ensure their enforcement in an effective manner:

Sec. 8.1.1. The enforcement of all relevant laws and rules with respect to the Gaming Operation and Facility, and the power to conduct investigations and hearings with respect thereto, and to any other subject within its jurisdiction.

Sec. 8.1.2. Ensuring the physical safety of Gaming Operation patrons and employees, and any other person while in the Gaming Facility. Nothing herein shall be construed to make applicable to the Tribe any state laws, regulations, or standards governing the use of tobacco. However, the Tribe agrees to provide a non-smoking area in the Gaming Facility and to utilize a ventilation system throughout the Gaming Facility that exhausts tobacco smoke to the extent reasonably feasible under existing technology.

Sec. 8.1.3. The physical safeguarding of assets transported to, within, and from the Gaming Facility.

Sec. 8.1.4. The prevention of illegal activity from occurring within the Gaming Facility or with regard to the Gaming Operation, including, but not limited to, the maintenance of employee procedures and a surveillance system as provided below.

Sec. 8.1.5. The recording of any and all occurrences within the Gaming Facility that deviate from normal operating policies and procedures (hereafter "incidents"). The Tribal Gaming Agency shall transmit copies of incident reports to the State Gaming Agency upon request. The procedure for recording incidents shall: (1) specify that security personnel record all incidents, regardless of an employee's determination that the incident may be immaterial (all incidents shall be identified in writing); (2) require the assignment of a sequential number to each report; (3) provide for permanent reporting in indelible ink in a bound notebook from which pages cannot be removed and in which entries are made on each side of each page; and (4) require that each report include, at a minimum, all of the following:

(a) The record number.

(b) The date.

(c) The time.

(d) The location of the incident.

(e) A detailed description of the incident.

(f) The persons involved in the incident.

(g) The security department employee assigned to the incident.

Sec. 8.1.6. The establishment of employee procedures designed to permit detection of any irregularities, theft, cheating, fraud, or the like, consistent with industry practice.

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Sec. 8.1.7. Maintenance of a list of persons barred from the Gaming Facility who, because of their past behavior, criminal history, or association with persons or organizations, pose a threat to the integrity of the Gaming Activities of the La Posta Tribe or to the integrity of regulated gaming within the State. The Tribal Gaming Agency shall transmit a copy of the list to the State Gaming Agency quarterly.

Sec. 8.1.8. The conduct of an audit of the Gaming Operation, not less than annually, by an independent certified public accountant, in accordance with the auditing and accounting standards for audits of casinos of the American Institute of Certified Public Accountants. The Tribal Gaming Agency shall transmit a copy of the audit to the State Gaming Agency annually.

Sec. 8.1.9. Submission to, and prior approval, from the Tribal Gaming Agency of the rules and regulations of each Class III game to be operated by the La Posta Tribe, and of any changes in those rules and regulations. No Class III game may be played that has not received Tribal Gaming Agency approval.

Sec. 8.1.10. Addressing all of the following:

(a) Maintenance of a copy of the rules, regulations, and procedures for each game as played, including, but not limited to, the method of play and the odds and method of determining amounts paid to winners;

(b) Specifications and standards to ensure that information regarding the method of play, odds, and payoff determinations shall be visibly displayed or available to patrons in written form in the Gaming Facility;

(c) Specifications ensuring that betting limits applicable to any gaming station shall be displayed at that gaming station;

(d) Procedures ensuring that in the event of a patron dispute over the application of any gaming rule or regulation, the matter shall be handled in accordance with industry practice and principles of fairness, pursuant to the Tribal Gaming Ordinance and any rules and regulations promulgated by the Tribal Gaming Agency. A copy of the patron dispute procedures shall be made available to any patron upon request. The Tribal Gaming Agency shall transmit a copy of the procedures and any amendment thereto to the State Gaming Agency within twenty (20) days of adoption or amendment.

Sec. 8.1.11. Maintenance of a closed-circuit television surveillance system consistent with industry standards for gaming facilities of the type and scale operated by the La Posta Tribe, which system shall be approved by, and may not be modified without the approval of, the Tribal Gaming Agency. The Tribal Gaming Agency shall have current copies of the Gaming Facility floor plan and closed-circuit television system at all times, and any modifications thereof first shall be approved by the Tribal Gaming Agency.

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Sec. 8.1.12. Maintenance of a cashier's cage in accordance with industry standards for such facilities.

Sec. 8.1.13. Specification of minimum staff and supervisory requirements for each Gaming Activity to be conducted.

Sec. 8.1.14. Technical standards and specifications for the operation of Gaming Devices and other games authorized herein to be conducted by the La Posta Tribe, which technical specifications may be no less stringent than those approved by a recognized gaming testing laboratory in the gaming industry.

Sec. 8.2. State Civil and Criminal Jurisdiction. Nothing in this Gaming Compact affects the civil or criminal jurisdiction of the State under Public Law 280 (18 U.S.C. Sec. 1162; 28 U.S.C. Sec. 1360) or IGRA, to the extent applicable. In addition, criminal jurisdiction to enforce state gambling laws is transferred to the State pursuant to 18 U.S.C. § 1166(d), provided that no Gaming Activity conducted by the La Posta Tribe pursuant to this Gaming Compact may be deemed to be a civil or criminal violation of any law of the State.

Sec. 8.3. (a) The La Posta Tribe shall take all reasonable steps to ensure that members of the Tribal Gaming Agency are free from corruption, undue influence, compromise, and conflicting interests in the conduct of their duties under this Compact; shall adopt a conflict-of-interest code to that end; and shall ensure (i) the prompt removal of any member of the Tribal Gaming Agency who is found to

have acted in a corrupt or compromised manner and (ii) the enforcement of the La Posta Tribe's conflict of interest code.

(b) The La Posta Tribe shall conduct a background investigation on a prospective member of the Tribal Gaming Agency, who shall meet the background requirements of a management contractor under IGRA; provided that, if such official is elected through a tribal election process, that official may not participate in any Tribal Gaming Agency matters under this Compact unless a background investigation has been concluded and the official has been found to be suitable. If requested by the tribal government or the Tribal Gaming Agency, the State Gaming Agency may assist in the conduct of such a background investigation and may assist in the investigation of any possible corruption or compromise of a member of the agency.

Sec. 8.4. In order to foster statewide uniformity of regulation of Class III gaming operations throughout the state, rules, regulations, standards, specifications, and procedures of the Tribal Gaming Agency in respect to any matter encompassed by Sections 6.0, 7.0, or 8.0 shall be consistent with regulations adopted by the State Gaming Agency in accordance with Section 8.4.1. Chapter 3.5 (commencing with section 11340) of Part 1 of Division 3 of Title 2 of the California Government Code does not apply to regulations adopted by the State Gaming Agency in respect to tribal gaming operations under this Section.

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Sec. 8.4.1. (a) Except as provided in subdivision (d), no State Gaming Agency regulation shall be effective with respect to the La Posta Tribe's Gaming Operation unless it has first been approved by the Association and the La Posta Tribe has had an opportunity to review and comment on the proposed regulation.

(b) Every State Gaming Agency regulation that is intended to apply to the La Posta Tribe (other than a regulation proposed or previously approved by the Association) shall be submitted to the Association for consideration prior to submission of the regulation to the La Posta Tribe for comment as provided in subdivision (c). A regulation that is disapproved by the Association shall not be submitted to the La Posta Tribe for comment unless it is re-adopted by the State Gaming Agency as a proposed regulation, in its original or amended form, with a detailed, written response to the Association's objections.

(c) Except as provided in subdivision (d), no regulation of the State Gaming Agency shall be adopted as a final regulation with respect to the La Posta Tribe's Gaming Operation before the expiration of thirty (30) days after submission of the proposed regulation to the La Posta Tribe for comment as a proposed regulation, and after consideration of the La Posta Tribe's comments, if any.

(d) In exigent circumstances (e.g., imminent threat to public health and safety), the State Gaming Agency may adopt a regulation that becomes effective immediately. Any such regulation shall be accompanied by a detailed, written description of the exigent circumstances, and shall be submitted immediately to the

Association for consideration. If the regulation is disapproved by the Association, it shall cease to be effective, but may be re-adopted by the State Gaming Agency as a proposed regulation, in its original or amended form, with a detailed, written response to the Association's objections, and thereafter submitted to the La Posta Tribe for comment as provided in subdivision (c).

(e) The La Posta Tribe may object to a State Gaming Agency regulation on the ground that it is unnecessary, unduly burdensome, or unfairly discriminatory, or that it conflicts with a published final regulation of the NIGC, and may seek repeal or amendment of the regulation through the dispute resolution process of Section 9.0; provided that, if the regulation of the State Gaming Agency conflicts with a final published regulation of the NIGC, the NIGC regulation shall govern pending conclusion of the dispute resolution process.

Sec. 9.0. DISPUTE RESOLUTION PROVISIONS.

