United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

TAKE PRIDE IN AMERICA

JUN 23 1992

Honorable Clifford La Chappa
Chairman, Barona Group of the
Capitan Grande Band of Mission Indians
1095 Barona Road
Lakeside, California 92040

Dear Chairman La Chappa:

On May 13, 1992, we received the tribal-state compact between the Barona Group of the Capitan Grande Band of Mission Indians and the State of California, signed by the Chairman on April 2, 1992, and the Governor on April 17, 1992, accompanied by Tribal Resolution Number 91-0516 authorizing the tribal chairman to enter into the compact. Pursuant to my delegated authority and Section 11 of the Indian Gaming Regulatory Act (IGRA), (P.L. 100-497; 25 U.S.C. 2710 et seq.) we approve the compact.

The compact shall take effect when notice of our approval, pursuant to Section 11(d)(3)(B) of the IGRA, is published in the FEDERAL REGISTER.

For your information, Section 11(d) of the IGRA requires the Chairman of the Commission to approve tribal ordinances authorizing Class III gaming. The Commission does not yet have final regulations governing such approvals. When those regulations are issued, you must submit the tribal ordinance to the Commission.

We wish the Tribe and the State success in this economic endeavor.

Sincerely,

Ron Eden

Acting Assistant Secretary - Indian Affairs

Enclosure

Similar letter to: Honorable Pete Wilson
Governor of California
Sacramento, California 95814

cc: Sacramento Area Director with copy of approved compact
Southern California Agency Superintendent with copy of approved compact
National Indian Gaming Commission with copy of approved compact
Penny Coleman, SOL
Sacramento Field Solicitor
California United States Attorney

DEPARTMENT OF THE INTERIOR

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved a Tribal-State Gaming Compact between the Barona Group of the Capitan Grande Band of Mission Indians and the State of California, executed on April 2, 1992.

DATE: This action is effective June 30, 1992.

ADDRESSES: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS/MIB 4603, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ronal Eden, Bureau of Indian Affairs, Washington, DC 20240, (202) 208–7445.

Dated: June 23, 1992.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 92–15267 Filed 6–29–92; 8:45 am]

BILLING CODE 4310–02–M

TRIBAL - STATE COMPACT

This Compact is entered into this _____ day of _____, 1992, by and between the Barona Group of the Capitan Grande Band of Mission Indians ("Barona"), a federally recognized Indian tribe which exercises governmental authority over the Barona Indian Reservation, which is located within the boundaries of the County of San Diego, State of California ("Reservation"), and the Honorable Pete Wilson, Governor of the State of California ("Governor"), acting for and on behalf of the State of California ("the State") and is made pursuant to Section 11(d) of the Indian Gaming Regulatory Act, 25 U.S.C. §2710(d)("the Act").

WHEREAS, the State of California permits and regulates parimutuel wagering on horse racing at authorized simulcast wagering facilities (also known as satellite wagering facilities or extended wagering facilities) at various locations within the State, under the terms of Section 19400 et seq. of the California Business and Professions Code ("the California Horse Racing Law") and Title 4, California Code of Regulations, Article 24 ("Rules and Regulations of the Board"); and

WHEREAS, the California Horse Racing Board ("Board") is the agency established under California state law to administer and enforce all laws, rules, and regulations affecting horse racing and parimutuel wagering within the State; and

WHEREAS, operation of a simulcast wagering facility is a Class III gaming activity under the Act; and

WHEREAS, Barona has duly enacted a Tribal Ordinance entitled, "Gaming Ordinance", enacted on May 4, 1989, amended on May 16, 1991, permitting such gaming activities on and within the Barona Indian Reservation if conducted in conformity with an applicable Tribal-State Compact; and

WHEREAS, Barona and the State each recognize the sovereign authority and interests of the other in regulating gaming activities within their respective areas of jurisdiction and in insuring that simulcast wagering is conducted fairly, honestly, professionally and in a manner that promotes the California horse racing industry; and

WHEREAS, the parties hereto deem it to be in their respective best interests to enter into this Compact for the purposes set forth herein; and

WHEREAS, the Board has recommended the approval and execution of this Compact by the Governor on behalf of the State of California.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows:

1. Definitions. Except where the context otherwise requires, the terms employed in this Compact shall have the same meanings ascribed to them in the California Horse Racing Law and the Rules and Regulations of the Board.

