



## Indian Gaming Special Distribution Fund

The Method Used to Mitigate Casino Impacts Has Changed, and Two Counties' Benefit Committees Did Not Ensure Compliance With State Law When Awarding Grants

Report 2016-036

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March 7, 2017

2016-036

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

Dear Governor and Legislative Leaders:

As required by California Government Code section 12717, the California State Auditor presents this audit report concerning allocation and use of money from the Indian Gaming Special Distribution Fund (distribution fund).

This report, our fourth review of the allocation and expenditure of grants from the distribution fund, concludes that expenditures and transfers from the distribution fund are expected to outpace revenue by nearly \$61 million in fiscal years 2012–13 through 2017–18, continuing the trend noted in our previous audits. The State slowed the decline of the distribution fund by reducing appropriations to fund mitigation grants from \$30 million for fiscal year 2010–11 to \$9.1 million for fiscal years 2011–12 through 2013–14, and eliminating those appropriations entirely for fiscal years 2014–15 through 2017–18. However, most of the new and amended compacts established since fiscal year 2003–04 require tribes to offer to negotiate directly with counties and local jurisdictions to mitigate the effects of activities on tribal land that serve tribal gaming activities or operations. Some counties, including the three counties we reviewed, have entered into agreements directly with tribes for mitigation of the tribes' activities.

Additionally, two of the three Indian gaming local community benefit committees (benefit committees) we reviewed did not ensure compliance with state law when awarding funding for mitigation grants. Specifically, for fiscal year 2013–14, Fresno County's benefit committee awarded a grant of \$362,000 and San Diego County's benefit committee awarded \$250,000 without requiring the grant applicants to provide sufficient documentation demonstrating the proportion of their respective project costs that was attributable to casino impacts, as required by state law.

Respectfully submitted,



ELAINE M. HOWLE, CPA  
State Auditor

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## Contents

Summary	1
Introduction	3
The Method Used to Mitigate Casino Impacts Has Changed, Which Has Slowed the Drastic Decline in the Distribution Fund Balance, but Some Local Mitigation Is Still Taking Place	11
Two of the Three Benefit Committees We Reviewed Awarded Mitigation Grants Without Ensuring Compliance With State Law	17
Other Areas We Reviewed	23
Scope and Methodology	27
<b>Appendix</b>	
Indian Tribes in California With Tribal-State Gaming Compacts	31
<b>Responses to the Audit</b>	
Fresno County	35
California State Auditor's Comments on the Response From Fresno County	37
San Diego County	39
Riverside County	41
California State Auditor's Comment on the Response From Riverside County	43

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## SUMMARY

The 1988 federal Indian Gaming Regulatory Act (IGRA) authorizes Indian gaming through compacts between the State and federally recognized Indian tribes. Beginning in 1999, the State entered into 61 tribal compacts with provisions requiring tribes to pay into the Indian Gaming Special Distribution Fund (distribution fund). Since then, the State has entered into new compacts and amended others, each requiring varying levels of deposits by the tribes into the distribution fund. State law provides for the Legislature to appropriate money from the distribution fund to address four needs and prioritizes those needs. The fourth priority of the distribution fund—and the subject of this audit—is to provide grants that mitigate the effects of tribal gaming on local governments (mitigation grants). For this audit, we reviewed the allocation and expenditure of grants from the distribution fund for a selection of three counties. This report draws the following conclusions:

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**The method used to mitigate casino impacts has changed, which has slowed the drastic decline in the distribution fund balance, but some local mitigation is still taking place.**

Expenditures and transfers from the distribution fund are expected to outpace revenue by nearly \$61 million in fiscal years 2012–13 through 2017–18, continuing the trend noted in our previous audits. The State slowed the decline of the distribution fund by reducing appropriations to fund mitigation grants from \$30 million for fiscal year 2010–11 to \$9.1 million for fiscal years 2011–12 through 2013–14, and eliminating those appropriations entirely for fiscal years 2014–15 through 2017–18. However, most of the new and amended compacts established since fiscal year 2003–04 require tribes to offer to negotiate directly with counties and local jurisdictions to mitigate the effects of activities on tribal land that serve tribal gaming activities or operations. Some counties, including the three counties we reviewed, have entered into agreements directly with tribes for mitigation of the tribes' activities.

Page 11

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**Two of the three benefit committees we reviewed awarded mitigation grants without ensuring compliance with state law.**

State law requires Indian gaming local community benefit committees (benefit committees) to determine that the amounts awarded for applicants' projects represents a proportionate share of costs attributable to casino impacts. However, two benefit committees awarded grants based on applications that did not do so. In fiscal year 2013–14,

Page 17

Fresno County's benefit committee awarded a grant of \$362,000 to fund county sheriff positions, and San Diego County's benefit committee awarded \$250,000 to the county's health and human services department without requiring the grantees to document the proportion of their respective project costs that was attributable to casino impacts, as required by state law.

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As part of this audit, we also reviewed the benefit committees' efforts to monitor that grant funds were placed in interest-bearing accounts, whether benefit committee members filed statements of economic interests in a timely manner and whether the composition of each benefit committee complied with the law, the degree to which benefit committees appropriately calculated the geographic proximity of their cities and county to the tribal casinos, and the degree to which benefit committees have addressed recommendations from prior audit reports. In some of these areas, we found that one benefit committee could improve its processes, and we have made recommendations that are discussed in the Other Areas We Reviewed section of this report beginning on page 23.

### **Summary of Recommendations**

If the Legislature appropriates funding from the distribution fund for mitigation grants in the future, to comply with state law, the benefit committees for Fresno and San Diego counties should ensure that they obtain sufficient documentation from grant applicants to demonstrate that the requested funding represents the correct proportionate share of the costs attributable to casino impacts.

### **Agency Comments**

Fresno County stated it had taken steps to implement one of the recommendations we directed to it and would implement the other two recommendations in the future, if the Legislature appropriates funding from the distribution fund for mitigation grants. Similarly, San Diego County indicated that if funding is awarded, it will implement additional review to address its recommendation. Riverside County also provided a response even though we did not direct any recommendations to it and therefore did not expect a response.

# INTRODUCTION

## Background

Gaming on Indian tribal lands in California has experienced extensive growth since the initial agreements between the tribes and the State—known as compacts—were established in 1999. The California Gambling Control Commission (Gambling Commission) estimates that as of September 2016, Indian tribes were operating more than 68,000 class III gaming devices in California.<sup>1</sup> According to the National Indian Gaming Commission, revenues from Indian gaming in California and northern Nevada have nearly tripled since the initial compacts were established, growing from \$2.9 billion in federal fiscal year 2000 to \$7.9 billion in federal fiscal year 2015. During this time, additional compacts have been signed and existing compacts have been amended.

## Tribal-State Gaming Compacts in California

In the March 2000 statewide primary election, voters approved Proposition 1A, which amended the California Constitution to authorize the Governor to negotiate and enter into compacts authorizing gaming on tribal lands in California, subject to ratification by the Legislature. The statutory framework for the compacts had been established in 1988, when the U.S. Congress enacted the IGRA. Unless authorized by an act of Congress, the jurisdiction of state governments and the application of state laws do not extend to Indian lands. Therefore, the provisions of the IGRA generally regulate the relationships between the State and tribal casinos. The proposition also gave federally recognized Indian tribes the authority—consistent with the IGRA—to operate slot machines, lottery games, and certain types of card games on Indian lands in California.

In 1999, anticipating approval of Proposition 1A, the Governor negotiated, and the Legislature approved, legislation ratifying compacts with many tribes. The state law ratifying these initial compacts, which are identical in most respects, affirms that any future compact the State enters into that is identical to the original compact in all material respects is ratified, unless the Legislature objects within 30 days from the date the Governor submits the compact to it. The State eventually entered into

<sup>1</sup> Class III gaming includes lotteries, certain card games, and slot machines. Gaming device means a slot machine.

61 of these tribal-state gaming compacts, known as *1999-model compacts*, which are effective until December 31, 2020. In consideration for the State's willingness to enter into these compacts, the tribes agreed to provide a portion of their revenues from the gaming devices to the State in the form of license and operation fees. These fees provide money for two funds: the Indian Gaming Revenue Sharing Trust Fund (trust fund), which distributes money to tribes that do not have compacts or that have compacts and operate fewer than 350 gaming devices, and the distribution fund, which finances various state and local government activities. Although the 1999-model compacts will remain in effect until 2020, the Governor and some Indian tribes have renegotiated and amended some of these compacts for various reasons, such as to increase the number of gaming devices allowed. In addition, some other tribes that did not negotiate compacts in 1999 have since done so. The Appendix, beginning on page 31, provides a list of all compacts entered into or amended as of June 2016, as well as the year the Legislature ratified the most recent compact or amendment for each tribe, whether the tribe has a casino, the number of gaming devices in operation, and the maximum number of gaming devices allowed by the tribe's compact.

### **Distribution Fund**

The majority of the tribal-state compacts require tribes operating gaming devices to pay into the distribution fund. For example, the 1999-model compacts require each tribe that operates more than 200 grandfathered devices—those in operation as of September 1, 1999, before the compacts were ratified—to pay a percentage of its average net win into the distribution fund. Generally, the net win of a gaming device is its gross revenue—the amount players pay into the device—less the amount paid out to winners. The percentage paid to the distribution fund varies depending on the number of grandfathered devices.

State law provides for the Legislature to appropriate money deposited into the distribution fund to address four needs. Table 1 shows these needs, arrayed from highest to lowest funding priority, and the expenditures for each in fiscal years 2013–14 through 2015–16. When the State appropriates funds for the fourth priority, support of local governments affected by tribal gaming through mitigation grants, the State divides the funds among the counties with tribal casinos to use for grants to pay for projects to mitigate the impact of those casinos.

**Table 1**  
**Funding Priorities and Expenditures for the Indian Gaming Special Distribution Fund**  
**Fiscal Years 2013–14 Through 2015–16**  
**(In Millions)**

PRIORITY	EXPENDITURES FOR FISCAL YEARS		
	2013–14	2014–15	2015–16*
1. Funding the Indian Gaming Revenue Sharing Trust Fund to ensure that it can distribute \$1.1 million annually to each tribe that does not have a compact or that has a compact and operates fewer than 350 gaming devices.	\$28.2	\$18.0	\$20.8
2. Funding problem-gambling prevention programs managed by the California Department of Public Health.	8.3	8.2	8.2
3. Funding the Indian gaming regulatory functions of the California Gambling Control Commission and the California Department of Justice.	20.1	20.8	22.3
4. Funding the support of local governments affected by tribal gaming.	9.1	0.0	0.0
<b>Totals</b>	<b>\$65.7</b>	<b>\$47.0</b>	<b>\$51.3</b>

Sources: California Government Code sections 12012.85 and 12012.90, and the Governor's budgets for fiscal years 2015–16 through 2017–18.