Sec. 9.1. Voluntary Resolution; Reference to Other Means of Resolution. In recognition of the government-to-government relationship of the La Posta Tribe and the State, the parties shall make their best efforts to resolve disputes that occur under this Gaming Compact by good faith negotiations whenever possible. Therefore, without prejudice to the right of either party to seek injunctive relief against the other when circumstances are deemed to require immediate relief, the parties hereby establish a threshold requirement that disputes between the La Posta Tribe and the State first be subjected to a process of meeting and conferring in good faith in order to foster a spirit of cooperation and efficiency in the administration and monitoring of performance and compliance by each other with the terms, provisions, and conditions of this Gaming Compact, as follows:

Cited in Rincon Band v. Schwarzenegger, No. 08-55914, archived on April 23, 2010

(a) Either party shall give the other, as soon as possible after the event giving rise to the concern, a written notice setting forth, with specificity, the issues to be resolved.

(b) The parties shall meet and confer in a good faith attempt to resolve the dispute through negotiation not later than ten (10) days after receipt of the notice, unless both parties agree in writing to an extension of time.

(c) If the dispute is not resolved to the satisfaction of the parties within thirty (30) calendar days after the first meeting, then either party may seek to have the dispute resolved by an arbitrator in accordance with this section, but neither party shall be required to agree to submit to arbitration.

(d) Disagreements that are not otherwise resolved by arbitration or other mutually acceptable means as provided in Section 9.3 may be resolved in the United States District Court where the La Posta Tribe's Gaming Facility is located, or is to be located, and the Ninth Circuit Court of Appeals (or, if those federal courts lack jurisdiction, in any state court of competent jurisdiction and its related courts of appeal). The disputes to be submitted to court action include, but are not

limited to, claims of breach or violation of this Compact, or failure to negotiate in good faith as required by the terms of this Compact. In no event may the La Posta Tribe be precluded from pursuing any arbitration or judicial remedy against the State on the grounds that the La Posta Tribe has failed to exhaust its state administrative remedies. The parties agree that, except in the case of imminent threat to the public health or safety, reasonable efforts will be made to explore alternative dispute resolution avenues prior to resort to judicial process.

Sec. 9.2. Arbitration Rules. Arbitration shall be conducted in accordance with the policies and procedures of the Commercial Arbitration Rules of the American Arbitration Association, and shall be held on the La Posta Tribe's land or, if unreasonably inconvenient under the circumstances, at such other location as the parties may agree. Each side shall bear its own costs, attorneys' fees, and one-half the costs and expenses of the American Arbitration Association and the arbitrator, unless the arbitrator rules otherwise. Only one neutral arbitrator may be named. The provisions of Section 1283.05 of the California Code of Civil Procedure shall apply; provided that no discovery authorized by that section may be conducted without leave of the arbitrator. The decision of the arbitrator shall be in writing, give reasons for the decision, and shall be binding. Judgment on the award may be entered in any federal or state court having jurisdiction thereof.

Cited in Rincon Band v. Schwarzenegger, No. 08-55914, archived on April 23, 2010

Sec. 9.3. No Waiver or Preclusion of Other Means of Dispute Resolution. This Section 9.0 may not be construed to waive, limit, or restrict any remedy that is otherwise available to either party, nor may this Section be construed to preclude, limit, or restrict the ability of the parties to pursue, by mutual agreement, any other method of dispute resolution, including, but not limited to, mediation or utilization of a technical advisor to the Tribal and State Gaming Agencies; provided that neither party is under any obligation to agree to such alternative method of dispute resolution.

Sec. 9.4. Limited Waiver of Sovereign Immunity.

(a) In the event that a dispute is to be resolved in federal court or a state court of competent jurisdiction as provided in this Section 9.0, the State and the La Posta Tribe expressly consent to be sued therein and waive any immunity therefrom that they may have provided that:

(1) The dispute is limited solely to issues arising under this Gaming Compact;

(2) Neither side makes any claim for monetary damages (that is, only injunctive, specific performance, including enforcement of a provision of this Compact requiring payment of money to one or another of the parties, or declaratory relief is sought); and

(3) No person or entity other than the La Posta Tribe and the State is party to the action, unless failure to join a third party would deprive the court of jurisdiction; provided that nothing herein shall be construed to constitute a waiver

of the sovereign immunity of either the La Posta Tribe or the State in respect to any such third party.

(b) In the event of intervention by any additional party into any such action without the consent of the La Posta Tribe and the State, the waivers of either the La Posta Tribe or the State provided for herein may be revoked, unless joinder is required to preserve the court's jurisdiction; provided that nothing herein shall be construed to constitute a waiver of the sovereign immunity of either the La Posta Tribe or the State in respect to any such third party.

(c) The waivers and consents provided for under this Section 9.0 shall extend to civil actions authorized by this Compact, including, but not limited to, actions to compel arbitration, any arbitration proceeding herein, any action to confirm or enforce any judgment or arbitration award as provided herein, and any appellate proceedings emanating from a matter in which an immunity waiver has been granted. Except as stated herein or elsewhere in this Compact, no other waivers or consents to be sued, either express or implied, are granted by either party.

Section 10.0. PUBLIC AND WORKPLACE HEALTH, SAFETY, AND LIABILITY.

Cited in Rincon Band v. Schwarzenegger No. 08-55914 archived on April 23, 2010

Sec. 10.1. The La Posta Tribe will not conduct Class III gaming in a manner that endangers the public health, safety, or welfare, provided that nothing herein shall be construed to make applicable to the Tribe state laws or regulations governing the use of tobacco. However, the Tribe agrees to provide a non-smoking area in the Gaming Facility and to utilize a ventilation system throughout the Gaming Facility that exhausts tobacco smoke to the extent reasonably feasible under existing technology.

Sec. 10.2. Compliance. For the purposes of this Gaming Compact, the La Posta Tribe shall:

(a) Adopt and comply with standards no less stringent than state public health standards for food and beverage handling. The Gaming Operation will allow inspection of food and beverage services by state or county health inspectors, during normal hours of operation, to assess compliance with these standards, unless inspections are routinely made by an agency of the United States government to ensure compliance with equivalent standards of the United States Public Health Service. Nothing herein shall be construed as submission of the La Posta Tribe to the jurisdiction of those state or county health inspectors, but any alleged violations of the standards shall be treated as alleged violations of this Compact.

(b) Adopt and comply with standards no less stringent than federal water quality and safe drinking water standards applicable in California; the Gaming Operation will allow for inspection and testing of water quality by state or county

health inspectors, as applicable, during normal hours of operation, to assess compliance with these standards, unless inspections and testing are made by an agency of the United States pursuant to, or by the La Posta Tribe under express authorization of, federal law, to ensure compliance with federal water quality and safe drinking water standards. Nothing herein shall be construed as submission of the La Posta Tribe to the jurisdiction of those state or county health inspectors, but any alleged violations of the standards shall be treated as alleged violations of this Compact.

(c) Comply with the building and safety standards set forth in Section 6.4.

(d)(i) Acquire, prior to the commencement of Gaming Activities under this Compact, and at all times thereafter maintain in continuous force, a policy or policies of insurance furnishing not less than five million dollars ($5,000,000) in public liability coverage for the satisfaction of tort claims by members of the public, underwritten by an insurer or insurers admitted by the State of California, and in connection therewith secure from each such insurer **(A)** the insurer's written acknowledgment that the La Posta Tribe has waived its immunity to suit under the terms of this Section 10.2(d); and **(B)** the insurer's written waiver of any and all rights that the insurer may have to raise as a defense the sovereign immunity of the La Posta Tribe from suit, provided, however, that the waiver by the insurer shall not be deemed to waive or otherwise limit the La Posta Tribe's sovereign immunity outside or beyond the coverage or aggregated limits of insurance in force.

Cited in Rincon Band v. Schwarzenegger No. 08-55914 archived on April 23, 2010

(ii) Adopt, at least thirty (30) days prior to the commencement of Gaming Activities under this Compact, and at all times thereafter maintain in continuous force, an ordinance that **(A)** affirms that all claims for damages resulting from intentional or negligent injury to persons or property at the Gaming Facility or in connection with the La Posta Tribe's Gaming Operation will be promptly and fairly entertained, and that legitimate claims will be paid; and **(B)** expressly waives the La Posta Tribe's immunity from suit upon claims identified in clause (A) immediately above, and contains the Tribe's consent to the jurisdiction of any federal or state court having jurisdiction over the subject matter of any such suit, to the extent of the limits of coverage provided by the policy or policies of public liability insurance in force, provided that the insurance in force shall not be less than five million dollars ($5,000,000).

(iii) At any time in which the La Posta Tribe fails to comply with paragraphs (i) and (ii) of this Section 10.2(d), expressly waive the Tribe's immunity to suit for damages resulting from intentional or negligent injury to persons or property at the Gaming Facility or in connection with the La Posta Tribe's Gaming Operation or Gaming Facility, but only up to the limits of the insurance policy required under paragraph (i) of this Section 10.2(d); and with

respect to which suits, the Tribe expressly consents to the jurisdiction of any state or federal court having jurisdiction over the subject matter of the suit.

(e) Adopt and comply with standards no less stringent than federal workplace and occupational health and safety standards; the Gaming Operation will allow for inspection of Gaming Facility workplaces by state inspectors, during normal hours of operation, to assess compliance with these standards, unless inspections are regularly made by an agency of the United States government to ensure compliance with federal workplace and occupational health and safety standards. Nothing herein shall be construed as submission of the La Posta Tribe to the jurisdiction of those state inspectors, but any alleged violations of the standards shall be treated as alleged violations of this Compact.

(f) Comply with tribal codes and other applicable federal law regarding public health and safety.