2. Purpose. The purpose of this Compact is to establish and declare the terms upon which a simulcast wagering facility may be established and operated upon the Barona Indian Reservation by the Barona Group of the Capitan Grande Band of Mission Indians as a means of generating revenues necessary to provide tribal services and programs, while providing the Board and Barona with an effective means of regulating such activities. In furtherance thereof, this Compact constitutes the sole expression of the mutual will of the parties concerning the subject to which it pertains.

3. Authorization to Operate Simulcast Wagering Facility. Barona is authorized to establish and operate a simulcast wagering facility upon the Barona Indian Reservation provided that such facility is operated in conformity with the Act and this Compact.

4. Exclusivity. Except as provided in this Compact, no prohibition upon, or regulation of, the establishment or operation of a simulcast wagering facility on the Barona Indian Reservation will be imposed upon Barona by the State.

5. Taxes. No tax will be imposed by the State on a simulcast wagering facility established by Barona upon the Barona Indian Reservation, or on the operation thereof.

6. Approval of Simulcast Facility.

a. Modification of Present Gaming Facility. Barona presently operates a gaming facility, known as Barona Indian Gaming, formerly known as the Barona Indian Bingo Palace, located in protracted Section 21, T. 14 S., R. 1 E., SBM, County of San Diego, on the trust lands of the Barona Indian Reservation. In this 2,200-seat hall, Barona now offers bingo. Now under construction and expected to open in July of 1991 is an addition to this existing structure in which Barona plans to offer various Class II card games under the same roof. Subject to the Board's approval, Barona is now preparing plans and specifications for the remodeling of a portion of the existing structure adjacent to the addition now under construction for card games to be used to accommodate simulcast wagering. At its early convenience, the Board will review the plans and specifications for the intended simulcast facility and will inspect the existing facility. If the Board finds that the plans for the simulcast facility comply with the substantive requirements of Title 4, Code of California Regulations, Article 24, Sections 2058(e) and (f), or the then applicable requirements for approving simulcast facilities, and the applicable uniform building and construction codes, the Board shall approve the new Barona facility as a simulcast facility, provided that it is constructed in accordance with the approved plans and specifications, and in conformity with the applicable uniform codes.

b. Continuing Obligation to Maintain Facility. Barona agrees to maintain its facility in a manner that complies with all applicable simulcast facility requirements at all times.

c. Fire Safety Inspection. For several years, the Rural Fire Protection District of San Diego County, California, with funding provided by the Bureau of Indian Affairs of the U.S. Department of the Interior, has provided primary fire protection services for the Barona Indian Reservation, including the existing Barona Indian Gaming facility. This protection is supplemented by a local volunteer fire company. On June 11, 1991, Barona's Tribal Council adopted its resolution no. 91-0611, requesting further federal funding for this purpose for Fiscal Year 1992. Before the Board's approval of the plans and specifications for the above simulcast wagering facility and annually thereafter, Barona will provide to the Board verification that the above fire protection district is providing fire protection to the said facility and that the said facility meets a reasonable standard of fire safety. Barona will promptly notify the Board if there is significant change in the fire protection provided to the Barona Indian Gaming facility or the expected simulcast wagering facility by this district, and the Board must approve any such change prior to its effectiveness.

7. Term of Compact. This compact shall remain in full force and effect until one of the following events shall occur:

a. This Compact is terminated by mutual consent of the parties;

b. This Compact is determined to be invalid by a court of competent jurisdiction; or

c. The State amends its Constitution or laws to prohibit all persons, organizations, and entities from conducting simulcast parimutuel wagering anywhere within the State of California for any purpose.