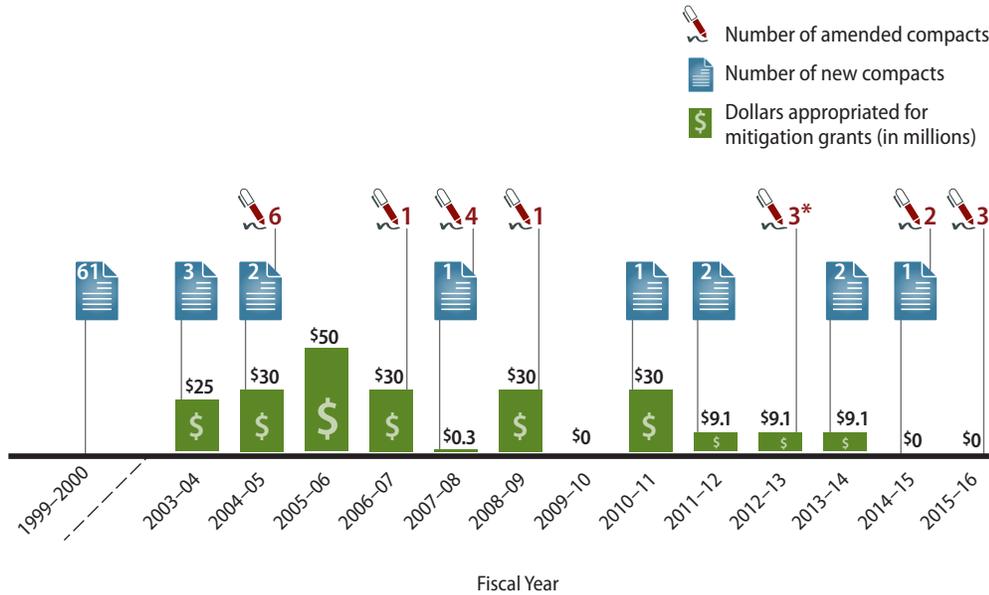
\* Amounts for fiscal year 2015–16 are estimates based on the 2017–18 Governor's Budget.

The amounts appropriated annually by the Legislature for mitigation grants have varied over the years. Figure 1 on the following page shows a history of new and amended compacts and the annual appropriation of funding for mitigation grants.

The State allocated \$9.1 million to local governments for mitigation grants in fiscal year 2013–14, using the method defined in state law. As Figure 2 on page 7 shows, counties with tribes that contribute to the distribution fund (eligible counties) receive 95 percent of these funds, and counties with tribes that are not obligated by their compacts to contribute to the distribution fund receive 5 percent. State law specifies that, for eligible counties, grant money is to be allocated based on the aggregate number of gaming devices in the county for which contributions are made (eligible devices). The more eligible devices within the county, the more grant money the county can receive. For counties without devices subject to the obligation, the law specifies that grant money is to be allocated based on the aggregate number of gaming devices within the county.

The State's allocation to eligible counties in fiscal year 2013–14 was divided among 26 counties and 152 grants. Figure 3 on page 8 shows the range of allocations to counties for mitigation grants in fiscal year 2013–14. These amounts varied considerably. For example, Modoc County received the smallest allocation of \$3,200, representing less than 1 percent of the \$9.1 million allocation in fiscal year 2013–14. In contrast, Riverside County received the largest allocation of nearly \$2.5 million, or 27 percent of the fiscal year 2013–14 allocation, because its tribes operate many more eligible devices. The Legislature did not appropriate funding for mitigation grants after fiscal year 2013–14.

**Figure 1**  
**Appropriations for Mitigation Grants and New or Amended Compacts by Fiscal Year Related to the Indian Gaming Special Distribution Fund**



Sources: California Gambling Control Commission’s website, tribal-state gaming compacts, and Governor’s budgets for fiscal years 2005–06 through 2017–18.

Note: New and amended compacts are shown in the fiscal year the Legislature ratified them. The version of this graphic in our previous report (2013-036) showed compacts in the fiscal year that they were published in the *Federal Register*. Therefore, there are slight differences in some years between the two reports.

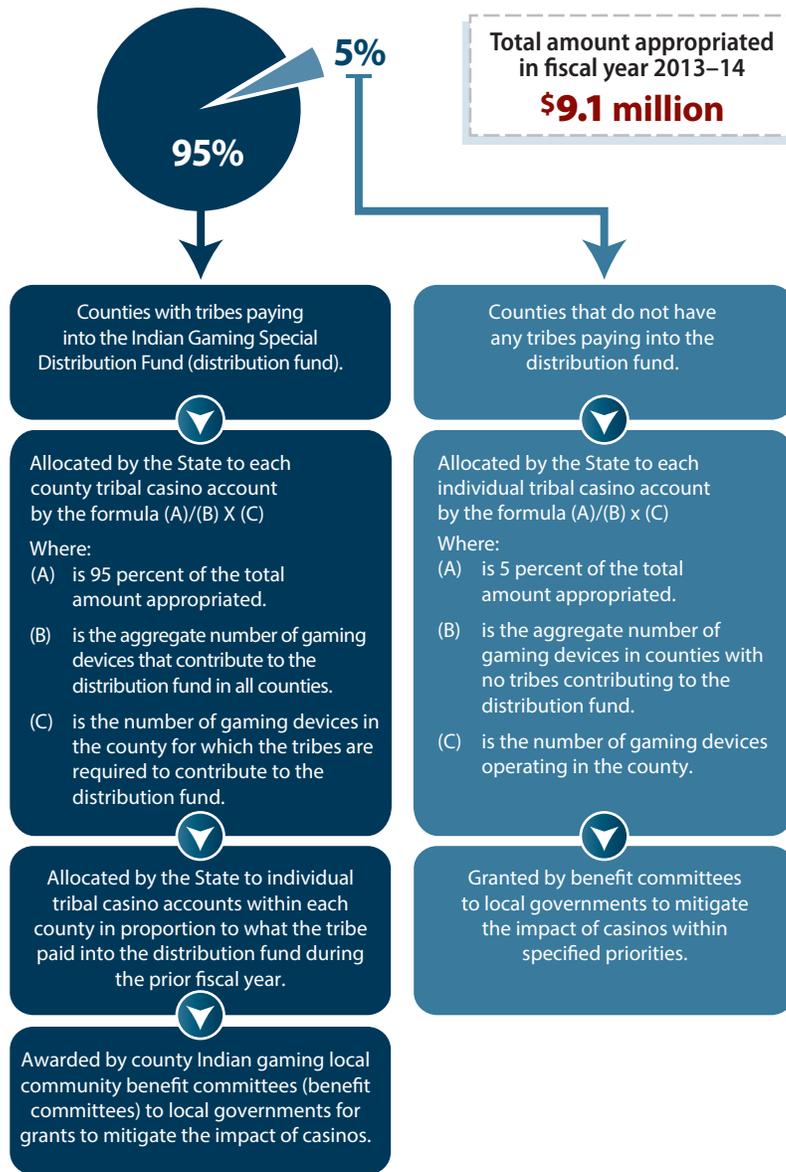
\* In February 2013 the Rincon Band of Luiseno Mission Indians of the Rincon Reservation began operating under Secretarial Procedures, which are the result of mediation between the tribe and the State and are a full substitute for a gaming compact. Because the tribe had a previous compact and now operates under different terms, for ease of discussion we refer to it in this report as having an amended compact.

**Entities Involved in County Allocations From the Indian Gaming Distribution Fund for Mitigation Grants**

California’s 1997 Gambling Control Act created the Gambling Commission to serve as the State’s primary regulatory body over gambling activities, including Indian gaming. This commission has jurisdiction over the operation, concentration, and supervision of gambling establishments in the State. The Gambling Commission collects trust fund deposits pursuant to the terms of gaming compacts, and it acts as the trustee of the trust fund. It also collects and accounts for contributions received under the provisions of the gaming compacts for deposit into the distribution fund.

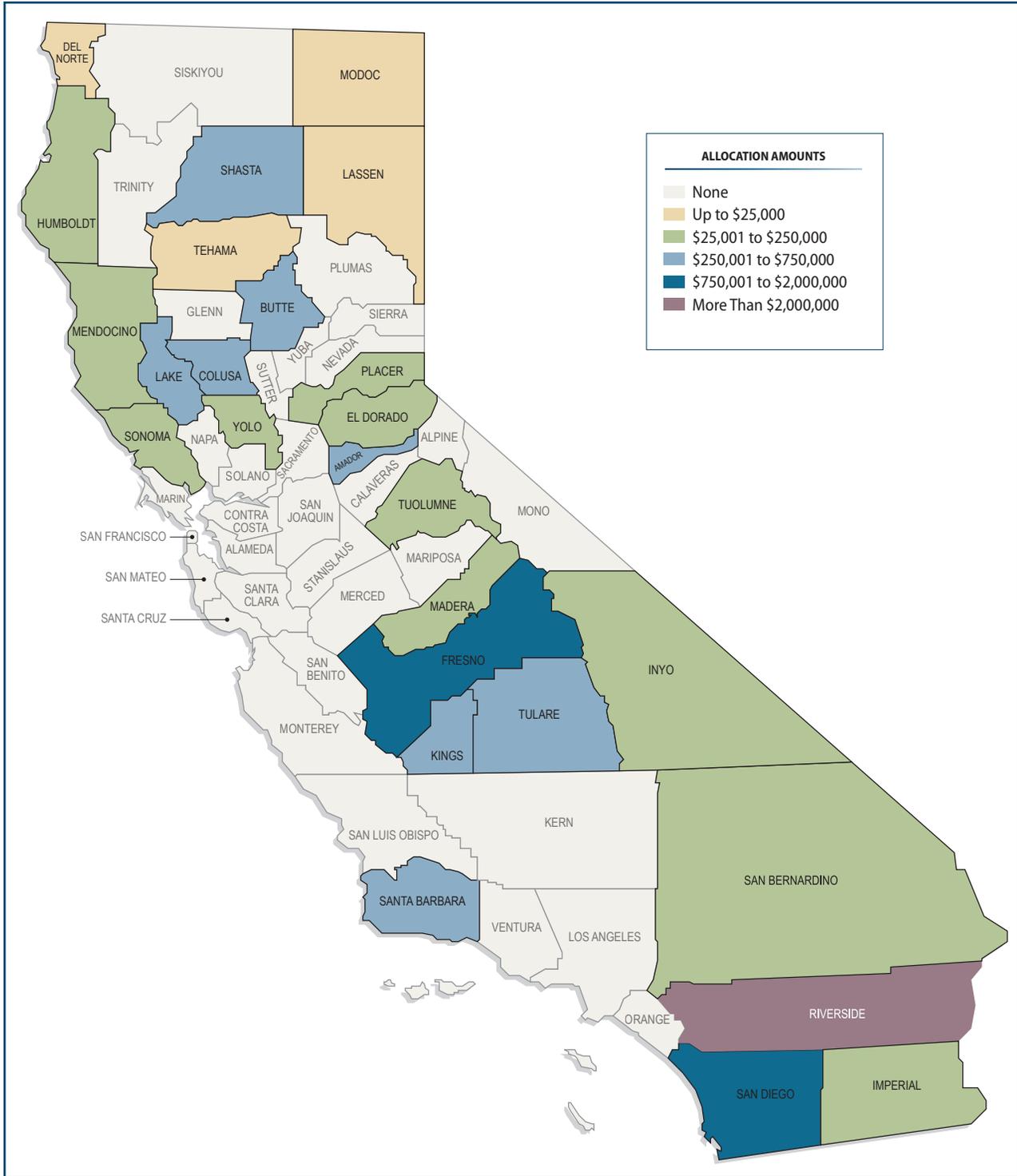
When the Legislature appropriates funding from the distribution fund for mitigation grants, the State Controller’s Office (State Controller) is responsible for calculating the allocations, in consultation with the Gambling Commission, for each of the county tribal casino accounts. State law requires the State Controller to release grant funds directly to the entities receiving approved grants.