(g) Adopt and comply with standards no less stringent than federal laws and state laws forbidding employers generally from discriminating in the employment of persons to work for the Gaming Operation or in the Gaming Facility on the basis of race, color, religion, national origin, gender, sexual orientation, age, or disability; provided that nothing herein shall preclude the La Posta Tribe from giving a preference in employment to Indians, pursuant to a duly adopted tribal ordinance.

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(h) Adopt and comply with standards that are no less stringent than state laws prohibiting a gaming enterprise from cashing any check drawn against a federal, state, county, or city fund, including but not limited to, Social Security, unemployment insurance, disability payments, or public assistance payments.

(i) Adopt and comply with standards that are no less stringent than state laws, if any, prohibiting a gaming enterprise from providing, allowing, contracting to provide, or arranging to provide alcoholic beverages, or food or lodging for no charge or at reduced prices at a gambling establishment or lodging facility as an incentive or enticement.

(j) Adopt and comply with standards that are no less stringent than state laws, if any, prohibiting extensions of credit.

(k) Comply with provisions of the Bank Secrecy Act, P.L. 91-508, October 26, 1970, 31 U.S.C. Sec. 5311-53 14, as amended, and all reporting requirements of the Internal Revenue Service, insofar as such provisions and reporting requirements are applicable to casinos.

Sec. 10.2.1. The La Posta Tribe shall adopt and, not later than 30 days after the effective date of this Compact, shall transmit to the Coordinator or such other State entity as may be designated by the Governor, the standards described in subdivisions (a)-(c) and (e)-(k) of Section 10.2 to which the Gaming Operation is held, as well as the insurance policy or policies and ordinance described in subdivision (d) of Section 10.2. In the absence of a promulgated tribal standard in

respect to a matter identified in subdivisions (a)-(c) and (e)-(k) of Section 10.2, or the express adoption of an applicable federal statute or regulation in lieu of a tribal standard in respect to any such matter, the applicable state statute or regulation shall be deemed to have been adopted by the La Posta Tribe as the applicable standard.

Sec. 10.3 Participation in state statutory programs related to employment.

(a) In lieu of permitting the Gaming Operation to participate in the state statutory workers' compensation system, the La Posta Tribe may create and maintain a system that provides redress for employee work-related injuries through requiring insurance or self-insurance, which system must include a scope of coverage, availability of an independent medical examination, right to notice, hearings before an independent tribunal, a means of enforcement against the employer, and benefits comparable to those mandated for comparable employees under state law. Not later than the effective date of this Compact, or sixty (60) days prior to the commencement of Gaming Activities under this Compact, the La Posta Tribe will advise the State of its election to participate in the statutory workers' compensation system or, alternatively, will transmit to the Coordinator or such other State entity as may be designated by the Governor, all relevant ordinances that have been adopted and all other documents establishing the system and demonstrating that the system is fully operational and compliant with the comparability standard set forth above. The parties agree that independent contractors doing business with the La Posta Tribe must comply with all state workers' compensation laws and obligations.

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(b) The La Posta Tribe agrees that its Gaming Operation will participate in the State's program for providing unemployment compensation benefits and unemployment compensation disability benefits with respect to employees employed at the Gaming Facility, including compliance with the provisions of the California Unemployment Insurance Code, and the La Posta Tribe consents to the jurisdiction of the state agencies charged with the enforcement of that Code and of the courts of the State of California for purposes of enforcement.

(c) As a matter of comity, with respect to persons employed at the Gaming Facility, other than members of the La Posta Tribe, the Tribal Gaming Operation shall withhold all taxes due to the State as provided in the California Unemployment Insurance Code and the Revenue and Taxation Code, and shall forward such amounts as provided in said Codes to the State.

Sec. 10.4. Emergency Service Accessibility. The La Posta Tribe shall make reasonable provisions for adequate emergency fire, medical, and related relief and disaster services for patrons and employees of the Gaming Facility.

Sec. 10.5. Alcoholic Beverage Service. Standards for alcohol service shall be subject to applicable law.

Sec. 10.6. Possession of firearms shall be prohibited at all times in the Gaming Facility except for state, local, or tribal security or law enforcement personnel authorized by tribal law and by federal or state law to possess fire arms at the Facility

Sec. 10.7. Labor Relations. Notwithstanding any other provision of this Compact, this Compact shall be effective only after the La Posta Tribe has provided written notice to the Coordinator, or such other entity as may be designated by the Governor, that it has adopted an ordinance identical to the Model Tribal Labor Relations Ordinance attached hereto as Appendix B.

Sec. 10.8. Off-Reservation Environmental Impacts.

Sec. 10.8.1. On or before the effective date of this Compact, or not less than 90 days prior to the commencement of a Project, as defined herein, the La Posta Tribe shall adopt an ordinance providing for the preparation, circulation, and consideration by the La Posta Tribe of environmental impact reports concerning potential off-Reservation environmental impacts of any and all Projects to be commenced on or after the effective date of this Compact. In fashioning the environmental protection ordinance, the La Posta Tribe will make a good faith effort to incorporate the policies and purposes of the National Environmental Policy Act and the California Environmental Quality Act consistent with the La Posta Tribe's governmental interests.

Cited in Rincon Band v. Schwarzenegger, No. 08-55914, archived on April 23, 2010

Sec. 10.8.1.1. The La Posta Tribe shall consult with the County of San Diego and any other local government entity that will either provide services to, or be adversely impacted by, the construction or operation of the Project. The purpose of these consultations shall be to develop site- or project-specific terms and conditions and to conclude written agreements with these local government entities. All such agreements shall be concluded prior to the commencement of the Project, and shall provide for the identification and implementation of feasible mitigation measures and feasible project alternatives, concerning significant environmental, economic and social effects stemming from the Gaming Facility, including, but not limited to, each of the following areas: the sufficiency, sustainability, and quality of groundwater supplies; water supply, quality, and resources; waste water treatment and storm water requirements; air quality; solid waste management; hazardous waste management; fire and protective services; public health and safety; impacts during and of construction; increased traffic; noise; economic and social impacts; and protection of cultural, historical and biological resources. If any local government entity and the La Posta Tribe are unable to reach an agreement as to the terms of these written agreements, they will follow the dispute resolution provisions set forth in Appendix C. The La Posta Tribe will transmit a copy of any written agreements reached pursuant to this Section to the Coordinator or such other State entity as may be designated by the Governor, prior to the commencement of the Project.

Sec. 10.8.2. (a) Prior to commencement of a Project, the La Posta Tribe will:

(1) Inform the public of the planned Project;

(2) Take appropriate actions to determine whether the project will have any significant adverse impacts on the off-Reservation environment;

(3) For the purpose of receiving and responding to comments, submit all environmental impact reports concerning the proposed Project to the State Clearinghouse in the Office of Planning and Research and the county board of supervisors, for distribution to the public.

(4) Consult with the San Diego County Board of Supervisors, and, if the Gaming Facility is within a city, with the city council, and if requested by the board or council, as the case may be, meet with them to discuss mitigation of significant adverse off-Reservation environmental impacts;

(5) Meet with and provide an opportunity for comment by those members of the public residing off-Reservation within the vicinity of the Gaming Facility such as might be adversely affected by the proposed Project.

(b) During the conduct of a Project, the La Posta Tribe shall:

(1) Keep the board or council, as the case may be, and potentially affected members of the public apprised of the project's progress; and

(2) Make good faith efforts to mitigate any and all such significant adverse off-Reservation environmental impacts.

(c) As used in Sections 10.8.1, 10.8.1d, and this Section 10.8.2, the term "Project" means any expansion or any significant renovation or modification of an existing Gaming Facility, or any significant excavation, construction, or development associated with the La Posta Tribe's Gaming Facility or proposed Gaming Facility and the term "environmental impact reports'' means any environmental assessment, environmental impact report, or environmental impact statement, as the case may be.

Sec. 10.8.3. (a) The La Posta Tribe and the State shall, from time to time, meet to review the adequacy of this Section 10.8, the La Posta Tribe's ordinance adopted pursuant thereto, and the La Posta Tribe's compliance with its obligations under Section 10.8, to ensure that significant adverse impacts to the off-Reservation environment resulting from projects undertaken by the La Posta Tribe may be avoided or mitigated.

(b) At any time after January 1, 2007, but not later than March 1, 2007, the State may request negotiations for an amendment to this Section 10.8 on the ground that, as it presently reads, the Section has proven to be inadequate to protect the off-Reservation environment from significant adverse impacts resulting from Projects undertaken by the La Posta Tribe or to ensure adequate mitigation by the La Posta Tribe of significant adverse off-Reservation environmental impacts and, upon such a request, the La Posta Tribe will enter into such negotiations in good faith.

Cited in Rincon Band v. Schwarzenegger, No. 08-55914 archived on April 23, 2010

(c) On or after January 1, 2008, the La Posta Tribe may bring an action in federal court under 25 U.S.C. Sec. 2710(d)(7)(A)(i) on the ground that the State has failed to negotiate in good faith, provided that the La Posta Tribe's good faith in the negotiations shall also be in issue. In any such action, the court may consider whether the State's invocation of its rights under subdivision (b) of this Section 10.8.3 was in good faith. If the State has requested negotiations pursuant to subdivision (b) but, as of January 1, 2009, there is neither an agreement nor an order against the State under 25 U.S.C. Sec. 2710(d)(7)(B)(iii), then, on that date, the La Posta Tribe shall immediately cease construction and other activities on all projects then in progress that have the potential to cause adverse off-Reservation impacts, unless and until an agreement to amend this Section 10.8 has been concluded between the La Posta Tribe and the State.