8. Agreements With Simulcast Organizations.

a. In order to permit the conduct of intrastate simulcast wagering and out-of-state wagering at the Barona Simulcast wagering facility, Barona is hereby authorized to enter into agreements with any simulcast organization which is established pursuant to Business and Professions Code Sections 19608-19608.2, and which organization provides the audiovisual signal of, and operates simulcast wagering on, racing events authorized to be received in the southern zone. No such simulcast organization shall refuse to enter into such an agreement with Barona on the ground that Barona is not an entity eligible to be authorized to operate a simulcast wagering facility under state law, or that the proposed agreement with Barona is otherwise inconsistent with any other provision of state law, or with the Rules and Regulations of the Board, as long as the proposed agreement between Barona and the simulcast organization complies with Federal laws and with the terms of this Compact. A copy of any such agreement entered into by Barona shall be provided to the Board within 30 days after its execution. Except as herein

provided, nothing in this Compact is intended to alter in any way the rights of the simulcast organization under State law.

b. Upon the written request of Barona made not sooner than one year after commencement of operation of the Barona simulcast wagering facility, the provisions of subparagraph (a) limiting the simulcast organizations with which Barona may enter into agreements shall be subject to amendment in accordance with the procedures of Paragraph 11(b) of this compact.

9. Right of Entry. Barona hereby grants the Board a right of entry onto the Barona Indian Reservation for purposes of inspecting its simulcast facility and monitoring compliance with this Compact. Such inspection or other site visits shall be conducted by the Board in accordance with the same schedules, policies and procedures that the Board customarily applies to simulcast facilities licensed under state law.

10. Concurrent Tribal Authority. Unless expressly prohibited under the terms of this Compact, nothing contained herein shall operate to preclude Barona from exercising such additional and concurrent governmental authority as it may otherwise possess over the gaming activities authorized under this Compact; provided, however, that any regulatory authority exercised by Barona shall be no less stringent than that which the Board would exercise over simulcast facilities approved under state law.

11. Negotiation of Amendments.

a. Changes in Applicable Law. The activities authorized and regulated under this Compact are Class III gaming activities within the meaning of the Act, and are permissible under current state law. The parties recognize, however, that subsequent changes in state or federal law may affect the scope of such permissible activities. In the event of any change in state or federal law which any party hereto believes (1) materially affects the validity of this Compact, in whole or in part, or (2) expands or diminishes the permissible type of gaming activities under this Compact, or (3) materially affects the duties or responsibilities of the parties under this Compact, that party shall notify the other party, in writing, of that belief, and the parties shall thereafter comply with the provisions of subparagraph (b), below.

b. Procedures. In the event that either party seeks any amendment pursuant to the terms of this Compact, that party shall in writing request a meeting to be scheduled within 30 days after the request is made. The parties shall thereupon meet to discuss the proposed amendment, and the impact, if any, on this compact. As a result of such meeting, or any subsequent negotiations, and within 180 days following the initial notice:

(1) The parties may agree that no amendment of the Compact is required; or

(2) The parties may agree that amendment of the Compact is required and execute such amendment; or

(3) Either party, if no agreement can be reached by the parties as to the proposed amendment, may bring suit against the other, in a court of competent jurisdiction, seeking a declaratory judgment as to the respective rights of the parties.

12. Consent Under Interstate Horse Racing Act. To the extent that acceptance of interstate off-track wagers is authorized by state law, the execution of this compact by the State shall constitute consent to acceptance of interstate off-track wagers by the simulcast organization at the Barona simulcast facility, as required under 15 U.S.C.§3004(a)(3). The California Horse Racing Board, if requested, shall acknowledge in writing the consent given herein.

13. Licenses Generally. Subject to compliance with the terms of this Compact, Barona shall not be required to obtain a license from the Board in order to establish and operate a simulcast wagering facility within the Barona Indian Reservation, and shall not be required to obtain any other license under State law in connection with its operation of a simulcast wagering facility.

14. Licensing of Personnel. Every person employed at the simulcast facility on the Barona Indian Reservation required to be licensed pursuant to Section 1481 of the Board's Rules shall hold a valid license issued by the Board; and

a. hold a valid license issued by Barona, if Barona licenses such occupation or activity within the Reservation; or

b. be approved by Barona for such employment.

15. Security Control over Inclosure. Barona shall maintain such security controls over its inclosure and premises as the Board's Assistant Executive Secretary for Licensing and Enforcement shall direct; and shall remove, deny access to, eject or exclude persons whose presence within the inclosure is inimical to the interests of the State as provided by Sections 1980 and 1989 of the Board's Rules, or the interests of Barona in operating an honest, legitimate facility.