**Figure 2**  
Allocation of Funding From the Indian Gaming Special Distribution Fund to Local Governments



Sources: California Government Code sections 12714 and 12715, and Chapter 746, Statutes of 2013.

**Figure 3**  
**Allocations to County Tribal Casino Accounts**  
**Fiscal Year 2013–14**

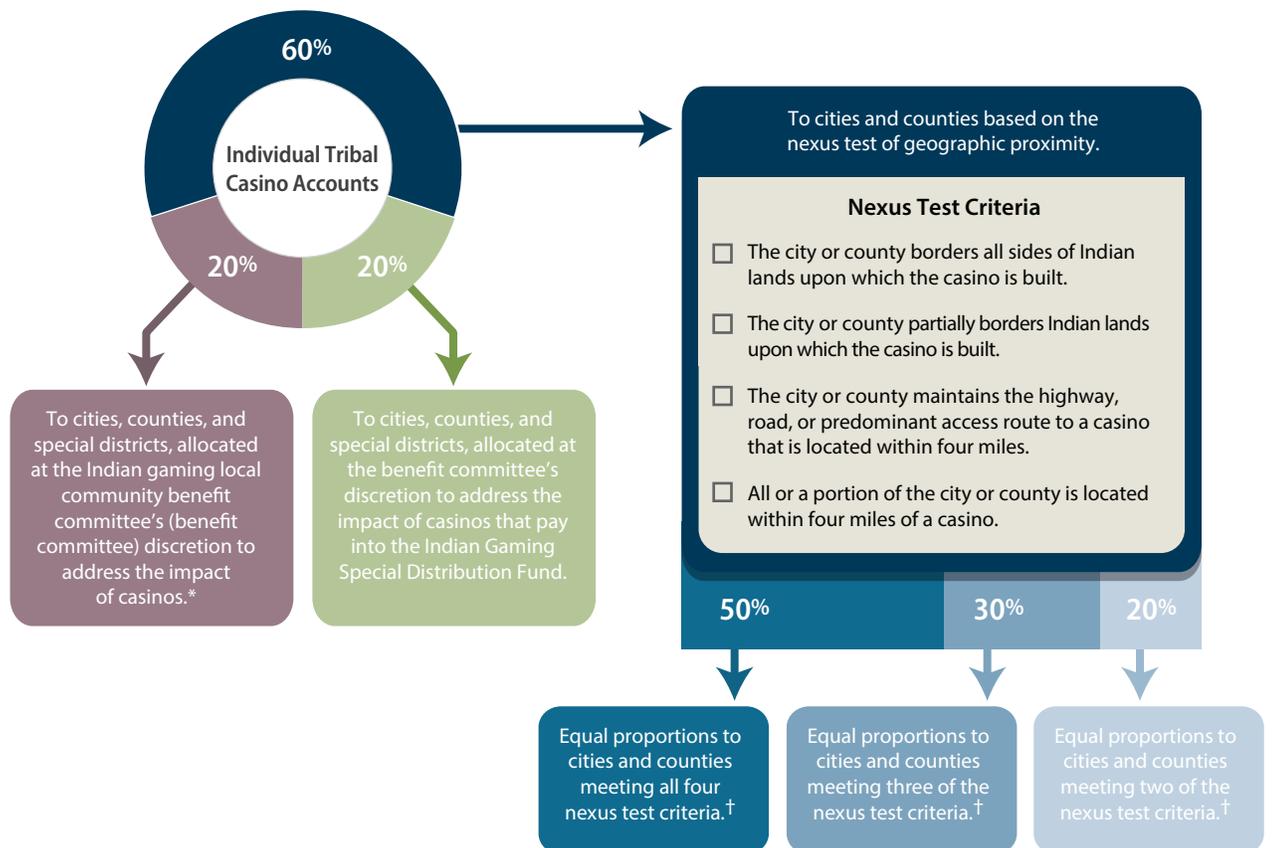


Source: State Controller’s Office allocation amounts.

Note: This figure presents allocation amounts for only fiscal year 2013–14 because the Legislature did not appropriate amounts for grant awards to local governments for projects to mitigate the impact of the casinos after that fiscal year.

In each county in which Indian gaming is conducted, state law creates a benefit committee that awards mitigation grants from the distribution fund. The composition of the benefit committees is outlined in state law. State law also specifies that each benefit committee is responsible for establishing procedures for local governments within the county to apply for grants and for selecting eligible applications to receive funds. To allocate funds correctly to local governments in eligible counties, state law requires benefit committees to determine the geographic proximity of cities and the county to an Indian casino and the Indian land upon which that casino is built, using a set of criteria known as the nexus test. As shown in Figure 4, 60 percent of the funds are available to cities and counties that meet two or more of the nexus criteria, and the remainder is awarded as discretionary grants; that is, the benefit committees can choose which qualifying local governments receive the money. These criteria are intended to provide a fair and proportionate system for awarding grants to local governments affected by tribal gaming.

**Figure 4**  
Allocation of Funds From Individual Tribal Casino Accounts



Source: California Government Code section 12715.

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

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

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

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

Source: California Government Code section 12715.

State law requires grant recipients to clearly show how the requested funds will mitigate the impact of a tribal casino on a local government jurisdiction. The amount each grant recipient can receive must be proportionate to the casino's impact. For example, a police department might apply for a grant to cover 20 percent of its budget if it can demonstrate that 20 percent of its calls are for incidents related to the casino. State law identifies 12 priorities for the award of grants, as shown in the text box. As an example, grant funds can be used to help pay for maintaining roads in proportion to an increase in traffic from casino patrons or for the proportion of staffing costs related to the additional workload firefighters and law enforcement experience because they must respond to emergencies at the casinos. If a project both mitigates the effect of a tribal casino and also has other benefits that are not related to tribal gaming, such as maintenance for a road that serves both a tribal casino and other city or county traffic, the benefit committee may award funds only for the proportional share of the project that mitigates the effect of tribal gaming.

## The Method Used to Mitigate Casino Impacts Has Changed, Which Has Slowed the Drastic Decline in the Distribution Fund Balance, but Some Local Mitigation Is Still Taking Place

### Key Points

- The distribution fund's expenditures and transfers continue to outpace revenue, resulting in the distribution fund's declining balance.
- The State has shifted to direct payments from the tribes for the mitigation of negative impacts of activities on tribal land that serve tribal gaming or operations rather than through grant funding from the distribution fund. The three counties we reviewed—Fresno, Riverside, and San Diego—have had agreements with tribes in which the tribes directly pay to mitigate negative impacts of activities on tribal land.

### Distribution Fund Revenue, Expenditures, and Transfers

Expenditures and transfers from the distribution fund (expenditures) have generally outpaced revenue and transfers into the fund (revenue) since fiscal year 2008–09. Because of this, the balance of the distribution fund has continued to decline, as we also noted in our two previous Indian gaming audits. Expenditures are expected to exceed revenue by a total of nearly \$61 million for fiscal years 2012–13 through 2017–18.<sup>2</sup> This shortfall has drastically reduced the fund balance. The balance fell from \$60.5 million at the beginning of fiscal year 2012–13 to an estimated \$5.9 million at the end of fiscal year 2016–17, and is expected to fall to \$4.2 million at the end of fiscal year 2017–18, a year in which proposed expenditures from the distribution fund are expected to exceed revenues by \$1.7 million.

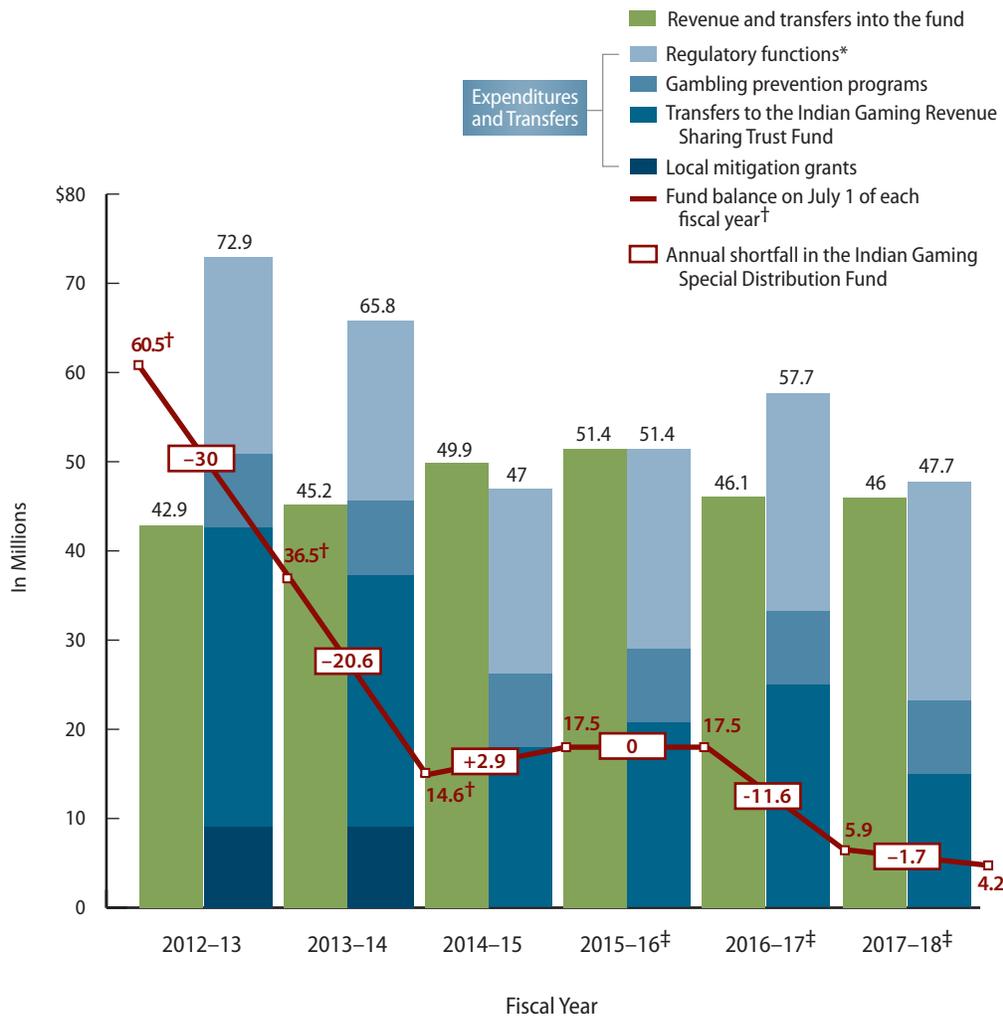
As shown in Figure 5 on the following page, revenue for the distribution fund is expected to remain fairly constant from fiscal years 2012–13 through 2017–18, ranging from \$42.9 million to \$51.4 million. However, during that same time period, expenditures from the distribution fund range from \$47 million to \$72.9 million. The State reduced appropriations to fund mitigation grants from \$30 million for fiscal year 2010–11 to \$9.1 million for fiscal years 2011–12 through 2013–14, and eliminated those appropriations entirely for fiscal years 2014–15 through 2017–18.<sup>3</sup> This change in appropriations has slowed the drastic decline of the distribution fund balance and is expected to bring the distribution fund's total expenditures into closer alignment