Section 11.0. EFFECTIVE DATE AND TERM OF COMPACT.

Sec. 11.1. Effective Date. This Gaming Compact shall not be effective unless until all of the following have occurred:

(a) The Compact is ratified by statute in accordance with state law; and

(b) Notice of approval or constructive approval is published in the Federal Register as provided in 25 U.S.C. Sec. 2710(d)(3)(B).

Sec. 11.2. Term of Compact; Termination.

Sec. 11.2.1. Effective. (a) Once effective this Compact shall be in full force and effect for state law purposes until December 31, 2024. No sooner than eighteen (18) months prior to the aforementioned termination date, either party may request the other party to enter into negotiations to extend this Compact or to enter into a new compact. If the parties have not agreed to extend the date of this Compact nor entered into a new compact by the termination date, this Compact will automatically be extended to June 30, 2026, unless the parties have agreed to an earlier termination date.

(b) Either party may bring an action in federal court, after providing a sixty (60) day written notice of an opportunity to cure any alleged breach of this Compact, for a declaration that the other party has materially breached this Compact. Upon issuance of such a declaration, the complaining party may unilaterally terminate this Compact upon service of written notice on the other party. In the event a federal court determines that it lacks jurisdiction over such an action, the action may be brought in the superior court for the county in which the La Posta Tribe's Gaming Facility is located. The parties expressly waive their immunity to suit for purposes of an action under this subdivision, subject to the qualifications stated in Section 9.4(a).

Cited in Rincon Band v. Schwarzenegger, No. 08-55914, archived on April 23, 2010

Sec. 12.0. AMENDMENTS; RENEGOTIATIONS.

Sec. 12.1. The terms and conditions of this Gaming Compact may be amended at any time by the mutual and written agreement of both parties.

Sec. 12.2. (a) This Gaming Compact is subject to renegotiation in the event the La Posta Tribe wishes to engage in forms of Class III gaming other than those games authorized herein and requests renegotiation for that purpose, provided that no such renegotiation may be sought for twelve (12) months following the effective date of this Gaming Compact.

(b) Nothing herein shall be construed to constitute a waiver of any rights under IGRA in the event of an expansion of the scope of permissible gaming resulting from a change in state law.

Sec. 12.3. Process and Negotiation Standards. All requests to amend or renegotiate this Gaming Compact shall be in writing, addressed to the Tribal Chairperson or the Governor, as the case may be, and shall include the activities or circumstances to be negotiated, together with a statement of the basis supporting the request. If the request meets the requirements of this Section, the parties shall confer promptly and determine a schedule for commencing negotiations within thirty (30) days of the request. Unless expressly provided otherwise herein, all matters involving negotiations or other amendatory processes under Section 4.3.3(b) and this Section 12.0 shall be governed, controlled, and conducted in conformity with the provisions and requirements of IGRA, including those provisions regarding the obligation of the State to negotiate in good faith and the enforcement of that obligation in federal court. The Chairperson of the La Posta Tribe and the Governor of the State are hereby authorized to designate the person or agency responsible for conducting the negotiations, and shall execute any documents necessary to do so.

Cited in Rincon Band v. Schwarzenegger No. 08-55914 archived on April 23, 2010

Sec. 12.4. In the event the exclusive right of Indian tribes to operate Gaming Devices in California is abrogated by the enactment, amendment, or repeal of a state statute or constitutional provision, or the conclusive and dispositive judicial construction of a statute or the state Constitution by a California appellate court after the effective date of this Compact, that Gaming Devices may lawfully be operated by another person, organization, or entity (other than an Indian tribe pursuant to a compact) within California, the La Posta Tribe shall have the right to: (i) termination of this Compact, in which case the La Posta Tribe will lose the right to operate Gaming Devices and other Class III gaming, or (ii) continuation under the Compact with an entitlement to a reduction of the rates specified in Section 4.3.1 following conclusion of negotiations, to provide for (a) compensation to the State for actual and reasonable costs of regulation, as determined by the state Department of Finance; (b) reasonable payments to local governments impacted by tribal government gaming; (c) grants for programs designed to address gambling

addiction; and (d) such assessments as may be permissible at such time under federal law.

Sec. 12.5. If requested to do so by either party between March 1 and 31, 2008, and every fourth March 1 through 31 thereafter, the parties will promptly commence negotiations in good faith concerning any matter encompassed by this Compact. Nothing in this Section shall prevent the parties from mutually agreeing to amend this Compact at other times.

Section 13.0 NOTICES.

Unless otherwise indicated by this Gaming Compact, all notices required or authorized to be served shall be served by first-class mail at the following addresses, or to such other address as either party may designate by written notice to the other:

Governor
State Capitol
Sacramento, California 95814

Tribal Chairperson
La Posta Band of Mission Indians
P.O. Box 1120
Boulevard, California 91905

Cited in Rincon Band v. Schwarzenegger, No. 08-55914, archived on April 23, 2010

Section 14.0. CHANGES IN IGRA.

This Gaming Compact is intended to meet the requirements of IGRA as it reads on the effective date of this Gaming Compact, and when reference is made to the Indian Gaming Regulatory Act or to an implementing regulation thereof, the referenced provision is deemed to have been incorporated into this Compact as if set out in full. Subsequent changes to IGRA that diminish the rights of the State or the La Posta Tribe may not be applied retroactively to alter the terms of this Gaming Compact, except to the extent that federal law validly mandates that retroactive application without the State's or the La Posta Tribe's respective consent.

Section 15.0. MISCELLANEOUS.

Sec. 15.1. Third Party Beneficiaries. Except to the extent expressly provided under this Gaming Compact, this Gaming Compact is not intended to, and shall not be construed to, create any right on the part of a third party to bring an action to enforce any of its terms.

Sec. 15.2. Complete agreement; revocation of prior requests to negotiate. This Gaming Compact, together with all addenda and approved amendments, sets forth the full and complete agreement of the parties and supersedes any prior agreements or understandings with respect to the subject matter hereof.

Sec. 15.3. Construction. Neither the presence in another tribal-state compact of language that is not included in this Compact, nor the absence in this Compact

of language that is present in another tribal-state compact shall be a factor in construing the terns of this Compact.

Sec. 15.4. Representations. By entering into this Compact, the La Posta Tribe expressly represents that, as of the date of the La Posta Tribe's execution of this Compact: (a) the undersigned has the authority to execute this Compact on behalf of the La Posta Tribe and will provide written proof of such authority and ratification of this Compact by the tribal governing body no later than thirty (30) days after the execution of this Compact; and (b) the La Posta Tribe is (i) recognized as eligible by the Secretary of the Interior for special programs and services provided by the United States to Indians because of their status as Indians, and (ii) recognized by the Secretary of the Interior as possessing powers of self-government. In entering into this Compact, the State expressly relies upon the foregoing representations by the La Posta Tribe, and the State's entry into the Compact is expressly made contingent upon the truth of those representations as of the date of the La Posta Tribe's execution of this Compact. Failure to provide written proof of authority to execute this Compact or failure to provide written proof of ratification by the La Posta Tribe's governing body will give the State the opportunity to declare this Compact null and void.

Sec. 15.5. Maintenance of Ordinances. The La Posta Tribe agrees to maintain any ordinances required by this Compact in full force and effect during the life of this Compact, unless the parties have amended or renegotiated the terms and conditions of this Compact pursuant to Section 12.0.

Cited in Rincon Band v. Schwarzenegger, No. 08-5591 archived on April 23, 2010

IN WITNESS WHEREOF, the undersigned sign this Compact on behalf of the State of California and the La Posta Band of Mission Indians.

STATE OF CALIFORNIA

By Gray Davis
Governor of the State of California

Executed this 9th day of September, 2003, at Sacramento, California

LA POSTA BAND OF MISSION INDIANS

By Gwendolyn Parada
Chairperson of the La Posta Band of Mission Indians

Executed this 9th day of September, 2003, at SACRAMENTO, California

Cited in Rincon Band v. Schwarzenegger, No. 08-55914 archived on April 23, 2010

ATTEST:

By Kevin Shelley
Secretary of State, State of California

Cited in Rincon Band v. Schwarzenegger,
No. 08-55914 archived on April 23, 2010

Addendum Regarding the Meaning of Terms

Generally accepted accounting principles and generally accepted auditing standards apply to casinos.

The term "Net Win", defined in Section 2.15 "as defined by American Institute of Certified Public Accountants", refers to the AICPA Audit and Accounting Guide, Audits of Casinos, Appendix F, definition of "gross gaming revenue (win)", which reads, "The net win from gaming activities, which is the difference between gaming wins and losses before deducting costs and expenses."