16. Civil Regulation.

a. Generally. Except as modified by this compact, and except to the extent that they are in conflict with the provisions of federal law, the Constitution and all statutes of the State of California specifically pertaining to the conduct of simulcast wagering, and all regulations, policies and regulatory and enforcement practices of the California Horse Racing Board or its successor, which are now in existence or which may hereafter be enacted, adopted or from time to time amended and which apply generally to simulcast wagering facilities within the State, are hereby incorporated into this Compact and are applicable to the simulcast wagering facility established or operated by Barona on the Barona Indian Reservation and to all persons, entities and things operating on behalf or under the authority, supervision, direction or control of Barona, its governing body, or any enterprise formed for the purpose of establishing or operating such facility.

b. Non-Discrimination in Enforcement. In exercising the regulatory enforcement authority granted herein, such authority and the application of its rules, regulations and procedures shall be exercised by the Board in a manner that does not improperly discriminate against Barona or is more stringent than that applied to regularly approved simulcast wagering facilities under normal State jurisdiction.

17. Registration of Management Personnel.

a. Intent. It is the intent of this section to establish concurrent jurisdiction with the tribe over the approval and registration of persons involved in the management of tribal gaming facilities authorized by this compact, as well as those with a financial interest, as described below, in such facilities, through registration by the California Department of Justice of those persons.

b. Prohibition against operation of tribal gaming facility without valid registration.

(1) No person shall manage, operate or have a financial interest in, a tribal gaming facility authorized by this compact without first obtaining a valid registration from the California Department of Justice.

(2) The tribe shall not authorize or permit any person to manage or operate any tribal gaming facility authorized by this compact unless that person possess a valid registration pursuant to subdivision (1).

(3) This paragraph shall not apply to any person licensed or supervised by the California Horse Racing Board.

c. Definitions.

(1) "Person" means any member, stockholder, officer, director, manager, partner, principal, associate, individual, or combination thereof holding any direct or indirect financial interest exceeding 5% in the operation or management of a tribal gaming facility authorized by this compact. "Person" also means any individual who has the power to exercise influence over the operation or management of a tribal gaming facility authorized by this compact whether or not such person has a financial interest. "Person" does not include the tribe itself, or any elected or appointed tribal official acting solely in his or her official capacity.

(2) "Conviction" means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the California Department of Justice takes following a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the California Penal Code or

any similar provisions of a statute or law, whether state, federal or of a foreign jurisdiction. The record of conviction of the crime shall be conclusive evidence of the fact that conviction occurred, but only of that fact, and the California Department of Justice may inquire into the circumstances surrounding the commission of the crime in order to determine if the conviction is substantially related to the qualifications, functions, and duties of the applicant or registrant in question.

(3) "Dishonesty" means: (a) an absence of integrity; (b) lack of honesty; or (c) a crime involving dishonest conduct.

d. Investigations; authority to initiate proceedings to deny or revoke registration; subpoenas. The California Department of Justice may, either on his or her initiative or in response to a complaint, investigate and gather evidence of fitness for registration under this section and may initiate proceedings to deny or revoke a registration. The California Department of Justice may issue subpoenas for the appearance of witnesses and the production of documents and other evidence. Subpoenas will not be directed to the tribe itself, or to any elected or appointed tribal official acting solely in his or her official capacity. Barona agrees to voluntarily supply the California Department of Justice with requested information; if such information is not supplied, Barona agrees that the California Department of Justice may refuse to register the applicant.

e. Examination of applicants' or registrants' books and records, inspection of premises and seizure of illegal equipment. Applicants and registrants shall authorize the California Department of Justice, or his or her representative, as a condition of registration, to do any of the following:

(1) Make any examination of the books and records of any applicant, registrant or other person and visit and inspect the premises of any applicant or registrant or of the tribal gaming facility authorized by this compact during normal business hours as deemed necessary by the California Department of Justice to enforce this paragraph.

(2) Seize and remove from such premises and impound any illegal equipment or supplies to the extent that it is finally determined in a court of competent jurisdiction that law enforcement officials in the State of California have authority to take such action. To the extent that such authority is not established, the California Department of Justice, or any law enforcement official within the State, may refer the matter to appropriate federal officials.

f. Information required of applicant; action on completed application.