<sup>2</sup> According to the 2017–18 Governor's Budget, amounts for fiscal year 2016–17 are estimates and amounts for 2017–18 are proposals. Additionally, the 2017–18 Governor's Budget indicates that the amounts for fiscal year 2015–16 are still estimates that reflect the latest available information pending final completion of year-end financial reports.

<sup>3</sup> In addition to the Legislature's reductions in appropriations in these fiscal years, the Governor reduced appropriations for fiscal year 2013–14 by \$3.9 million to \$9.1 million through a line item veto.

with the fund’s annual revenue. However, as Figure 5 shows, expenditures from the distribution fund were still estimated to exceed revenue in two of the four years since funding for the grants was eliminated.

**Figure 5**  
**Indian Gaming Special Distribution Fund Revenue, Expenditures, Transfers, and Fund Balance**  
**Fiscal Years 2012–13 Through 2017–18**



Sources: Governor’s budgets for fiscal years 2014–15 through 2017–18.

\* State law requires the Indian Gaming Special Distribution Fund (distribution fund) to pay for the Indian gaming regulatory functions of the California Gambling Control Commission and the California Department of Justice. Expenditures for these two regulatory bodies are reported in Table 1 on page 5. However, the distribution fund also pays for some functions of the State Controller’s Office, the California Department of Human Resources, and the Financial Information System for California. Expenditures categorized here as regulatory functions include expenditures for all of these functions. As a result, total expenditures reported in this category are slightly higher than those shown for regulatory functions in Table 1.

† In fiscal years 2012–13 through 2014–15, the adjusted fund balance reflects prior-period adjustments.

‡ Amounts for fiscal year 2016–17 are estimates, amounts for fiscal year 2017–18 are projections, and according to the 2017–18 Governor’s Budget, amounts for fiscal year 2015–16 are estimates that reflect the latest available information pending final completion of year-end financial reports.

### The Mechanism for Local Mitigation Has Shifted

The State has moved away from funding local mitigation through the distribution fund and toward other direct mechanisms to fund mitigation. As discussed in the Introduction, state law allows the Legislature to appropriate money from the distribution fund to pay for local mitigation grants. However, this law is scheduled to be repealed on January 1, 2021, after which the local mitigation grant program will cease to exist. The senior advisor for tribal negotiations in the Governor's Office (senior advisor) told us that the State intends to use the distribution fund to pay for Indian gaming regulatory activities and problem-gambling prevention programs. This is consistent with the allocations from the distribution fund in fiscal years 2014–15 through 2016–17. Specifically, the Legislature made appropriations from the distribution fund for the regulatory costs, problem-gambling prevention programs, and transfers to the trust fund, but did not appropriate funding for mitigation grants in those years.

The senior advisor also stated that the recent compacts significantly increase payments to the trust fund, and the trust fund is expected to be fully solvent by the end of fiscal year 2017–18. This would reduce pressure on the distribution fund, which must pay enough into the trust fund to ensure that it can distribute \$1.1 million annually to each tribe that does not have a compact or that operates fewer than 350 gaming devices. Based on a review of correspondence and summary revenue information from the Gambling Commission staff to its board, statewide tribal payments into the trust fund increased from fiscal years 2014–15 to 2015–16. The 2017–18 Governor's Budget and notification by the Gambling Commission to the Legislature indicate that the trust fund's shortfall, which is backfilled from the distribution fund, is expected to decrease from \$20.8 million for fiscal year 2015–16 to \$15.5 million for fiscal year 2016–17. Further, as shown in Table 2 on the following page, we noted that the funding structure of all new or amended compacts ratified in fiscal years 2013–14 through 2015–16 requires tribes to pay into the distribution fund a share of the annual appropriations for the State's Indian gaming regulatory activities and problem-gambling prevention programs.

**Table 2**  
**New and Amended Compacts**  
**Fiscal Years 2013–14 Through 2015–16**

TRIBE	DATE RATIFIED	FUNDING STRUCTURE IN CURRENT COMPACT	FUNDING STRUCTURE IN PREVIOUS COMPACT
Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation	July 11, 2013 (New compact)	The tribe shall pay to the distribution fund a share of the gaming compact money appropriated in the annual Budget Act for the Indian gaming regulatory activities of state agencies and problem-gambling prevention programs, based on the proportion of devices it operated in comparison to the devices operated by all tribes in the State.	Not applicable—new compact.
Ramona Band of Cahuilla	October 1, 2013 (New compact)		
Karuk Tribe	August 29, 2014 (New compact)		
Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation	September 9, 2014 (Amended compact)	During the first five years in which the compact is in effect, the tribe shall pay \$5 million in the first and second years, \$4 million in the third year, \$3 million in the fourth year, and \$2 million in the fifth year to the State, which shall be deposited into the distribution fund from the tribe's revenue contributions. Additionally, the tribe shall pay to the distribution fund a share of the gaming compact money appropriated in the annual Budget Act for the Indian gaming regulatory activities of state agencies and problem-gambling prevention programs, based on the proportion of devices it operated in comparison to the devices operated by all tribes in the State.*	The previous compact did not have any requirements for the tribe to pay into the distribution fund.
Jackson Band of Miwuk Indians	June 17, 2015 (Amended compact)	The tribe shall pay to the distribution fund a share of the gaming compact money appropriated in the annual Budget Act for the Indian gaming regulatory activities of state agencies and problem-gambling prevention programs, based on the proportion of devices it operated in comparison to the devices operated by all tribes in the State.	The previous compact required the tribe to pay between 0 percent and 13 percent of the average gaming device net win to the distribution fund, depending on the number of gaming devices operated.
Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation	October 6, 2015 (Amended compact)		
Sycuan Band of the Kumeyaay Nation	October 6, 2015 (Amended compact)		
United Auburn Indian Community of the Auburn Rancheria of California	October 6, 2015 (Amended compact)	The tribe shall pay to the distribution fund a share of the gaming compact money appropriated in the annual Budget Act for the Indian gaming regulatory activities of state agencies and problem-gambling prevention programs, based on the proportion of devices it operated in comparison to the devices operated by all tribes in the State.	The previous compact did not have any requirements for the tribe to pay into the distribution fund.

Sources: Indian gaming compacts and California Gambling Control Commission's website.

\* In August 2016, the Legislature ratified a compact amendment between the State and the Viejas Band that eliminates the requirement for the tribe to pay between \$2 million and \$5 million in the first five years the compact is in effect, and only requires the tribe to pay a share of the gaming compact money appropriated in the annual Budget Act for the Indian gaming regulatory activities of state agencies and problem-gambling prevention programs.

According to the senior advisor, under the new and amended compacts, local mitigation will be funded separately pursuant to the compacts and will not be funded from the distribution fund. Provisions for separate funding have been present in the post-1999-model compacts. These post-1999-model compacts generally include mechanisms for tribes to pay directly to mitigate the negative effects of casinos. Specifically, 29 of the 32 compacts entered into or amended between fiscal years 2003–04 and 2015–16 require that, before the tribe begins a new project on tribal lands, it must offer to negotiate with the county to fund the costs to mitigate the impacts of activities on tribal land that serve tribal gaming activities or operations. If the county accepts the offer, the compacts require the tribe to negotiate and enter into a written agreement specifying provisions for timely mitigation of any significant effect on the off-reservation environment; mitigation of any effect on public safety attributable to the project; reasonable compensation for law enforcement, fire protection, emergency medical services, and any other public services to be provided by the county to the tribe for the purposes of the tribe’s gaming operations; and reasonable compensation for programs designed to address gambling addiction. The remaining three compacts require that the tribe implement feasible mitigation measures or make good-faith efforts to mitigate negative effects.

When compared to the allowable uses of mitigation grants from the distribution fund, which we describe in the Introduction, these agreements for direct mitigation allow for a greater variety of mitigation projects. Although state law outlines 12 specific allowable priorities for the use of mitigation grant funds from the distribution fund, such as law enforcement and fire services, the language in the compacts is less restrictive and allows direct mitigation and payments to address any significant negative effects of the tribal casinos.

Further, the senior advisor stated that the post-2014 compacts provide incentives for tribes to provide funding to local jurisdictions for mitigation. Of the six new or amended compacts entered into during fiscal years 2014–15 and 2015–16, four include incentives for tribes to pay local jurisdictions for improved fire, law enforcement, and other services and infrastructure improvements intended to serve the needs of the county residents. These incentives allow tribes to make payments to the county or local jurisdictions in return for reductions in the tribes’ required payments into the trust fund.

