Tribal - State Compact

State of California

&

Viejas Band of Mission Indians

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Compact dtd. 01/19/90

(No Tribal Resolution on file @ Sacramento Area Ofc.)

Sacramento Area Office
Southern California Agency

RPM

TRIBAL - STATE COMPACT

This Compact is entered into this 16th day of February, 1990, by and between the Viejas Band of Mission Indians ("the Viejas Band"), a federally recognized Indian tribe which exercises governmental authority over the Viejas Indian Reservation, which is located within the boundaries of the County of San Diego, State of California ("Reservation"), and The Honorable George Deukmejian, 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., 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, the Viejas Band has duly enacted a Tribal Ordinance entitled, "Regulation of Off-Track Simulcast Parimutuel Wagering," permitting such gaming activities on and within the Viejas Indian Reservation if conducted in conformity with an applicable Tribal-State Compact; and

WHEREAS, the Viejas Band 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 purpose 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 Viejas Indian Reservation by the Viejas Band of Mission Indians as a means of generating revenues necessary to provide tribal services and programs, while providing the Board and the Viejas Band 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. The Viejas Band is authorized to establish and operate a simulcast wagering facility upon the Viejas 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 Viejas Indian Reservation will be imposed upon the Viejas Band by the State.

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

6. Approval of Simulcast Facility.

(A) Present Facility. For purposes of this Compact, the Viejas Valley Casino, located at 5000 Willows Road, within the Viejas Indian Reservation, County of San Diego, has been inspected by the Board, has been found to be suitable for simulcast wagering activities and is hereby approved as a simulcast facility.

(B) Future Facility. In the event that the Viejas Band seeks to establish and operate a different simulcast wagering facility on the Viejas Indian Reservation in the future, it shall notify the Board in writing of this intention. Within 30 days following receipt of this notice, the Board shall inspect the new facility or review plans and specifications as provided by the Viejas Band. If the Board finds that the new facility complies or will 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 building and construction codes, as set forth in the Resolution of the Viejas Band Tribal Council dated January 16, 1990, and any successor Resolution, the Board shall approve the new the Viejas Band

facility as a simulcast facility, provided that it is constructed in accordance with the approved plans and specifications, and in conformity with the applicable codes.

(C) Continuing Obligation to Maintain Facility. The Viejas Band agrees to maintain its facility in a manner that complies with all applicable simulcast facility requirements at all times.

(D) Fire Safety Inspection. Not less than annually, the Viejas Band shall have its simulcast facility inspected by the fire authority having jurisdiction, and shall submit to the Board a certification that the facility meets a reasonable standard of fire safety.

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 Viejas Band simulcast wagering facility, the Viejas Band is hereby authorized to enter into agreements with any simulcast organization which is established pursuant to Business and Professions Code Section 19596.4, subdivision (c), 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 the Viejas Band on the ground that the Viejas Band is not an entity eligible to be authorized to operate a simulcast wagering facility under state law, or that the proposed agreement with the Viejas Band 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 the Viejas Band and the simulcast organization complies with Federal law and with the terms of this Compact. A copy of any such agreement entered into by the Viejas Band 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 the Viejas Band made not sooner than one year after commencement of operation of the Viejas Band simulcast wagering facility, the provisions of subparagraph A limiting the simulcast organizations with which the Viejas Band 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. The Viejas Band hereby grants the Board a right of entry onto the Viejas 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 the Viejas Band 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 the Viejas Band 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 Viejas Band 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, the Viejas Band shall not be required to obtain a license from the Board in order to establish and operate a simulcast wagering facility within the Viejas 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 Viejas 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 the Viejas Band; if the Viejas Band licenses such occupation or activity within the Reservation, or

(B) be approved by the Viejas Band for such employment.

15. Security Control over Inclosure. The Viejas Band shall maintain such security controls over its inclosure and premises as the Board's Chief Investigator 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 the Viejas Band 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 the Viejas Band on the Viejas Indian Reservation and to all persons, entities and things operating on behalf or under the authority, supervision, direction or control of the Viejas Band, 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 the Viejas Band or is more stringent than that applied to regularly approved simulcast wagering facilities under normal State jurisdiction.

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

18. 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 the Viejas Band.

19. Distribution of Handle.

(A) Generally. Subject to subsections (B) and (C) below, the amounts deducted from parimutuel wagers at the Viejas Band 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 Viejas Band shall seek a declaratory judgment against the State from a United States District Court of competent jurisdiction as to whether the deduction and distribution of the state license fee under Business and Professions Code Section 19596.6, subdivisions (d)(1), (d)(2), (k), and (l), are permissible under the Act.

2. In the event a final judgment is obtained that the deduction and distribution of the 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 collect the state license fee from all wagers at the Viejas Band simulcast wagering facility. Under such circumstances, the State shall not be entitled to any further assessment against or payment from the Viejas Band to cover the costs of State regulation of the Viejas Band simulcast wagering facility, and the Viejas Band 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 that the deduction and distribution of the state license fee is impermissible under the Act, and following the exhaustion of all appellate review, the State shall pay over to the Viejas Band 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 the Viejas Band shall thereafter be entitled to receive an amount equivalent to the state license fee from all wagers at the Viejas Band 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 the Viejas Band 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 Viejas Band 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. The Viejas Band 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 Viejas Band simulcast wagering facility shall be distributed and expended; and

2. The Viejas Band 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 the Viejas Band shall receive such distribution.

20. 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.

21. 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.

22. 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 the Viejas Band 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 a 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 the Viejas Band 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.

23. 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.

24. Effective Date. This Compact shall be effective upon execution by the parties and approval 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.

THE VIEJAS BAND OF MISSION INDIANS

Date: February 16, 1990

By: _____
Chairman

STATE OF CALIFORNIA

Date: April 3, 1990

By: George Deukmejian
George Deukmejian, Governor

APPROVED:

Date: JUN 22 1990

By: _____
Secretary of the Interior
Assistant Secretary - Indian Affairs