(1) The California Department of Justice shall provide forms, which are to be completed under penalty of perjury, to obtain information to identify the persons applying for registration including, but not limited to, the individual's

name, address, identification numbers and other data prescribed by the California Department of Justice. Applicants for registration who have or will have a management or financial interest in any tribal gaming facility authorized by this compact shall submit full financial statements, as prescribed herein and which shall include a statement of any interest in any other business. The applicant shall submit a statement under penalty of perjury that no person, other than those disclosed in the application, shall have any management control of, or other financial interest in, the tribal gaming facility authorized by this compact.

(2) If any of the information submitted by an applicant or registrant changes, the applicant or registrant shall promptly notify the California Department of Justice. Based on such information, the California Department of Justice may initiate proceedings to deny or revoke a registration issued under this section.

(3) The California Department of Justice may issue a conditional registration in order to allow sufficient time to complete background investigations without causing undue hardships to applicants or registrants or to the tribal gaming facility authorized by this compact.

(4) Registration; application.

(i) An application form shall be submitted by all individuals who have or who intend to have a financial or management interest in any gaming establishment.

(ii) Part I, General Application Information, shall include substantially the following: name of applicant; type of affiliation with the tribal gaming facility authorized by this compact; name and address of the tribal gaming facility authorized by this compact; amount of interest in the tribal gaming facility authorized by this compact; names and addresses of other investors or managers if applicant is not sole investor in, or manager of, the facility.

(iii) Part II, Personal History, shall include substantially the following: personal identifiers; marital information; family information; education; military information; prior criminal activity; residence; employment; and character references.

(iv) Part III, Financial History, shall include substantially the following: complete financial history of the applicant, including a statement of assets and liabilities; amount invested or to be invested in the tribal gaming facility authorized by this compact and/or in the management entity with whom Barona contracts or otherwise engages to operate the tribal gaming facility authorized by this compact and source of funds; whether the applicant has ever filed bankruptcy.

(v) Applications shall be submitted on forms supplied by the California Department of Justice. The completed initial or first-time registration application shall be accompanied by two completed ten-print applicant fingerprint cards

obtained from a law enforcement agency and the specified nonrefundable application fee. Applications to renew registration need not be accompanied by fingerprint cards.

(5) Annual renewal of registration. Registration shall be renewed on an annual basis following instructions that shall be provided when the initial certificate of registration is issued to the applicant.

(6) Furnishing of additional information. The California Department of Justice may require an applicant for registration or a registrant to supply additional information beyond what is routinely required to be included in the application form in order to enforce the terms of this paragraph.

(7) Registration; proof thereof. Two forms of documentation may constitute proof of compliance with the Act and regulations: 1) possession of a valid "conditional registration" which will allow the applicant to operate pending the outcome of the Department of Justice background investigation conducted pursuant to the submission of an application for registration; or 2) possession of a valid annual registration certificate issued when the background investigation has been completed and the applicant has been registered.

g. Fees. All applicants for registration, whether for an initial or renewal registration, shall be charged an amount not to exceed the actual, reasonable cost incurred in processing, investigating, approving or denying the application. Such fees shall be paid prior to the commencement of any processing of an application, in an amount to be determined by the California Department of Justice, but, in any event, shall not exceed $5,000 per applicant unless previously approved by the Tribal Council on the basis of a report to the Tribal Council by the California Department of Justice describing the results of the initial investigation and setting forth the additional projected costs of further investigation. Barona agrees that such report will not include information which is deemed confidential pursuant to Part 4, Title 1, Chapter 1, section 11105, et seq. of the California Penal Code. Barona further agrees that if the additional costs are not approved, the California Department of Justice may refuse to register the applicant.

h. Grounds for denial of application; conditions.

(1) An application for registration may be denied if the person:

(i) Is under the age of 21 years.

(ii) Makes a false statement required to be revealed in an application for registration issued pursuant to this paragraph or in any application for authorization to own or operate any gaming facility.

(iii) Has been convicted of a crime punishable as a felony.

(iv) Is determined by the California Department of Justice to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto.

(v) Has engaged in bookmaking or other illegal gaming activities or has been convicted of an offense involving such activities.

(vi) Has been issued a conditional registration and commits any act which would be grounds for revocation under this paragraph.