Through these alternate mechanisms, some counties are receiving funds for county services and infrastructure improvements. For example, a tribe entered into an agreement with Sonoma County

in October 2012 to contribute, among other things, \$3.1 million annually to the county to mitigate the impacts of tribal development on law, justice, and public safety, and an additional nonrecurring payment of \$1.7 million to hire and train four new deputy sheriffs, purchase two vehicles, and pay for support staff for those officers. This single mitigation agreement far exceeds the county's allocations of roughly \$64,000 from the distribution fund for fiscal years 2012–13 and 2013–14. According to the senior advisor and the deputy director of administration at the Gambling Commission, it is likely that these direct agreements for mitigation and the additional payments for county services and infrastructure improvements will exceed the historic levels of distribution fund payments for local mitigation grants under the 1999-model compacts.

Tribes in the three counties we reviewed—Fresno, Riverside, and San Diego—have entered into direct agreements with the counties to pay for mitigating impacts of activities on tribal land, and some of these agreements were made at the same time that the State was providing mitigation grants from the distribution fund. For example, in 2008, a tribe in Fresno County entered into an agreement with the county to provide environmental and design work to improve a local county road, at a cost of \$3.85 million. Riverside County entered into a 2015 agreement in which a tribe agreed to pay nearly \$335,000 annually for county sheriff and district attorney services to mitigate the effects of a hotel expansion on tribal land. San Diego County has also negotiated various agreements with tribes for mitigation projects. According to a summary provided by a benefit committee staff member, between 2000 and 2016 the county entered into various agreements, totaling more than \$34 million, with tribes. One agreement, for example, includes a provision for a tribe to pay nearly \$3.8 million for road improvements and \$275,000 annually to the county sheriff's department.

## Two of the Three Benefit Committees We Reviewed Awarded Mitigation Grants Without Ensuring Compliance With State Law

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### Key Points

- In fiscal year 2013–14, Fresno County’s benefit committee awarded a mitigation grant of \$362,000 and San Diego County’s benefit committee awarded a mitigation grant of \$250,000, without requiring the grant applicants to document how the requested funding represented a proportionate share of costs attributable to casino impacts, as required by state law.
- For five of six mitigation grants we reviewed, grantees provided documentation to demonstrate they spent funds for allowable purposes consistent with the activities described in the respective grant applications. One of the five grantees has spent some funds but has not spent its full grant award. For the sixth grant, the grantee has not yet spent any of the funds but expects to use them in 2017.

### Benefit Committees’ Awarding of Mitigation Grants

Two of the three benefit committees we reviewed—those in Fresno and San Diego counties—did not ensure that grant applicants provided sufficient documentation demonstrating the proportion of their project costs that were attributable to casino impacts. Although the benefit committees’ operating policies and procedures, application instructions, or other written guidance require this information from grant applicants, these two benefit committees awarded grant funds without obtaining the information.

State law requires benefit committees to assess the eligibility of applications from local jurisdictions affected by tribal gaming. As part of establishing eligibility, the benefit committees must determine that the amounts awarded for applicants’ projects represent the proportionate share of costs attributable to impacts from local tribal casinos. Specifically, if a local jurisdiction approves an expenditure that mitigates impacts from a casino but also provides other benefits to the jurisdiction, the grant funds may finance only the portion of the expenditure that mitigates casino impacts. For example, a fire department may use grant funds to pay only for the proportion of emergency calls it responds to that are tied to casino activity; therefore, the benefit committee needs to obtain sufficient information from the fire department to ensure that the benefit committee awards grant funding only for the portion of the fire department’s efforts that relate to the casino. Further, in September 2012, the Governor signed legislation requiring that each grant application clearly show how the grant will mitigate the impact of the casino. Each of the benefit committees we reviewed uses a standard application form that requires the applicants to describe the impact of the casino and how the grant would mitigate that impact. For example, the application form used by San Diego County requires the applicant to provide an explanation

of how the proposed project will mitigate impacts of the casino, including documentation for the benefit committee to review and make a determination of how the grant mitigates a proportional share of casino impacts.

As shown in Table 3, in fiscal year 2013–14, the benefit committees for the three counties we reviewed awarded grants from the distribution fund totaling nearly \$5 million. We reviewed two grants from each county, which together totaled \$2.1 million, or more than 40 percent of the grant funding these three counties received in that fiscal year. Table 4 lists the grants we selected for review.

**Table 3**  
**Grants Awarded by the Three Indian Gaming Local Community Benefit Committees Reviewed**  
**Fiscal Year 2013–14**

COUNTY	NUMBER OF GRANTS AWARDED	TOTAL GRANT AWARDS
Fresno	4	\$874,000
Riverside	34	2,419,000
San Diego	15	1,636,000
<b>Totals</b>	<b>53</b>	<b>\$4,929,000</b>

Sources: Indian Gaming Special Distribution Fund annual reports and the State Controller's authorization forms to release funds from the individual tribal casino accounts.

For one of the two grants we reviewed for Fresno County, the benefit committee did not require the grantee to document the proportion of the project costs attributable to casino impacts. The benefit committee awarded \$362,000 to the county sheriff to fund its request for three deputy positions, one of which is assigned as a detective. The grant application requested funding of \$516,000 to fully cover the costs of these positions and indicated that these positions had responded to slightly more than 1,100 calls in 2013. However, the application also indicated that only 581 of those calls—or just more than half—came from zones surrounding the two casinos. The remainder of the service calls to which these three positions responded were from areas outside the casino zones. Because the grant application showed that the positions would be responsible for some activities not related to tribal gaming, we would have expected the application to identify the proportionate share of costs attributable to impacts from the tribal casinos, and the benefit committee to award only a proportionate share of the annual cost for those positions. Although the benefit committee did not award the full amount of grant funds requested, there is no documentation in the benefit committee files to demonstrate the grant award amount represents the proportionate

share of costs attributable to casino impacts. When we asked why the benefit committee awarded funding to patrol areas outside of the casino, benefit committee staff indicated that these service calls all originated from areas within the casino’s sphere of influence. However, benefit committee staff were unable to demonstrate that they had asked the sheriff’s department to provide evidence that the calls from these areas were related to Indian gaming.

**Table 4**  
**Review of Selected Grants Awarded by Indian Gaming Local Community Benefit Committees**  
**Fiscal Year 2013–14**

COUNTY	GRANT AMOUNT	GRANT CATEGORY	DESCRIPTION OF PROJECT	GRANT APPLICATION DEMONSTRATES GRANT WILL MITIGATE CASINO IMPACTS	DOCUMENTATION ADEQUATELY DEMONSTRATES PROPORTIONAL SHARE OF COSTS ATTRIBUTABLE TO CASINO IMPACTS	EXPLANATION
Fresno	\$359,000	Law enforcement	Staff funding	Yes	Yes	
	362,000	Law enforcement	Staff funding	Yes	No	Benefit committee awarded grant funds without support that all service calls described in the grant application were attributed to casino impact. Although it awarded less funding than requested, it could not demonstrate that it awarded the proportionate share of costs attributed to that impact.
<b>Subtotal</b>	<b>\$721,000</b>					
Riverside	\$306,000	Law enforcement	Law enforcement services	Yes	Yes	
	445,000	Roads	Road improvement/repairs	Yes	Yes	
<b>Subtotal</b>	<b>\$751,000</b>					
San Diego	\$410,000	Roads	Road improvement/repairs	Yes	Yes	
	250,000	Public health/behavioral health	Senior citizen anti-scam campaign	Yes	No	Benefit committee awarded grant funds despite the grant application's failure to support claims made in the application that the funding requested was proportional to the effects of tribal gaming.
<b>Subtotal</b>	<b>\$660,000</b>					
<b>Total</b>	<b>\$2,132,000</b>					

Sources: Indian Gaming Special Distribution Fund annual reports, benefit committee grant applications, and supplemental application materials.

Fresno County benefit committee staff also could not explain why the benefit committee approved funds without sufficient documentation. Further, when we reviewed the audio recording of the meeting at which the benefit committee awarded the mitigation grant, we noted that the benefit committee did not ask questions about the proportion of costs to be covered by the grant before it voted to approve funding. Current benefit committee staff stated that they do not know why there was no such discussion because none of the current staff were assigned to the benefit committee at the time. They also stated that none of the previous staff members still work for the administrative office, and there is no other documentation in the files from previous staff.

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**Staff could not explain why the benefit committee approved funds without sufficient documentation.**

.....

For one of the two grants we reviewed for San Diego County, the benefit committee awarded \$250,000 to the county Health and Human Services Agency to address financial abuse of and problem gambling by seniors.<sup>4</sup> In its application, the grant applicant referred to statistics and data from reports to show how many seniors in the county were affected by problem gambling. However, although the application included the titles and authors for these reports, it did not include copies of those reports or documentation supporting the proportionate share of the project funding that it was requesting as required by the application. According to the benefit committee meeting notes, the grant applicant presented its application and there were no questions from the committee.

When we discussed the grant award with a benefit committee staff member in San Diego County, he indicated that when he was deciding whether the amount was proportional, he looked at the statistics as a whole to determine whether the amount requested reasonably fell within those statistics and used professional judgment to assess whether the funding was appropriate. However, we would have expected San Diego's benefit committee to require the grant applicant to provide relevant documentation to support its request to fund the proportional share of its expenses attributable to the impact of tribal casinos.

<sup>4</sup> Although addressing problem gambling is one of the four priorities for the distribution fund described in law, as we describe in the Introduction, state law also describes behavioral health for local governments as an allowable use of mitigation grants.

Although the benefit committees in Fresno and San Diego counties did not award one of the two mitigation grants we reviewed in each county appropriately, we determined that for five of the six grant awards we reviewed the grantees spent the awards appropriately based on the projects they proposed in their grant applications. Specifically, our review of documentation supporting a selection of the grantees' quarterly expenditure reports showed that the grantees spent the funds for the purposes described in their grant applications. One of the five grantees had spent only \$299,000 of its award of \$359,000. For the sixth grant award we reviewed, the grantee had not yet spent any of the funds but expects to use the funds in 2017.

We reviewed Riverside and San Diego counties' benefit committees' awarding of mitigation grants in each of our previous three audits.<sup>5</sup> Previously, Riverside's benefit committee awarded grants without ensuring that the grant applicants had demonstrated that the funding requested was proportional to casino impact. During the current audit, our review of two mitigation grants awarded by the benefit committee in Riverside County found that the benefit committee appropriately awarded grant funds to applicants that had properly demonstrated casino impacts and, if applicable, proportionate amounts. For example, in Riverside County, one grant application we reviewed described a road construction project to widen an existing road from two lanes to four lanes and create a bike lane, using specific rubberized asphalt to mitigate noise levels and create a safe path for bicyclists, among other things. The applicant used traffic studies that showed the high traffic volume leading to and from the casino to demonstrate that the casino had a significant impact on the road.

### Recommendation

If the Legislature appropriates funding from the distribution fund for mitigation grants in the future, to comply with state law, the benefit committees for Fresno and San Diego counties should ensure that they obtain sufficient documentation from grant applicants to demonstrate that the requested funding represents the correct proportionate share of the costs attributable to casino impacts.