Cited in Rincon Band v. Schwarzenegger, No. 08-55914 archived on April 23, 2010

ADDENDUM "A" TO TRIBAL-STATE GAMING COMPACT BETWEEN THE LA POSTA BAND OF DIEGUENO MISSION INDIANS AND THE STATE OF CALIFORNIA

Modification No. 1

Section 10.8.1.1 is modified to read as follows:

Sec. 10.8.1.1. The La Posta Tribe shall consult with the County of San Diego. The purpose of these consultations shall be to develop site- or project-specific terms and conditions and to conclude one or more written agreements with the County of San Diego. All such agreements shall be concluded prior to the commencement of the Project, and shall provide for the identification and implementation of feasible mitigation measures and feasible project alternatives concerning problem and pathological gambling and significant environmental effects stemming from the Gaming Facility, including, but not limited to, each of the following areas: the sufficiency, sustainability, and quality of groundwater supplies; water supply, quality, and resources; waste water treatment and storm water requirements; air quality; solid waste management; hazardous waste management; fire and protective services; public health and safety; impacts during and of construction; increased traffic; noise; problem and pathological gambling; and protection of cultural, historical and biological resources. If the County of San Diego and the La Posta Tribe are unable to reach an agreement as to the terms of these written agreements, they will follow the dispute resolution provisions set forth in Appendix C. The La Posta Tribe will transmit a copy of any written agreements reached pursuant to this Section to the Coordinator or such other State entity as may be designated by the Governor, prior to the commencement of the Project.

Cited in Rincon Band v. Schwarzenegger, No. 08-55914, archived on April 23, 2010

Modification No. 2

Appendix C is modified to read as follows:

APPENDIX C
Resolution of Disputes Between
The La Posta Tribe and San Diego County

In an effort to foster good government-to-government relationships; and to assure that the La Posta Tribe is not unreasonably prevented from engaging in activities authorized under this Compact and benefiting therefrom, the State and the Tribe agree to the following:

Sec. 1. Pursuant to Section 10.8.1.1, the La Posta Tribe and San Diego County shall make their best efforts to resolve disputes that occur under this Compact by good faith negotiations whenever possible. Disputes between the La Posta Tribe and San Diego shall first be subjected to a process of meeting and conferring in good faith in order to foster a spirit of cooperation and efficiency in the administration of the terms, provisions, and conditions of this Compact or agreements entered into pursuant to this Compact, as follows:

Cited in Rincon Band v. Schwarzenegger, No. 08-55914 archived on April 23, 2010

(a) Either party shall give the other, as soon as possible after the event giving rise to the concern, a written notice setting forth, with specificity, the issues to be resolved.

(b) The parties shall meet and confer in a good faith attempt to resolve the dispute through negotiation not later than ten (10) days after receipt of the notice, unless both parties agree in writing to an extension of time.

(c) If the dispute is not resolved to the satisfaction of the parties within thirty (30) calendar days after the first meeting, then upon the request of either party in writing, the dispute shall be submitted to binding arbitration in accordance with this section. The disputes to be submitted to arbitration shall be limited to the inability to reach and conclude the agreements listed in Section 10.8.1.1 of this Compact and claims of breach or violation of such agreements. The arbitrator shall reach decisions, including providing the substance of outstanding and unresolved portions of such agreements to make possible their conclusion, and resolutions of any disputes pursuant to such agreements, within ninety (90) days of the disputes or issues being first submitted to him or her.

Sec. 2. Arbitration Rules. Any dispute between La Posta and San Diego County arising out of or relating to this Compact, or the breach thereof, shall be settled in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be held on the La Posta Tribe's land

or, if unreasonably inconvenient under the circumstances, at such other location mutually agreeable to the parties. Each side shall bear its own costs, attorneys' fees, and one-half the costs and expenses of the American Arbitration Association and the arbitrator, unless the arbitrator rules otherwise. The arbitration shall be administered by a single neutral arbitrator. The provisions of Section 1283.05 of the California Code of Civil Procedure shall apply; provided that no discovery authorized by that section may be conducted without leave of the arbitrator. The decision of the arbitrator shall be in writing, give reasons for the decision, and shall be binding.

Sec. 3. No Waiver or Preclusion of Other Means of Dispute Resolution. This Appendix C may not be construed to waive, limit, or restrict any remedy that is otherwise available to either party, nor may this Section be construed to preclude, limit, or restrict the ability of the parties to pursue, by mutual agreement, any other method of dispute resolution, including, but not limited to, mediation or utilization of a technical advisor to the Tribal and State Gaming Agencies; provided that neither party is under any obligation to agree to such alternative method of dispute resolution.

Sec. 4. Limited Express Waiver of Sovereign Immunity.

(a) Any party to an arbitration in which an award has been made pursuant to this Appendix C may petition any federal or state court of competent jurisdiction to confirm the award. San Diego County and the La Posta Tribe expressly consent to be sued in such courts for the purposes of confirmation of such an award. An award shall be confirmed, provided that:

Cited in Rincon Band v. Schwarzenegger, No. 08-55914 archived on April 23, 2010

(i) The award is limited to the purposes of arbitration stated in Section 1(c) of this Appendix C.

(ii) No monetary damages are awarded other than decisions requiring the payment of sums pursuant to obligations of the parties under the agreements referred to in Section 1(c) of this Appendix C. (Awards may be made by the arbitrator for only such payments, for injunctive relief, for creation or enforcement of provisions of such agreements, and for declaratory relief, all in respect only of agreements required under Section 10.8.1.1 of this Compact.)

(iii) No person or entity other than the La Posta Tribe and San Diego County is party to the action, unless failure to join a third party would deprive the court of jurisdiction; provided that nothing herein shall be construed to constitute a waiver of the sovereign immunity of either the La Posta Tribe or San Diego County in respect to any such third party.

If an award is confirmed, judgment shall be entered in conformity therewith. The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action; and may be enforced like any other judgment of the court in which it is entered.

(b) In the event of intervention by any additional party into any such action without the consent of the La Posta Tribe and San Diego County the waivers of either the La Posta Tribe or San Diego County provided for herein may be revoked, unless joinder is required to preserve the court's jurisdiction; provided that nothing herein shall be construed to constitute a waiver of the sovereign immunity of the La Posta Tribe or San Diego County in respect to any such third party.

(c) The express waivers and consents provided for under this Appendix C shall extend to civil actions authorized by this Compact, including, but not limited to, actions to compel arbitration, any arbitration proceeding herein, any action to confirm or enforce any judgment or arbitration award as provided herein, and any appellate proceedings emanating from a matter in which an immunity waiver has been granted. Except as stated herein or elsewhere in this Compact, no other waivers or consents to be sued, either express or implied, are granted by either party.

Cited in Rincon Band v. Schwarzenegger, No. 08-55914 archived on April 23, 2010

IN WITNESS WHEREOF, the undersigned sign this Addendum on behalf of the State of California and the La Posta Band of Diegueno Mission Indians.

STATE OF CALIFORNIA

By Gray Davis
Governor of the State of California

Executed this 11th day of September, 2003, at Sacramento, California

LA POSTA BAND OF DIEGUENO MISSION INDIANS

By Gwendolyn Parada
Chairwoman of the La Posta Band of Diegueno Mission Indians

Executed this 10th day of September, 2003, at SACRAMENTO, California

Cited in Rincon Band v. Schwarzenegger
No. 08-55914 archived on April 23, 2010

ATTEST:

By Kevin Shelley
Secretary of State, State of California

Cited in Rincon Band v. Schwarzenegger,
No. 08-55914 archived on April 23, 2010

LA POSTA
BAND OF MISSION INDIANS
Post Office Box 1120
Boulevard, California 91905
(619) 478-2113
Fax (619) 478-2125

RESOLUTION 030210a
OF THE
LA POSTA BAND OF MISSION INDIANS

Compact Ratification

WHEREAS, the La Posta Band of Mission Indians (the "Tribe") is a sovereign federally recognized Indian tribe; and

WHEREAS, the General Council of the La Posta Band of Mission Indians (the "General Council") is authorized by the Tribal Constitution to act and exercise Tribal Authority on behalf of the Tribe; and

WHEREAS, as authorized by the General Council, the Tribal Chairperson signed a Gaming Compact ("Compact") with the State of California on September 9, 2003; and

WHEREAS, this Compact represents an important step in the Tribe's efforts at economic development; and

WHEREAS, the General Council has determined that the ratification of this Compact by the General Council is a necessary condition for the legal effectiveness of this Compact; and

WHEREAS, the General Council has determined that the ratification of this Compact is in the best interests of the Tribe;

NOW, THEREFORE, BE IT RESOLVED, that the General Council hereby ratifies the Gaming Compact of September 9, 2003.

Cited in Rincon Band v. Schwarzenegger
No. 08-55914 archived on April 23, 2010

CERTIFICATION

The General Council of the La Posta Band of Mission Indians does hereby certify that the foregoing resolution was adopted by the General Council at a duly called meeting on the 2nd day of October, 2003, at which a quorum was present, by a vote of 12 for, 0 against, and 0 abstentions.

Gwendolyn Parada, Tribal Chairperson

October 2, 2002
Date

Appendices

A. Description of Class III Gaming Site
B. Model Tribal Labor Relations Ordinance
C. Dispute Resolution Procedure

Cited in Rincon Band v. Schwarzenegger,
No. 08-55914 archived on April 23, 2010

APPENDIX A

Cited in Rincon Band v. Schwarzenegger, No. 08-55914 archived on April 23, 2010

LA POSTA RESERVATION - ATTACHMENT NO. 1

TITLE DOCUMENTS:

(1) Trust Patent issued February 10, 1893, to La Posta Band for lands described as: The SE¼SW¼, S½SE¼ of Section 31, T. 16 S.; and N½NE¼, NE¼NW¼ of Section 6, T. 17 S., all in R. 6 E., SBBM, California, containing 238.88 acres.