(vii) Had his or her authorization to operate a gaming facility suspended or revoked or otherwise restricted by any authority, whether tribal, state, federal or foreign jurisdiction, if not reversed, vacated, or otherwise set aside in the same proceeding.

(2) The California Department of Justice may impose any condition upon registration reasonably necessary for implementation of this section.

(3) Denial of an application for any of the reasons specified in subdivision (a) shall not preclude the California Department of Justice or local enforcement agencies from filing criminal charges for any act done in making the application or for any act which is a ground for denial of a registration, which act might otherwise constitute a public offense.

i. Arrests for illegal gaming or dishonest acts; disclosure of facts <u>and circumstances</u>.

Notwithstanding any other provision of law, the California Department of Justice, or his or her representative, may require an applicant for registration to reveal the facts and circumstances of any arrest for illegal gaming activities, or of any act of dishonesty. Such an arrest must be disclosed regardless of whether or not the arrest resulted in a conviction or in a denial, suspension, revocation or restriction of any authorization to own or operate a gaming facility. An act of dishonesty must be disclosed if proceedings for the denial, suspension, or restriction of any business or occupational license was initiated as a result thereof.

j. <u>Review of criminal history information</u>. Notwithstanding any other provision of law, an investigation of an applicant's qualifications for registration may include review of his or her criminal history information maintained pursuant to Sections 11105 and 13300 of the California Penal Code, or criminal history information collected by any law enforcement agency, in any jurisdiction, whether state, federal or other foreign jurisdiction, including records of arrests which did not result in conviction.

k. Grounds for revocation.

(1) Registration may be revoked if the registrant has done any of the following:

(i) Committed any act which would constitute grounds for denial of registration as set forth in this paragraph.

(ii) Violated any applicable federal, state or local statute, rule or ordinance regulating gaming.

(iii) Engaged in unfair business practices or false or misleading advertising, as defined in Division 7, Part 2, Chapter 4, commencing with section 17000, and Part 3, Chapter 1, commencing with section 17500, of the California Business and Professions Code in connection with gaming.

(iv) Failed to take reasonable steps to prevent any dishonest acts or illegal activities occurring on the premises of the tribal gaming facility authorized by this compact committed by any patron or other individual or employee of the tribal gaming facility.

(v) Had his or her authorization to operate a gaming facility suspended or revoked or otherwise restricted by any authority, whether tribal, state, federal or foreign jurisdiction.

(vi) Denied the California Department of Justice access to any place within a tribal gaming facility authorized by this compact or failed to promptly produce for inspection or audit any book, record, or document requested by the California Department of Justice. Such inspection shall be limited to those relating to any tribal gaming facility authorized by this compact, unless the California Department of Justice deems it necessary to inspect other places or books, records or documents in order to fully investigate the operations of the tribal gaming facility authorized by this compact. In circumstances where the registrant has denied access to a place or inspection of any book, record or document, the California Department of Justice may request of Barona such access and/or copies of specified books, records or documents. The request shall describe the need for access or inspection. Within 15 days of such a request to Barona, Barona shall respond to the request.

(vii) Failed to comply with any condition of registration.

(viii) Obtained a registration by fraud, misrepresentation, concealment, or through inadvertence or mistake.

(ix) Made a misrepresentation, or failed to disclose, a material fact to the California Department of Justice.

(2) Revocation of a registration for any of the reasons specified in subdivision (a) shall not preclude the California Department of Justice or local enforcement agencies from filing criminal charges for any act done which is grounds for revocation, which act might otherwise constitute a public offense.

(3) Prior to commencing any proceeding to revoke, suspend, or restrict a registration required by this paragraph, the California Department of Justice will notify Barona, by letter, of its proposed action, including a brief description of the factual basis for the action. Within fifteen (15) days of the mailing of the letter, Barona may present its views in written form to the California Department of Justice, who will consider those views prior to commencing the proceeding. All such communications will be confidential to the degree provided by law.

l. Hearings related to denial or revocation of a registration; conduct.

All hearings relating to the denial or revocation of a registration shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the California Government Code. These proceedings shall be subject to judicial review pursuant to Section 1094.5 of the California Code of Civil Procedure.