<sup>5</sup> California State Auditor's reports 2013-036 (March 2014), 2010-036 (February 2011), and 2006-036 (July 2007).

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## OTHER AREAS WE REVIEWED

To address the requirements of California Government Code section 12717, which requires the California State Auditor to conduct an audit every three years regarding the allocation and use of Indian Gaming Special Distribution Fund grant money, we reviewed the subject areas shown in Table 5. In the table, we indicate the results of our review and any associated recommendations that are not discussed in other sections of this report.

**Table 5**  
Other Areas Reviewed as Part of This Audit

Monitoring Whether Grantees Placed Mitigation Grant Funds in Interest-Bearing Accounts
<ul style="list-style-type: none"> <li>• State law requires grantees receiving local mitigation grants from the distribution fund to place the grant funds into an interest-bearing account.</li> <li>• We reviewed policies and procedures of the benefit committees in the three counties we reviewed—Fresno, Riverside, and San Diego—to determine the extent to which they ensured that grantees met this requirement.</li> <li>• We found that the benefit committees in Riverside and San Diego counties had adequate policies and procedures to monitor grantees’ activities to ensure their compliance with requirements related to interest-bearing accounts. However, although Fresno County’s benefit committee had policies and procedures requiring grantees to place funds in interest-bearing accounts, it did not have procedures to verify that grantees were doing so.</li> <li>• We reviewed documentation for each of the six grants we selected for review and found that in all three counties, grantees appropriately placed their grant funds into interest-bearing accounts.</li> </ul> <p><b>Recommendation</b></p> <p><i>If the Legislature appropriates funding from the distribution fund for mitigation grants in future years, Fresno County’s benefit committee should revise its procedures to include specific steps to verify that grantees will place grant funds into interest-bearing accounts when awarding any mitigation grants. These steps should include requiring grantees to report the interest accrued in their quarterly reports and to substantiate those reports with bank statements or other reports of interest earned, and following up with the grantee when the grantee reports no earned interest for the period.</i></p>
Disclosure Requirements
<ul style="list-style-type: none"> <li>• The Political Reform Act of 1974 (reform act) requires certain individuals in positions that make or participate in the making of decisions that may have a material effect on economic interests (designated individuals) to file a statement of economic interests (statement) annually, and within 30 days of assuming or leaving office.</li> <li>• The Fair Political Practices Commission requires filing officers to maintain statements submitted by designated individuals for seven years.</li> <li>• The benefit committee in Fresno County could not provide a required leaving-office statement for one staff member and one assuming-office statement for another staff member for 2014. Because of staff turnover, current benefit committee staff could not explain why these missing statements were not available.</li> </ul>

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#### Disclosure Requirements Continued . . .

- In 2013 and 2014, four benefit committee members in Fresno County filed annual statements between five and 115 days late and one leaving-office statement 576 days late; two members in Riverside County filed leaving-office statements 45 and 179 days late, respectively; and one member in San Diego County submitted an annual statement 436 days late. However, benefit committee staff in those counties took appropriate actions to notify members before the due date for filing and to follow up on missing statements after that date had passed.
- In our last audit, we reported that the benefit committees in Riverside and San Diego counties did not require benefit committee staff to file statements, even though staff are responsible for activities that have them participating in governmental decisions.\* In this audit, we found that in September 2014 the benefit committee in Riverside County updated its conflict-of-interest code to require benefit committee staff to file statements. In February 2015, the benefit committee in San Diego updated its bylaws to require benefit committee staff to file statements. These changes would apply to any designated individual filing a statement for 2014 and subsequent years.

#### **Recommendation**

*Fresno County's benefit committee should develop procedures to ensure it complies with the reform act by collecting all required statements of economic interest in a timely manner, and that it complies with its record retention policy by maintaining those statements for the required period of time.*

#### Composition of Benefit Committees

- As described in the Introduction, state law specifies the composition of benefit committees. Generally, members of the benefit committees include representatives from the county, from the tribal casinos, from cities affected by those tribal casinos, and from the general public.
- We reviewed the composition of the benefit committees in the three counties we reviewed—Fresno, Riverside, and San Diego—and found that the composition of those counties' benefit committees reflected the requirements in state law.

#### Geographic Proximity to Tribal Casinos

- As described in the Introduction, state law requires benefit committees to distribute mitigation grant funds based on four nexus tests of geographic proximity to Indian casinos and tribal land for cities and the county.
- We reviewed the nexus calculations by the benefit committees in the counties of Fresno, Riverside, and San Diego and the local mitigation funds awarded by those benefit committees. We found that all three benefit committees appropriately completed the nexus test calculations and provided the minimum grant funds to entities that met the nexus test as required.

#### Allocation and Disbursement of Distribution Fund Money to Counties

- As described in the Introduction, the State Controller is responsible for calculating the allocations, in consultation with the Gambling Commission, for each of the county tribal casino accounts, based on the formula specified in state law. Our review found that the State Controller accurately allocated funds to counties.
- In our last audit, we reported that the State Controller had not always disbursed grant funds directly to grant recipients, as is required in state law.\* In this audit, we found that the State Controller had modified its procedures and released funds directly to grant recipients.

**Follow-Up on Selected Recommendations From Our Previous Audit\***

- In our last audit, we recommended that the benefit committee in San Diego County refrain from placing limits on the time available for grant recipients to spend grant funds. In this audit, we found that San Diego's benefit committee allowed extensions on these time limits and thus functionally implemented our recommendation.
- We also recommended in that audit that the filing officers for the benefit committees in Riverside and San Diego counties attend training provided by the Fair Political Practices Commission on the responsibilities for filing statements of economic interests. We found that filing officers for both benefit committees attended appropriate trainings and thus implemented our recommendation.
- We made other recommendations to the benefit committees in Riverside and San Diego counties related to awarding mitigation grants. We have reviewed the benefit committees' actions to address these findings as part of our testing described earlier in this report.

Sources: California State Auditor's analysis of records from the State and from benefit committees in the counties of Fresno, Riverside, and San Diego, and interviews with key staff members from the State and in those counties about the subject areas identified in the table.

\* *Indian Gaming Special Distribution Fund: Counties' Benefit Committees Did Not Always Comply With State Laws for Distribution Fund Grants* (Report 2013-036, March 2014).

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## SCOPE AND METHODOLOGY

State law requires the California State Auditor to conduct an audit every three years regarding the allocation and use of money from the Indian Gaming Special Distribution Fund by the grant recipients. Table 6 lists the objectives we developed to perform the audit and the methods we used to address those objectives.

**Table 6**  
**Audit Objectives and the Methods Used to Address Them**

AUDIT OBJECTIVE	METHOD
<p>1 Review and evaluate the laws, rules, and regulations significant to the audit objectives.</p>	<p>Reviewed relevant laws, regulations, and other background materials applicable to the distribution fund.</p>
<p>2 Update information regarding the distribution fund:</p> <p>a. Identify new compacts, or those amended, in fiscal years 2013–14 through 2015–16.</p> <p>b. Identify revenue and expenditures for the distribution fund for fiscal years 2013–14 through 2015–16.</p> <p>c. Verify accuracy of Gambling Commission list of counties that submitted annual reports.</p>	<ul style="list-style-type: none"> <li>• Reviewed compacts entered into or amended during fiscal years 2013–14 through 2015–16, and used a list of tribes from the Gambling Commission’s website to ensure that the tribal parties to these compacts were federally recognized tribes.</li> <li>• Identified terms for funding the distribution fund within the compacts and, for amended compacts, how those terms changed.</li> </ul> <p>Identified distribution fund revenue and expenditures for fiscal years 2013–14 through 2015–16. We also identified revenue and expenditures for one year before our audit period and estimated or projected amounts for fiscal years 2016–17 and 2017–18.</p> <p>To verify counties’ eligibility to receive distribution fund allocations in fiscal year 2013–14, the last year the Legislature appropriated funds, reviewed the Gambling Commission’s report to the State Controller’s Office (State Controller) identifying those annual reports submitted by Indian gaming local community benefit committees (benefit committee) for fiscal year 2012–13. Verified that the report was accurate and complete.</p>
<p>3 Determine whether the State Controller appropriately allocated funds available to counties for the distribution fund mitigation grant program in accordance with state law.</p>	<ul style="list-style-type: none"> <li>• Reviewed the State Controller’s allocations for mitigation grants in fiscal year 2013–14.</li> <li>• Interviewed State Controller staff to assess the State Controller’s procedures and controls for reviewing and approving benefit committee requests to release funds to grantees.</li> <li>• Reviewed the State Controller’s distributions to grant recipients for fiscal year 2013–14.</li> </ul>
<p>4 Determine whether the structure of selected county benefit committees is in compliance with state law.</p> <p>a. Determine the composition of the benefit committee membership for fiscal years 2013–14 through 2015–16, if mitigation grants were awarded in each year.</p> <p>b. Assess benefit committees’ compliance with conflict-of-interest requirements for fiscal years 2013–14 through 2015–16, if mitigation grants were awarded in each year.</p>	<p>Selected the three counties that received the largest allocation of local mitigation funds in fiscal year 2013–14 for review. For the counties we selected—Fresno, Riverside, and San Diego—we did the following:</p> <ul style="list-style-type: none"> <li>• The Legislature appropriated funds only in fiscal year 2013–14. We obtained benefit committee membership rosters and meeting minutes covering the fiscal year 2013–14 grant cycle for the counties of Fresno, Riverside, and San Diego.</li> <li>• Verified committee member organization affiliation—such as boards, commissions, and agencies.</li> <li>• Reviewed selected benefit committees’ conflict-of-interest codes for the fiscal year 2013–14 grant cycle.</li> <li>• Assessed whether benefit committee members and other designated staff filed required statements of economic interests.</li> </ul>

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AUDIT OBJECTIVE	METHOD
<p>5 Determine whether the benefit committees award and monitor grants appropriately.</p> <p>a. Determine whether the benefit committee awarded grants in fiscal year 2013–14 according to funding requirements.</p> <p>b. For two mitigation grant awards in fiscal year 2013–14, assess the eligibility of those awards.</p> <p>c. Assess benefit committees' methods to ensure mitigation grant awards are used for allowable purposes.</p> <p>d. Assess benefit committees' methods to ensure mitigation grant awards are placed in interest-bearing accounts.</p>	<p>For the three counties we reviewed:</p> <ul style="list-style-type: none"> <li>• Reviewed and verified the benefit committees' determination of nexus fund eligibility for local government jurisdictions.</li> <li>• Reviewed awards made by benefit committees for fiscal year 2013–14 to ensure that local government jurisdictions received at least the minimum amount required by statute.</li> <li>• For two mitigation grant awards at each county, reviewed application materials for selected grants in fiscal year 2013–14 and assessed eligibility of those awards.</li> <li>• Interviewed benefit committee staff and requested additional information regarding any deficiencies we identified in the documentation.</li> </ul> <p>Reviewed documentation to verify whether grantees spent mitigation grant funds for stated and allowable purposes.</p> <ul style="list-style-type: none"> <li>• Reviewed benefit committee policies and procedures designed to ensure that grantees complied with requirements to place mitigation grant funds in interest-bearing accounts.</li> <li>• Reviewed documents to ensure that for the two mitigation grants we reviewed at each county, mitigation grant funds for fiscal year 2013–14 were placed in interest-bearing accounts.</li> </ul>
<p>6 Determine the status of implementation of our recommendations from the prior audits.</p>	<p>For those recommendations from prior audits not already reviewed as part of current audit procedures:</p> <ul style="list-style-type: none"> <li>• Reviewed documentation from the benefit committee in San Diego County to ensure it was no longer placing limits on grantee's time to spend awards.</li> <li>• Reviewed documentation establishing that benefit committee staff from Riverside and San Diego counties obtained training on responsibilities for collecting and filing statements of economic interest.</li> </ul>

Sources: California State Auditor's analysis of California Government Code section 12717 and information and documentation identified in the table column titled *Method*.