(2) Trust Patent No. 163394 issued November 28, 1910, to La Posta Band for lands described as: The NW¼SE¼, S½SE¼ of Section 24; N½NE¼ of Section 25, T. 16 S., R. 5 E.; NE¼, N½SE¼, SE¼NW¼, SW¼SW¼ of Section 31; All of Sections 32 and 33, all in T. 16 S.; All of Sections 4 and 5; S½NE¼, S½NW¼ of Lot 1 of NW¼, NW¼NW¼ or W½ of Lot 2 of NW¼, Section 6, T. 17 S., all in R. 6 E., SBBM, Calif., containing 3,600.20 acres.

(3) Trust Patent No. 188531 issued April 5, 1911, to La Posta Band for lands described as: The NE¼SW¼ of Section 31, T. 16 S., R. 6 E., SBBM, Calif., containing 40.00 acres.

(4) Public Law 100-581 approved November 1, 1988, to La Posta Band for lands described as: Lots 5 through 8, SW¼NW¼, Section 6, T. 17 S., R. 6 E., SBBM, California, containing 84.20 acres.

Cited in Rincon Band v. Schwarzenegger, No. 08-55914 archived on April 23, 2010

TITLE STATEMENT
RESERVATIONS OR RANCHERIAS - CALIFORNIA

Original Name: LA POSTA RESERVATION
Present Name: LA POSTA RESERVATION

Established By: Executive Order.

Date Established: December 29, 1891.

Title Document (SEE ATTACHMENT NO. 1.)

Location Title Document: Bureau of Indian Affairs, Washington, D. C.

Trust Period: Until removed by Congress.

Description Original Reservation or Rancheria:

SE¼SW¼, S½SE¼ of Section 31, T. 16 S., and
N½NE¼, N½NW¼ of Section 6, T. 17 S., all in
R. 6 E., SBBM, Calif., containing 238.38 acres.

ADDITIONS TO RESERVATION OR RANCHERIA

Authority: (SEE ATTACHMENT NO. 2.)

Date:
Acreage:
Description:

Cited in Rincon Band v. Schwarzenegger, No. 08-55914 archived on April 23, 2010

SUBTRACTIONS FROM RESERVATION OR RACHERIA

Authority N

Date: O
Acreage: N
Description: E

SUMMARY

Original Acreage: 238.38
Additional Acreage: 3,217.61
Subtraction Acreage: None
Net Acreage: 3,556.19

Allotment - Need maps.

LA POSTA RESERVATION - ATTACHMENT NO. 2

ADDITIONS TO RESERVATION:

Authority: Departmental Order.
Date: February 28, 1895.
Acreage: 200

Description: S½SE¼, NW¼SE¼ of Section 24; N½NE¼ of Section 25, T. 16 S., R. 5 E., SBBM, Calif.

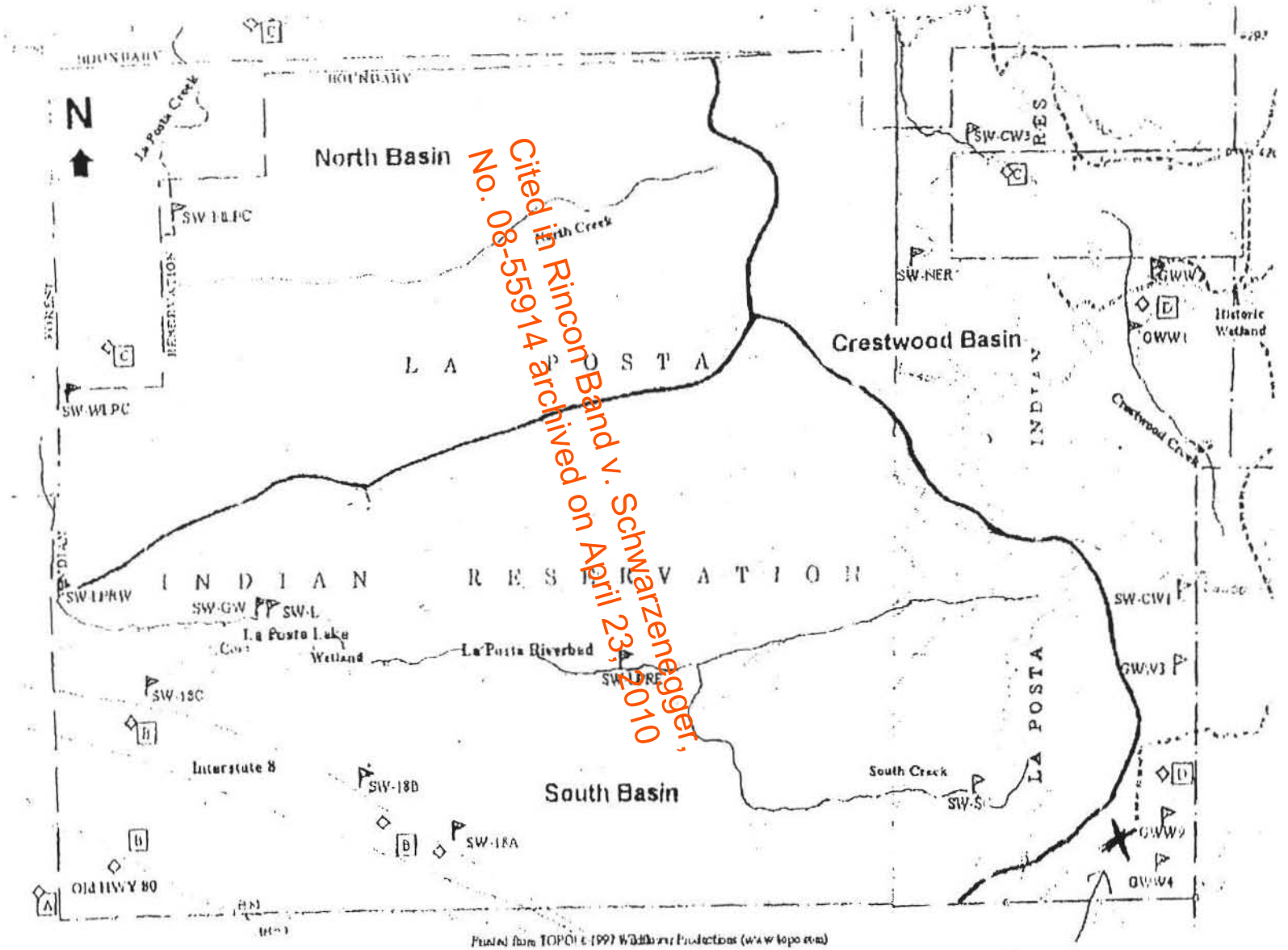
Authority: Departmental Order.
Date: February 2, 1907.
Acreage: 3,440.20

Description: SW¼SW¼, NE¼SW¼, SE¼NW¼, N½SE¼, NE¼ of Section 31; All of Sections 32 and 33, T. 16 S.; All of Sections 4 and 5; SW¼, SE¼, S½NW¼, S½NE¼, NW¼NW¼ of Section 6, T. 17 S., all in R. 6 E., SBBM, Calif.

Authority: Public Law 100-581
Date: November 1, 1988
Acreage: 84.20

Description: Lots 6 through 8, SW¼NW¼, Section 6, T. 17 S., R. 6 E., SBBM, Calif.

Cited in Rincon Band v. Schwarzenegger, No. 08-55914 archived on April 23, 2010



Reservation Monitoring Locations

NP Sources

Cited in Rincon Band v. Schwarzenegger, No. 08-55914 archived on April 23, 2010

A-4

APPENDIX B

Cited in Rincon Band v. Schwarzenegger, No. 08-55914 archived on April 23, 2010

APPENDIX B
MODEL TRIBAL LABOR RELATIONS ORDINANCE

Section 1: Threshold of Applicability

(a) Any tribe with 250 or more persons employed in a tribal casino and related facility shall adopt this Tribal Labor Relations Ordinance (TLRO or Ordinance). For purposes of this ordinance, a "tribal casino" is one in which Class III gaming is conducted pursuant to a tribal-state compact. A "related facility" is one for which the only significant purpose is to facilitate patronage of the Class III gaming operations.

(b) Any tribe which does not operate such a tribal casino as of September 10, 1999, but which subsequently opens a tribal casino, may delay adoption of this ordinance until one year from the date the number of employees in the tribal casino or related facility as defined in 1(a) above exceeds 250.

(c) Upon the request of a labor union, the Tribal Gaming Commission shall certify the number of employees in a tribal casino or other related facility as defined in 1(a) above. Either party may dispute the certification of the Tribal Gaming Commission to the Tribal Labor Panel.