18. Criminal Jurisdiction. In enforcing the terms and provisions of this Compact, the State shall have such criminal jurisdiction over Barona and its gaming operations, including its simulcast wagering facility within the Barona Indian Reservation as is recognized under 18 U.S.C. §1162.

19. Judicial Review. Judicial review of any action taken by either party under this Compact, or seeking any interpretation of this Compact, shall be had solely in the appropriate United States District Court; provided, however, that nothing herein shall be construed to confer jurisdiction on any federal court to review administrative actions taken by the Board with respect to persons or entities other than Barona.

20. Distribution of Handle.

a. Generally. Subject to subsections (b) and (c) below, the amounts deducted from parimutuel wagers at the Barona simulcast wagering facility, and the distribution of such amounts, shall be the same as that provided for under state law for simulcast wagering facilities, other than fairs, in the southern zone.

b. State License Fee.

(1) The parties acknowledge that the legality of the imposition, deduction, and distribution by the State of a license fee under business and Professions Code §§19605.71 (a) and (b), 19606.5, and 19606.6 on tribally-operated satellite wagering operations, such as that contemplated by this Compact, is currently being litigated by the Cabazon Band of Mission Indians in the U.S. District Court for the Eastern District

of California. Following the exhaustion of all appellate review of such litigation, the parties to this Compact will abide by that final outcome concerning the applicability of the said State license fee to the simulcast wagering facility contemplated by this Compact.

(2) In the event a final judgment is obtained in such litigation that the deduction and distribution of the said state license fee is permissible under the Act, and following the exhaustion of all appellate review, the State shall retain all license fees previously distributed to it, and shall be entitled to collects the state license fee from all wagers at the Barona simulcast wagering facility. Under such circumstances, the State shall not be entitled to any further assessment against or payment from Barona to cover the costs of State regulation of the Barona simulcast wagering facility, and the Barona simulcast wagering facility shall be entitled to all benefits and to participate in all programs under applicable state law which are available to any simulcast wagering facility, other than a fair, in the southern zone.

(3) In the event a final judgment is obtained in such litigation that the deduction and distribution of the said state license fee is impermissible under the Act, and following the exhaustion of all appellate review, the State shall pay over to Barona the amount of all state license fees previously distributed to the State under this Compact exclusive of assessments due and owing under subparagraph 4, below, and Barona shall thereafter be entitled to receive an amount equivalent to the state license fee from all wagers at the Barona simulcast wagering facility. The amount of state license fee previously distributed to the State and not reasonably claimed by the State as due and owing from the commencement of operation of the facility shall be paid over to Barona as soon as practicable and in any event, not later than sixty (60) days following final judgment.

(4) If it is judicially determined that the State is not entitled to receive the state license fee, the parties, in accordance with Paragraph 11(b), shall modify this Compact to provide for assessment by the State of the actual costs incurred by it in regulating the Barona simulcast wagering facility and for the settlement and collection of such costs due and owing from the commencement of operation of the facility.

c. Additional Provisions.

(1) Barona and the simulcast organization may agree between them and incorporate into the agreement described in Paragraph 8, above, how the one percent (1%) of the handle designated for promotion of the program at the Barona simulcast wagering facility shall be distributed and expended; and

(2) Barona shall be deemed to be the equivalent of the city or county entitled to the 0.33% of the handle distributed to the local government within which the simulcast wagering facility is located, and Barona shall receive such distribution.

21. Governing Law. This compact shall be governed by and construed in accordance with the laws of the United States; provided, however, that those provisions

of state law expressly incorporated into this Compact shall be construed in accordance with the laws of the State of California to the extent not inconsistent with federal law.

22. Entire Agreement. This Compact contains the entire agreement of the parties hereto with respect to the matters covered by this Compact and no other statement, agreement, or promise made by any party, officer, or agent of any party shall be valid or binding.

23. Amendments.

a. This Compact may be amended upon the written agreement of all the parties hereto, and with the approval of the Secretary of the Interior.

b. In order to provide Barona terms and conditions equivalent to those provided to any other California Indian Tribe under another Tribal-State compact, this Compact shall be amended by the parties in accordance with the procedures of Paragraph 11(b) if, during the term of this compact, either of the following conditions occurs:

(1) The State becomes a party to another Tribal-State Compact for the operation of as tribal simulcast wagering facility located in the central or southern zone under which the other tribe receives a greater percentage of the handle derived from wagers at its facility than does Barona under this Compact; or

(2) Acceptance of parimutuel wagers at any other tribal facility is permitted on racing other than as authorized at non-tribal facilities under state law.