We conducted this audit under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the Scope and Methodology section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,



ELAINE M. HOWLE, CPA  
State Auditor

Date: March 7, 2017

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## APPENDIX

### Indian Tribes in California With Tribal-State Gaming Compacts

In 1999 the Governor negotiated and the Legislature approved legislation ratifying a number of tribal-state gaming compacts between the State and federally recognized Indian tribes. Eventually, the State entered into 61 of these compacts. During fiscal years 2003–04 through 2015–16, the Legislature ratified 12 new tribal-state compacts and amendments to 20 existing compacts. The 1999-model compacts specify 2,000 as the maximum number of gaming devices that each tribe can operate. However, post-1999-model compacts ratified during fiscal years 2003–04 through 2015–16 contain different provisions regarding the maximum number of gaming devices allowed.

In accordance with audit standards, we are disclosing the existence of information that we have not published because of its confidential nature. As of September 2016, the Gambling Commission reported that the total number of class III gaming devices operated by California Indian tribes was more than 68,000.<sup>6</sup> During the course of this audit, and in our prior audit, the Gambling Commission requested that we not provide information on the number of devices operated at each casino, pursuant to the compacts and Section 19821 of the Business and Professions Code, which state that such information should not be publicly disclosed.

Based on these sections of the compacts and state law, we agreed not to provide specific device counts. To provide a minimum level of disclosure, in a previous audit, the Gambling Commission agreed that classifying casinos by size according to ranges of devices would not violate the confidentiality requirements to which the commission is subject. As a result, in Table A beginning on the following page, we present casinos by size according to several ranges of devices, as well as the maximum number of gaming devices each compact allows and the year that the Legislature voted to ratify the new or amended compact.

<sup>6</sup> Class III gaming includes lotteries, certain card games, and slot machines. Gaming device means a slot machine.

**Table A**  
**Indian Tribes in California With Tribal-State Gaming Compacts as of June 2016**

COUNTY	TRIBE	YEAR COMPACT OR MOST RECENT COMPACT AMENDMENT WAS RATIFIED*	CASINO <sup>†</sup>	RANGE OF GAMING DEVICES IN OPERATION (AS OF SEPTEMBER 2016)	MAXIMUM NUMBER OF GAMING DEVICES ALLOWED
Amador	Buena Vista Rancheria of Me-Wuk Indians	2004	No	0	Unlimited <sup>‡</sup>
	Jackson Rancheria of Miwuk Indians	2015	Yes	1,001 to 2,000	1,800
Butte	Berry Creek Rancheria of Maidu Indians	1999	Yes	351 to 1,000	2,000
	Mooretown Rancheria of Maidu Indians	1999	Yes	351 to 1,000	2,000
Colusa	Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria	2000	Yes	1,001 to 2,000	2,000
Del Norte	Elk Valley Rancheria	1999	Yes	1 to 350	2,000
	Resighini Rancheria	2000	No	0	2,000
	Tolowa Dee-ni' Nation	1999	Yes	1 to 350	2,000
	Yurok Tribe of the Yurok Reservation	2007	Yes	1 to 350	99
El Dorado	Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract)	2013	Yes	More than 2,000	3,000
Fresno	Big Sandy Rancheria of Western Mono Indians	1999	Yes	1 to 350	2,000
	Table Mountain Rancheria	1999	Yes	1,001 to 2,000	2,000
Humboldt	Bear River Band of the Rohnerville Rancheria	2000	Yes	1 to 350	2,000
	Blue Lake Rancheria	2000	Yes	351 to 1,000	2,000
	Cher-Ae Heights Indian Community of the Trinidad Rancheria	1999	Yes	1 to 350	2,000
	Hoopa Valley Tribe	1999	Yes	1 to 350	2,000
Imperial	Quechan Tribe of the Fort Yuma Indian Reservation	2006	Yes	1,001 to 2,000	1,100
	Torres Martinez Desert Cahuilla Indians	2003	Yes	1 to 350	2,000
Inyo	Bishop Paiute Tribe	2000	Yes	1 to 350	2,000
	Fort Independence Indian Community of Paiute Indians	2013	No	0	800
Kings	Santa Rosa Indian Community of the Santa Rosa Rancheria	1999	Yes	1,001 to 2,000	2,000
Lake	Big Valley Band of Pomo Indians of the Big Valley Rancheria	1999	Yes	1 to 350	2,000
	Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria	2000	No	0	2,000
	Habematolel Pomo of Upper Lake	2011	Yes	1 to 350	750
	Middletown Rancheria of Pomo Indians	1999	Yes	351 to 1,000	2,000
	Robinson Rancheria Band of Pomo Indians	1999	Yes	1 to 350	2,000
Lassen	Susanville Indian Rancheria	2000	Yes	1 to 350	2,000
Madera	Picayune Rancheria of Chukchansi Indians of California	1999	Yes	1,001 to 2,000	2,000
Mendocino	Cahto Tribe	1999	Yes	1 to 350	2,000
	Coyote Valley Reservation	2012	Yes	1 to 350	1,250
	Hopland Band of Pomo Indians	1999	Yes	1 to 350	2,000
	Manchester Band of Pomo Indians of the Manchester Rancheria	2000	Yes	1 to 350	2,000
	Pinoleville Pomo Nation	2011	No	0	900
	Sherwood Valley Rancheria of Pomo Indians	1999	Yes	1 to 350	2,000
Modoc	Alturas Indian Rancheria	2000	Yes	1 to 350	2,000
Placer	United Auburn Indian Community of the Auburn Rancheria	2015	Yes	More than 2,000	3,500

COUNTY	TRIBE	YEAR COMPACT OR MOST RECENT COMPACT AMENDMENT WAS RATIFIED*	CASINO <sup>†</sup>	ACTUAL NUMBER OF GAMING DEVICES IN OPERATION (AS OF SEPTEMBER 2016)	MAXIMUM NUMBER OF GAMING DEVICES ALLOWED
Riverside	Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation	2007	Yes	1,001 to 2,000	5,000
	Augustine Band of Cahuilla Indians	2000	Yes	351 to 1,000	2,000
	Cabazon Band of Mission Indians	1999	Yes	1,001 to 2,000	2,000
	Cahuilla Band of Mission Indians of the Cahuilla Reservation	1999	Yes	1 to 350	2,000
	Morongo Band of Mission Indians	2007	Yes	More than 2,000	7,500
	Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation	2007	Yes	More than 2,000	7,500
	Ramona Band of Cahuilla	2013	No	0	750
	Soboba Band of Luiseno Indians	1999	Yes	1,001 to 2,000	2,000
	Twenty-Nine Palms Band of Mission Indians	2000	Yes <sup>§</sup>	1,001 to 2,000	2,000
San Bernardino	Chemehuevi Indian Tribe of the Chemehuevi Reservation	1999	Yes	1 to 350	2,000
	Fort Mojave Indian Tribe of Arizona, California, and Nevada	2004	No	0	1,500
	San Manuel Band of Mission Indians	2007	Yes	More than 2,000	7,500
San Diego	Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation	2000	Yes	1,001 to 2,000	2,000
	Campo Band of Diegueno Mission Indians of the Campo Indian Reservation	1999	Yes	351 to 1,000	2,000
	Ewiiapaayp Band of Kumeyaay Indians	1999	No	0	2,000
	Jamul Indian Village	2000	No	0	2,000
	La Jolla Band of Luiseno Mission Indians	1999	No	0	2,000
	La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation	2003	No	0	350
	Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation	1999	No	0	2,000
	Pala Band of Luiseno Mission Indians of the Pala Reservation	2004	Yes	1,001 to 2,000	Unlimited <sup>‡</sup>
	Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation	2004 <sup>ll</sup>	Yes	1,001 to 2,000	Unlimited <sup>‡</sup>
	Rincon Band of Luiseno Mission Indians of the Rincon Reservation	2013	Yes	1,001 to 2,000	2,250
	San Pasqual Band of Digueno Mission Indians	1999	Yes	1,001 to 2,000	2,000
	Sycuan Band of the Kumeyaay Nation	2015	Yes	More than 2,000	2,500
	Iipay Nation of Santa Ysabel	2003	No	0	350
	Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viegas Reservation	2014	Yes	1,001 to 2,000	4,500
	Santa Barbara	Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation	2015	Yes	More than 2,000
Shasta	Pit River Tribe (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek, and Roaring Creek Rancherias)	2000	Yes	1 to 350	2,000
	Redding Rancheria	1999	Yes	351 to 1,000	2,000
Siskiyou	Karuk Tribe	2014	No	0	1,500
Sonoma	Dry Creek Rancheria Band of Pomo Indians	1999	Yes	1,001 to 2,000	2,000
	Federated Indians of Graton Rancheria	2012	Yes	More than 2,000	3,000

continued on next page...

COUNTY	TRIBE	YEAR COMPACT OR MOST RECENT COMPACT AMENDMENT WAS RATIFIED*	CASINO†	ACTUAL NUMBER OF GAMING DEVICES IN OPERATION (AS OF SEPTEMBER 2016)	MAXIMUM NUMBER OF GAMING DEVICES ALLOWED
Tehama	Paskenta Band of Nomlaki Indians	1999	Yes	351 to 1,000	2,000
Tulare	Tule River Indian Tribe of the Tule River Reservation	2000	Yes	1,001 to 2,000	2,000
	Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria	1999	Yes	1,001 to 2,000	2,000
Tuolumne	Chicken Ranch Rancheria of Me-Wuk Indians	2000	Yes	1 to 350	2,000
	Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria	1999	Yes	1,001 to 2,000	2,000
Yolo	Yocha Dehe Wintun Nation	2004	Yes	More than 2,000	Unlimited‡

Sources: California Gambling Control Commission (Gambling Commission) website, Gambling Commission, and tribal-state compacts.