Cited in Rincon Band v. Schwarzenegger, No. 08-55914 archived on April 23, 2010

Section 2: Definition of Eligible Employees

(a) The provisions of this ordinance shall apply to any person (hereinafter "Eligible Employee") who is employed within a tribal casino in which Class III gaming is conducted pursuant to a tribal-state compact or other related facility, the only significant purpose of which is to facilitate patronage of the Class III gaming operations, except for any of the following:

(1) any employee who is a supervisor, defined as any individual having authority, in the interest of the tribe and/or employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;

(2) any employee of the Tribal Gaming Commission;

(3) any employee of the security or surveillance department, other than those who are responsible for the technical repair and maintenance of equipment;

(4) any cash operations employee who is a "cage" employee or money counter; or

(5) any dealer.

Section 3: Non-Interference With Regulatory or Security Activities

Operation of this Ordinance shall not interfere in any way with the duty of the Tribal Gaming Commission to regulate the gaming operation in accordance with the Tribe's National Indian Gaming Commission-approved gaming ordinance. Furthermore, the exercise of rights hereunder shall in no way interfere with the tribal casino's surveillance/security systems, or any other internal controls system designed to protect the integrity of the tribe's gaming operations. The Tribal Gaming Commission is specifically excluded from the definition of tribe and its agents.

Section 4: Eligible Employees Free to Engage In or Refrain from Concerted Activity

Eligible Employees shall have the right to self-organization, to form, to join, or assist employee organizations, to bargain collectively through representatives of their own choosing, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities.

Cited in Rincon Band v. Schwarzenegger, No. 08-55914 archived on April 28, 2010

Section 5: Unfair Labor Practices for the Tribe

It shall be an unfair labor practice for the tribe and/or employer or their agents:

(1) to interfere with, restrain or coerce Eligible Employees in the exercise of the rights guaranteed herein;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it, but this does not restrict the tribe and/or employer and a certified union from agreeing to union security or dues checkoff;

(3) to discharge or otherwise discriminate against an Eligible Employee because s/he has filed charges or given testimony under this Ordinance;

(4) to refuse to bargain collectively with the representatives of Eligible Employees.

Section 6: Unfair Labor Practices for the Union

It shall be an unfair labor practice for a labor organization or its agents:

(1) to interfere, restrain or coerce Eligible Employees in the exercise of the rights guaranteed herein;

(2) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a primary or secondary boycott or a refusal in the course of his employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce or other terms and conditions of employment. This section does not apply to section 11;

(3) to force or require the tribe and/or employer to recognize or bargain with a particular labor organization as the representative of Eligible Employees if another labor organization has been certified as the representative of such Eligible Employees under the provisions of this TLRO;

(4) to refuse to bargain collectively with the tribe and/or employer, provided it is the representative of Eligible Employees subject to the provisions herein;

(5) to attempt to influence the outcome of a tribal governmental election, provided, however, that this section does not apply to tribal members.

Cited in Rincon Band v. Schwarzenegger, No. 08-55914 archived on April 23, 2010

Section 7: Tribe and Union Right to Free Speech

The tribe's and union's expression of any view, argument or opinion or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of interference with, restraint or coercion if such expression contains no threat of reprisal or force or promise of benefit.

Section 8: Access to Eligible Employees

(a) Access shall be granted to the union for the purposes of organizing Eligible Employees, provided that such organizing activity shall not interfere with patronage of the casino or related facility or with the normal work routine of the Eligible Employees and shall be done on non-work time in non-work areas that are designated as employee break rooms or locker rooms that are not open to the public. The tribe may require the union and or union organizers to be subject to the same licensing rules applied to individuals or entities with similar levels of access to the casino or related facility, provided that such licensing shall not be unreasonable, discriminatory, or designed to impede access.

(b) The Tribe, in its discretion, may also designate additional voluntary access to the Union in such areas as employee parking lots and non-Casino facilities located on tribal lands.

(c) In determining whether organizing activities potentially interfere with normal tribal work routines, the union's activities shall not be permitted if the Tribal Labor Panel determines that they compromise the operation of the casino:

(1) security and surveillance systems throughout the casino, and reservation;

(2) access limitations designed to ensure security;

(3) internal controls designed to ensure security;

(4) other systems designed to protect the integrity of the tribe's gaming operations, tribal property and/or safety of casino personnel, patrons, employees or tribal members, residents, guests or invitees.

(d) The tribe shall provide to the union, upon a thirty percent (30%) showing of interest to the Tribal Labor Panel, an election eligibility list containing the full first and last name of the Eligible Employees within the sought after bargaining unit and the Eligible Employees' last known address within ten (10) working days. Nothing herein shall preclude a tribe from voluntarily providing an election eligibility list at an earlier point of a union organizing campaign.

Cited in Rincon Band V. Schwarzenegger
No. 08-55914 archived on April 23, 2010

(e) The tribe agrees to facilitate the dissemination of information from the union to Eligible Employees at the tribal casino by allowing posters, leaflets and other written materials to be posted in non-public employee break areas where the tribe already posts announcements pertaining to Eligible Employees. Actual posting of such posters, notices, and other materials, shall be by employees desiring to post such materials.

Section 9: Indian Preference Explicitly Permitted

Nothing herein shall preclude the tribe from giving Indian preference in employment, promotion, seniority, lay-offs or retention to members of any federally recognized Indian tribe or shall in any way affect the tribe's right to follow tribal law, ordinances, personnel policies or the tribe's customs or traditions regarding Indian preference in employment, promotion, seniority, lay-offs or retention. Moreover, in the event of a conflict between tribal law, tribal ordinance or the tribe's customs and traditions regarding Indian preference and this Ordinance, the tribal law, tribal ordinance or the tribe's customs and traditions shall govern.

Section 10: Secret Ballot Elections Required

(a) Dated and signed authorized cards from thirty percent (30%) or more of the Eligible Employees within the bargaining unit verified by the elections officer will result in a secret ballot election to be held within thirty (30) days from presentation to the elections officer.

(b) The election shall be conducted by the election officer. The election officer shall be a member of the Tribal Labor Panel chosen pursuant to the dispute resolution provisions herein. All questions concerning representation of the tribe and/or Employer's Eligible Employees by a labor organization shall be resolved by the election officer. The election officer shall be chosen upon notification by the labor organization to the tribe of its intention to present authorization cards, and the same election officer shall preside thereafter for all proceedings under the request for recognition; provided however that if the election officer resigns, dies or is incapacitated for any other reason from performing the functions of this office, a substitute election officer shall be selected in accordance with the dispute resolution provisions herein.

Cited in Rincon Band v. Schwarzenegger, No. 08-55914 archived on April 23, 2010

(c) The election officer shall certify the labor organization as the exclusive collective bargaining representative of a unit of employees if the labor organization has received the majority of votes by employees voting in a secret ballot election that the election officer determines to have been conducted fairly. If the election officer determines that the election was conducted unfairly due to misconduct by the tribe and/or employer or union, the election officer may order a re-run election. If the election officer determines that there was the commission of serious Unfair Labor Practices by the tribe that interfere with the election process and preclude the holding of a fair election, and the labor organization is able to demonstrate that it had the support of a majority of the employees in the unit at any point before or during the course of the tribe's misconduct, the election officer shall certify the labor organization.

(d) The tribe or the union may appeal any decision rendered after the date of the election by the election officer to a three (3) member panel of the Tribal Labor Panel mutually chosen by both parties.

(e) A union which loses an election and has exhausted all dispute remedies related to the election may not invoke any provisions of this labor ordinance at that particular casino or related facility until one year after the election was lost.

Section 11: Collective Bargaining Impasse

Upon recognition, the tribe and the union will negotiate in good faith for a collective bargaining agreement covering bargaining unit employees represented by the union. If collective bargaining negotiations result in impasse, and the matter has not been resolved by the tribal forum procedures sets forth in Section 13 (b) governing resolution of impasse within sixty (60) working days or such other time as mutually agreed to by the parties, the union shall have the right to strike. Strike-related picketing shall not be conducted on Indian lands as defined in 25 U.S.C. Sec. 2703 (4).

Section 12: Decertification of Bargaining Agent

(a) The filing of a petition signed by thirty percent (30%) or more of the Eligible Employees in a bargaining unit seeking the decertification of a certified union, will result in a secret ballot election to be held thirty (30) days from the presentation of the petition.

(b) The election shall be conducted by an election officer. The election officer shall be a member of the Tribal Labor Panel chosen pursuant to the dispute resolution provisions herein. All questions concerning the decertification of the labor organization shall be resolved by an election officer. The election officer shall be chosen upon notification to the tribe and the union of the intent of the employees to present a decertification petition, and the same election officer shall preside thereafter for all proceedings under the request for decertification; provided however that if the election officer resigns, dies or is incapacitated for any other reason from performing the functions of this office, a substitute election officer shall be selected in accordance with the dispute resolution provisions herein.

Cited in Rincon Band v. Schwarzenegger, No. 08-55914 archived on April 23, 2010

(c) The election officer shall order the labor organization decertified as the exclusive collective bargaining representative if a majority of the employees voting in a secret ballot election that the election officer determines to have been conducted fairly vote to decertify the labor organization. If the election officer determines that the election was conducted unfairly due to misconduct by the tribe and/or employer or the union the election officer may order a re-run election or dismiss the decertification petition.

(d) A decertification proceeding may not begin until one (1) year after the certification of a labor union if there is no collective bargaining agreement. Where there is a collective bargaining agreement, a decertification petition may only be filed no more than 90 days and no less than 60 days prior to the expiration of a

collective bargaining agreement. A decertification petition may be filed anytime after the expiration of a collective bargaining agreement.