24. Authority to Execute. Each of the undersigned represents to each of the other parties that he or she is duly authorized and has the authority to execute this agreement on behalf of the party for whom he or she is signing.

25. Effective Date. This Compact shall be effective upon execution by the parties and approved by the Secretary of the Interior and publication in the Federal Register.

IN WITNESS WHEREOF, the parties have executed this Compact on the day and year first above written.

BARONA GROUP OF THE CAPITAN GRANDE BAND OF MISSION INDIANS

Date: April 2, 1992 By: Clifford N. La Chappa
Clifford La Chappa, Chairman

STATE OF CALIFORNIA

Date: 4/17/92 By: Pete Wilson
Pete Wilson, Governor

APPROVED:

Date: 6/23/92 By: Ken Eden
Authorized Representative of the Secretary of the Interior

BUREAU OF INDIAN AFFAIRS

Ken Eden
Acting Assistant Secretary - Indian Affairs

6/23/92
Date

BARONA INDIAN RESERVATION

Resolution No. 91-0576

WHEREAS, the General Council adopted the Tribe's present Gaming Ordinance on May 4, 1989, providing for playing of all games classified as Class II under the Indian Gaming Regulatory Act of October 17, 1988; and

WHEREAS, under the gaming management agreement between the Tribe and National Gaming Corp., approved by the Sacramento Area Director of the Bureau of Indian Affairs on October 30, 1990, only Class II gaming is allowed; and

WHEREAS, it has become clear that, in order to increase the attendance and the profitability of the Tribe's gaming enterprise, it will be useful to offer off-track satellite wagering, which is a Class III activity; and

WHEREAS, in order to offer this Class III form of gaming, it will be necessary to enter into a compact with the State of California and an operating agreement with Southern California Off-Track Wagering, Inc. to transmit and receive the satellite signals; and

WHEREAS, the Cabazon Band of Mission Indians has already entered into such a compact with the State of California and an operating agreement with Southern California Off-Track Wagering, Inc., and all other southern California tribes which offer such off-track wagering have used the Cabazon Band's compact and operating agreement as their models;

NOW, THEREFORE, BE IT RESOLVED by the General Council of the Barona Group of the Capitan Grande Band of Mission Indians that:

1. The Gaming Ordinance is hereby amended by adding the following language at the end of paragraph 2: "In addition to these Class II forms of gaming, off-track satellite wagering will also be permitted according to a compact between the Tribe and the State of California which is to be approved by the authorized representative of the Secretary of the Interior or the National Indian Gaming Commission."; and

2. The Chairman or Vice-Chairman is hereby authorized and directed to execute, on behalf of the Tribe, an amendment to the gaming management agreement between the Tribe and National Gaming Corporation to the effect that the following language is added at the end of

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paragraph 1.1.d.: "and off-track satellite wagering pursuant to a compact between the Tribe and the State of California which is to be approved by the authorized representative of the Secretary of the Interior or the National Indian Gaming Commission."; and

3. The Chairman or Vice-Chairman is hereby authorized and directed to execute, on behalf of the Tribe, a compact with the State of California, and an operating agreement with Southern California Off-Track Wagering, Inc., which is substantially the same as and at least as favorable to the Tribe as those executed by the Cabazon Band of Mission Indians for the above purposes; and

4. The Tribal Council is hereby authorized and directed to take whatever other follow-up and related actions are necessary or useful to accomplish the goal of offering off-track satellite wagering at the earliest possible date.

Dated: May 16, 1991

Clifford M. LaChappa

Clifford La Chappa, Chairman

CERTIFICATION

I, the undersigned recording secretary of the Barona Group of the Capitan Grande Band of Mission Indians, hereby certify that the above resolution was passed and adopted by a vote of 34 in favor, 16 opposed, and 4 not voting at a duly called and held special meeting of the General Council of the Tribe at which a quorum was present on May 16, 1991.

Laurie Phoenix

~~Julie Benedict~~ Laurie Phoenix