\* Date the executed compact was ratified by the Legislature or by the voters through the referendum process.

† Although under compacts they have the authority to operate a casino, some tribes do not.

‡ These tribes may operate an unlimited number of devices as long as they pay additional fees per gaming device.

§ This tribe has casino locations in both Riverside and San Bernardino.

|| In October 2015, the United States Court of Appeals for the Ninth Circuit concluded that Pauma's 2004 amendment was rescinded. Therefore, the tribe is subject to the 1999 compact for purposes of payment obligations.



# County of Fresno

COUNTY ADMINISTRATIVE OFFICE

**JEAN M. ROUSSEAU**

COUNTY ADMINISTRATIVE OFFICER

February 15, 2017

Ms. Elaine M. Howle, CPA\*  
State Auditor  
621 Capitol Mall, Suite 1200  
Sacramento, CA 95814

Sent via email to: [RickP@auditor.ca.gov](mailto:RickP@auditor.ca.gov)

**Subject: Response to Report 2016-036**

Dear Ms. Howle:

Thank you for the opportunity to address the Recommendations included in the California State Auditor's (CSA) draft audit report entitled "Indian Gaming Special Distribution Fund Report 2016-036" (Report). While the final report will be shared with the Fresno County Indian Gaming Local Community Benefit Committee (Committee) for consideration, the County wishes to note that the five-day timeframe for response and confidentiality requirements did not allow for the full Committee to meet, review the report and provide input into the response provided in this letter. County staff is responsible for the administration of the grant and staffing the Committee. The following includes the CSA's Recommendations followed by the County's Response.

Recommendation:

*If the Legislature appropriates funding from the distribution fund for mitigation grants in the future, to comply with state law, the benefit committee for Fresno County should ensure that they obtain sufficient documentation from grant applicants to demonstrate that the requested funding represents the correct proportionate share of the costs attributable to casino impacts.*

Response:

The recommendation has not yet been implemented, but will be implemented in the future, if the Legislature appropriates funding from the distribution fund for mitigation grants in the future.

Recommendation:

*If the Legislature appropriates funding from the distribution fund for mitigation grants in future years, Fresno County's benefit committee should revise its procedures to include specific steps to verify that grantees will place grant funds into interest-bearing accounts when awarding any mitigation grants. These steps should include requiring grantees to report the interest accrued in their quarterly reports and substantiate those reports with bank statements or other reports of interest earned, and following up with the grantee when the grantee reports no earned interest for the period.*

March 2017

Ms. Elaine M. Howle, CPA  
State Auditor  
February 15, 2017  
Page Two

Response:

The recommendation has not yet been implemented, but will be implemented in the future, if the Legislature appropriates funding from the distribution fund for mitigation grants in the future.

Recommendation:

*Fresno County's benefit committee should develop procedures to ensure it complies with the reform act by collecting all required statements of economic interest in a timely manner, and that it complies with its record retention policy by maintaining those statements for the required period of time.*

Response:

- ② The recommendation has been implemented, the Filing Officer has purchased SouthTech's DisclosureDocs and eDisclosure systems to manage and maintain Statements of Economic Interests Form (Form 700) information and the Filing Official is aware of their responsibilities per Government Codes. In addition, it is ultimately the filer's responsibility to file their Form 700 in a timely manner.

Again, thank you for the opportunity to review and respond to the draft Report. If you have any questions, please do not hesitate to contact me at 559.600.1710.

Sincerely,



Deborah Paolinelli, CPA  
Assistant County Administrative Officer

## COMMENTS

### CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM FRESNO COUNTY

To provide clarity and perspective, we are commenting on the response to our audit from Fresno County. The numbers below correspond to the numbers we have placed in the margin of the county's response.

The county's statement that the five-day time frame for response and confidentiality requirements did not allow for the full benefit committee to meet, review the report, and provide input into the response provided is misleading. We informed the county in September 2016 at our opening conference of the legal process that can be used for the full committee to meet in closed session to review the draft report. We also reminded the county again at the closing conference on February 1, 2017, and provided the specific dates that it would receive the draft report. The county also asked for the citation of the legal authority that authorizes it to hold a closed session, which we provided the same day.

①

Although the county indicates it has purchased an electronic system to manage and maintain its statements of economic interests, it does not indicate whether it plans to develop procedures for staff to follow in using this new system that will ensure it collects all required statements in a timely manner. Further, we do not disagree that it is a filer's responsibility to submit his or her forms in a timely manner; however, developing procedures for collecting and maintaining the forms as well as following up with individuals who do not file on time will help the county ensure compliance with requirements.

②

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March 2017



# County of San Diego

## LAND USE AND ENVIRONMENT GROUP

**SARAH E. AGHASSI**  
DEPUTY CHIEF ADMINISTRATIVE OFFICER

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(619) 531-6256 • Fax: (619) 531-5476  
[www.sdcounty.ca.gov/lueg](http://www.sdcounty.ca.gov/lueg)

February 15, 2017

Ms. Elaine M. Howle, State Auditor  
California State Auditor  
Bureau of State Auditor  
555 Capitol Mall, Suite 300  
Sacramento, CA 95814

Dear Ms. Howle,

### RESPONSE TO RECOMMENDATIONS IN THE FEBRUARY 2016 AUDIT

Thank you for the letter, dated February 9, 2017 that includes redacted draft copies of the draft audit report titled, "Indian Gaming Special Distribution Fund". This response is prepared on behalf of the San Diego County Indian Gaming Local Community Benefit Committee (IGLCBC) by the County of San Diego Grant Administrators. IGLCBC staff has worked with the Bureau of State Audits (Bureau) since the Fall of 2016 and appreciates the time the Bureau took during the process to review information provided and comment on the responsive revisions and process changes that have occurred since the previous audit.

The audit concluded that there is only one recommendation for the IGLCBC, however the audit also notes that there is not a guarantee that there will be additional funding allocated to this program in the future. While San Diego County does have individual agreements with gaming facilities under the process set forth in the gaming compacts, this funding program included a funding source that was important to mitigate local impacts using a holistic look at impacts from gaming facilities to important public infrastructure and programs in the San Diego region. The IGLCBC program should be replaced by the State of California.

This constitutes the first response from the IGLCBC on these issues, who will review and provide additional responses once the report is finalized and published, as required by the Bureau. The IGLCBC staff would request additional information on what time periods the State auditor requests the responses be sent, due to the nature of the recommendation.

- 1) **Recommendation 1:** If the legislature appropriates funding from the distribution fund for mitigation grants in the future, to comply with state law, the benefit committee for [redacted] San Diego County should ensure that they obtain sufficient documentation from grant applicants to demonstrate that the requested funding represents the correct proportionate share of the costs attributable to casino impacts.

**County Response:** The San Diego IGLCBC has implemented several process improvements since the 2014 audit and has required increasing levels of information for

March 2017

Ms. Elaine M. Howle, State Auditor  
February 15, 2017  
Page 2

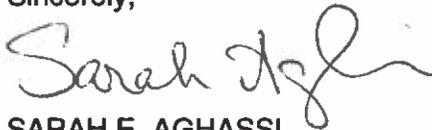
applicants to demonstrate proportional share for compliance with state law. IGLCBC staff explained this progress and no findings were made on the process, which includes an evaluation by County Counsel, staff, and the IGLCBC members. This finding relates to the documentation of that analysis in the grant application. If funding is awarded to San Diego, the IGLCBC staff will implement additional review for compliance with this finding.

As requested, the County provides the below contact information for the individual responsible for implementation of the recommendations. Please contact Eric Lardy for additional questions or information on this program.

Eric Lardy, Staff to the SD IGLCBC  
County of San Diego  
5570 Overland Ave, Suite 102  
San Diego, CA 92103  
Phone: 858-505-6932  
[Eric.Lardy@sdcounty.ca.gov](mailto:Eric.Lardy@sdcounty.ca.gov)

If you have questions, please call Eric Lardy at 858-505-6932.

Sincerely,



SARAH E. AGHASSI  
Deputy Chief Administrative Officer

March 2017



JAY E. ORR  
COUNTY EXECUTIVE OFFICER

## COUNTY OF RIVERSIDE EXECUTIVE OFFICE

GEORGE A. JOHNSON  
CHIEF ASSISTANT COUNTY EXECUTIVE OFFICER

ROB FIELD  
ASSISTANT COUNTY EXECUTIVE OFFICER  
ECONOMIC DEVELOPMENT AGENCY

MICHAEL T. STOCK  
ASSISTANT COUNTY EXECUTIVE OFFICER  
HUMAN RESOURCES

ZAREH SARRAFIAN  
ASSISTANT COUNTY EXECUTIVE OFFICER  
HEALTH SYSTEMS

PAUL McDONNELL  
ASSISTANT COUNTY EXECUTIVE OFFICER  
COUNTY FINANCE DIRECTOR

February 22, 2017

Elaine M. Howle \*  
California State Auditor  
621 Capitol Mall, Suite 1200  
Sacramento, CA 95814

Dear Ms. Howle,

The California Auditor's office reviewed Riverside County's Indian Gaming Mitigation Grant program during the six-month period ending January 2017. Over the course of the review, the team of auditors looked at every aspect of the administrative and procedural elements of the program and audited two specific grant-funded projects. ①

Riverside County is proud of the program developed in 2003, with guidance coming only from Senate Bill 621. Subsequently, additional guidance was received through prior State Auditor reports, resulting in clarifying legislation, SB 288 and AB 158. Given the challenges in arriving at this point, we are pleased and honored that the State Auditor found Riverside County's program to be operating in accordance with the law and the Auditor's recommendations.

Sincerely,



JAY E. ORR  
County Executive Officer  
County of Riverside

\* California State Auditor's comment appears on page 43.

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## COMMENT

### CALIFORNIA STATE AUDITOR'S COMMENT ON THE RESPONSE FROM RIVERSIDE COUNTY

To provide clarity and perspective, we are commenting on the response to our audit from Riverside County. The number below corresponds to the number we have placed in the margin of the county's response.

The county's statement that the team of auditors looked at every aspect of the administrative and procedural elements of the program and audited two specific grant-funded projects overstates the scope of our audit. Although the county is correct in its statement that we audited two specific grants, we did not review every aspect of the administrative and procedural elements of the program. We include the specific areas of our review in Table 6, which begins on page 27.

①