(e) The tribe or the union may appeal any decision rendered after the date of the election by the election officer to a three (3) member panel of the Tribal Labor Panel mutually chosen by both parties.

Section 13: Binding Dispute Resolution Mechanism

(a) All issues shall be resolved exclusively through the binding dispute resolution mechanisms herein, with the exception of a collective bargaining negotiation impasse, which shall only go through the first level of binding dispute resolution.

(b) The first level of binding dispute resolution for all matters related to organizing, election procedures, alleged unfair labor practices, and discharge of Eligible Employees shall be an appeal to a designated tribal forum such as a Tribal Council, Business Committee, or Grievance Board. The parties agree to pursue in good faith the expeditious resolution of these matters within strict time limits. The time limits may not be extended without the agreement of both parties. In the absence of a mutually satisfactory resolution, either party may proceed to the independent binding dispute resolution set forth below. The agreed upon time limits are set forth as follows:

Cited in Rincon Band v. Schwarzenegger, No. 06-55914 archived on April 23, 2010

(1) All matters related to organizing, election procedures and alleged unfair labor practices prior to the union becoming certified as the collective bargaining representative of bargaining unit employees, shall be resolved by the designated tribal forum within thirty (30) working days.

(2) All matters after the union has become certified as the collective bargaining representative and relate specifically to impasse during negotiations, shall be resolved by the designated tribal forum within sixty (60) working days;

(c) The second level of binding dispute resolution shall be a resolution by the Tribal Labor Panel, consisting of ten (10) arbitrators appointed by mutual selection of the parties which panel shall serve all tribes that have adopted this ordinance. The Tribal Labor Panel shall have authority to hire staff and take other actions necessary to conduct elections, determine units, determine scope of negotiations, hold hearings, subpoena witnesses, take testimony, and conduct all other activities needed to fulfill its obligations under this Tribal Labor Relations Ordinance.

(1) Each member of the Tribal Labor Panel shall have relevant experience in federal labor law and/or federal Indian law with preference given to those with experience in both. Names of individuals may be provided by such sources as, but not limited to, Indian Dispute Services, Federal Mediation and Conciliation Service, and the American Academy of Arbitrators.

(2) Unless either party objects, one arbitrator from the Tribal Labor Panel will render a binding decision on the dispute under the Ordinance. If either party objects, the dispute will be decided by a three-member panel of the Tribal Labor Panel, which will render a binding decision. In the event there is one arbitrator, five (5) Tribal Labor Panel names shall be submitted to the parties and each party may strike no more that two (2) names. In the event there is a three (3) member panel, seven (7) TLP names shall be submitted to the parties and each party may strike no more than two (2) names. A coin toss shall determine which party may strike the first name. The arbitrator will generally follow the American Arbitration Association's procedural rules relating to labor dispute resolution. The arbitrator or panel must render a written, binding decision that complies in all respects with the provisions of this Ordinance.

(d) Under the third level of binding dispute resolution, either party may seek a motion to compel arbitration or a motion to confirm an arbitration award in Tribal Court, which may be appealed to federal court. If the Tribal Court does not render its decision within 90 days, or in the event there is no Tribal Court, the matter may proceed directly to federal court. In the event the federal court declines jurisdiction, the tribe agrees to a limited waiver of its sovereign immunity for the sole purpose of compelling arbitration or confirming an arbitration award issued pursuant to the Ordinance in the appropriate state superior court. The parties are free to put at issue whether or not the arbitration award exceeds the authority of the Tribal Labor Panel.

Cited in Rincon Band v. Schwarzenegger, No. 08-55914, archived on April 23, 2010

APPENDIX C

Cited in Rincon Band v. Schwarzenegger,
No. 08-55914 archived on April 23, 2010

APPENDIX C

Resolution of Disputes Between
The La Posta Tribe and San Diego County
(and, where applicable, other local government entities)

In an effort to foster good government-to-government relationships; and to assure that the La Posta Tribe is not unreasonably prevented from engaging in activities authorized under this Compact and benefiting therefrom, the State and the Tribe agree to the following:

Sec. 1. Pursuant to Section 10.8.1.1, the La Posta Tribe and San Diego County, or any other local government entity that will either provide services to, or be adversely impacted by, the construction or operation of the La Posta Tribe's Gaming Facility, shall make their best efforts to resolve disputes that occur under this Compact by good faith negotiations whenever possible. Disputes between the La Posta Tribe and San Diego County or any other relevant local government entity shall first be subjected to a process of meeting and conferring in good faith in order to foster a spirit of cooperation and efficiency in the administration of the terms, provisions, and conditions of this Compact or agreements entered into pursuant to this Compact, as follows:

Cited in Rincon Band v. Schwarzenegger, No. 08-55914 archived on April 23, 2010

(a) Either party shall give the other, as soon as possible after the event giving rise to the concern, a written notice setting forth, with specificity, the issues to be resolved.

(b) The parties shall meet and confer in a good faith attempt to resolve the dispute through negotiation not later than ten (10) days after receipt of the notice, unless both parties agree in writing to an extension of time.

(c) If the dispute is not resolved to the satisfaction of the parties within thirty (30) calendar days after the first meeting, then upon the request of either party in writing, the dispute shall be submitted to binding arbitration in accordance with this section. The disputes to be submitted to arbitration include, but are not limited to, inability to reach and conclude the agreements listed in Section 10.8.1.1 of this Compact, and claims of breach or violation of such agreements. The arbitrator shall reach decisions, including providing the substance of outstanding and unresolved portions of such agreements to make possible their conclusion, and resolutions of any disputes pursuant to such agreements, within ninety (90) days of the disputes or issues being first submitted to him or her.

Sec. 2. Arbitration Rules. Any dispute between La Posta and San Diego County or any other relevant local government entity arising out of or relating to this Compact, or the breach thereof, shall be settled in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be held on the La Posta Tribe's land or, if unreasonably

inconvenient under the circumstances, at such other location mutually agreeable to the parties. Each side shall bear its own costs, attorneys' fees, and one-half the costs and expenses of the American Arbitration Association and the arbitrator, unless the arbitrator rules otherwise. The arbitration shall be administered by a single neutral arbitrator. The provisions of Section 1283.05 of the California Code of Civil Procedure shall apply; provided that no discovery authorized by that section may be conducted without leave of the arbitrator. The decision of the arbitrator shall be in writing, give reasons for the decision, and shall be binding.

Sec. 3. No Waiver or Preclusion of Other Means of Dispute Resolution. This Appendix C may not be construed to waive, limit, or restrict any remedy that is otherwise available to either party, nor may this Section be construed to preclude, limit, or restrict the ability of the parties to pursue, by mutual agreement, any other method of dispute resolution, including, but not limited to, mediation or utilization of a technical advisor to the Tribal and State Gaming Agencies; provided that neither party is under any obligation to agree to such alternative method of dispute resolution.

Sec. 4. Limited Express Waiver of Sovereign Immunity.

(a) Any party to an arbitration in which an award has been made pursuant to this Appendix C may petition any federal or state court of competent jurisdiction to confirm the award. San Diego County and all other relevant local government entities and the La Posta Tribe expressly consent to be sued in such courts for the purposes of confirmation of such an award. An award shall be confirmed, provided that:

Cited in Rincon Band v. Schwarzenegger, No. 08-55914 archived on April 23, 2010

(i) The award is limited to the purposes of arbitration stated in Section 1(c) of this Appendix C.

(ii) No monetary damages are awarded other than decisions requiring the payment of sums pursuant to obligations of the parties under the agreements referred to in Section 1(c) of this Appendix C. (Awards may be made by the arbitrator for only such payments, for injunctive relief, for creation or enforcement of provisions of such agreements, and for declaratory relief, all in respect only of agreements required under Section 10.8.1.1 of this Compact.)

(iii) No person or entity other than the La Posta Tribe and San Diego County or any other relevant local government entity is party to the action, unless failure to join a third party would deprive the court of jurisdiction; provided that nothing herein shall be construed to constitute a waiver of the sovereign immunity of either the La Posta Tribe or San Diego County or any other relevant local government entity in respect to any such third party.

If an award is confirmed, judgment shall be entered in conformity therewith. The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action; and may be enforced like any other judgment of the court in which it is entered.

(b) In the event of intervention by any additional party into any such action without the consent of the La Posta Tribe and San Diego County or any other relevant local government entity, the waivers of either the La Posta Tribe or San Diego County or the other relevant local government entity provided for herein may be revoked, unless joinder is required to preserve the court's jurisdiction; provided that nothing herein shall be construed to constitute a waiver of the sovereign immunity of the La Posta Tribe, San Diego County, or any relevant local government entity in respect to any such third party.

(c) The express waivers and consents provided for under this Appendix C shall extend to civil actions authorized by this Compact, including, but not limited to, actions to compel arbitration, any arbitration proceeding herein, any action to confirm or enforce any judgment or arbitration award as provided herein, and any appellate proceedings emanating from a matter in which an immunity waiver has been granted. Except as stated herein or elsewhere in this Compact, no other waivers or consents to be sued, either express or implied, are granted by either party.

Cited in Rincon Band v. Schwarzenegger,
No. 08-55914 archived on April 23, 2010