



PECHANGA BAND OF INDIANS

Pechanga Indian Reservation

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October 26, 2023

Via Electronic Submission

Andreia McMillen
Staff Services Manager
Bureau of Gambling Control
P.O. Box 168024
Sacramento, CA
95816-8024

BGC_Regulations@doj.ca.gov

Re: **Pechanga Band Comments on Draft Gambling Regulations for Player-Dealer Card Games and Blackjack-Style Games**

Dear Ms. McMillen:

On behalf of the Pechanga Band of Indians ("Pechanga"), we are writing to provide comments on the draft regulatory language for:

1. Rotation of player-dealer position; and
2. Approval of blackjack-style games.

Both regulatory proposals were circulated by the Bureau of Gambling Control on September 11, 2023. Pechanga believes the proposals are a step in the right direction in providing clarity on certain types of card games permitted at California's state-licensed cardrooms, however we believe these regulations fail to address other ongoing illegal gaming activities such as baccarat occurring in the under-regulated California cardrooms. Please accept the following as our initial comments on the two proposals:

1. Rotation of Player-Dealer Position

When considering how best to address the Player-Dealer Position it is critical to start with the California Constitution, California Penal Code, and existing case law.

California's Constitution prohibits casinos "of the type currently operating in Nevada and New Jersey." Article IV, section 19. As explained by the California Supreme Court:

"[T]he 'type' of casino referred to must be an establishment that offers gaming activities including banked table games and gaming devices, i.e., slot machines

Similarly, ‘the type’ of casino ‘operating in Nevada and New Jersey’ presumably refers to a gambling facility that did not legally operate in California ... The type of casino then operating in California is what has commonly been called a ‘card room’ ... a type that did not offer gambling activities including banking games and gaming devices.”

Hotel Employees & Restaurant Employees v. Davis, 21 Cal.4th 585, 604-05 (1999) (citations omitted). In addition, California’s Penal Code prohibits “banking” games. Penal Code, Section 330. “Banking game has come to have a fixed and accepted meaning: the ‘house’ or ‘bank’ is a participant in the game, taking on all comers, paying all winners, and collecting from all losers.” Sullivan v. Fox, 189 Cal.App.3d 673, 678 (1987) (citations omitted).

Section 330.11 of the Penal Code provides that a card game is not a banking or banked card game if it meets certain specific requirements:

“‘Banking game’ or ‘banked game’ does not include a controlled game if the published rules of the game feature a player-dealer position and provide that this position must be continuously and systematically rotated amongst each of the participants during the play of the game, ensure that the player-dealer is able to win or lose only a fixed and limited wager during the play of the game, and preclude the house, another entity, a player, or an observer from maintaining or operating as a bank during the course of the game. For purposes of this section it is not the intent of the Legislature to mandate acceptance of the deal by every player if the division finds that the rules of the game render the maintenance of or operation of a bank impossible by other means. The house shall not occupy the player-dealer position.

With these limitations in mind, we were pleased to see that the proposed regulations correctly recognize that state-licensed cardrooms are not permitted to offer banked card games. The proposed regulations make a credible effort to help insure that the player-dealer position does, in fact, rotate among the players at the table. For example, the requirement that the dealer offer the player-dealer position both verbally and physically to each of the seated players at the table before each hand is critical. Proposed Sec. 2077(a)(3). However, we suggest providing more clarity on how the dealer must make the offer to each player. Clarification will avoid creating further confusion for those who wish to interpret the regulation in an unintended manner.

Pechanga is concerned about the provision which states that the player-dealer must rotate at least two players every 40 minutes or the game shall end. Proposed Sec. 2077(a)(4). The 40 minutes should be reduced to meet the Penal Code requirement that rotation be “continuous and systematic.” While we support the apparent goal of this provision, we are concerned that the limitation is easily avoided by “ending” a game after 39 minutes, immediately starting a new 39-minute game, and so on, rendering the regulation meaningless. The regulations should make clear that ending a game in less than 40 minutes does not restart the 40-minute clock. The game should not be permitted to restart unless two players take the player-dealer position, per Sec. 2077(a)(4). Additionally, clear

protocols should be established to direct what the end of a game entails in a properly regulated gaming environment such as closing a table and locking chips, etc.

The regulations do a good job stating that any player may assume the player-dealer position. Proposed Sec. 2077(a)(2). However, we are aware that some cardrooms impose requirements, such as a minimum cash balance, for a player to serve as a player-dealer. The regulations should expressly prohibit cardrooms from limiting which players are permitted to serve as a player-dealer. Similarly, a cardroom owner, licensee, or employee (whether during work time or otherwise) should not qualify as one of the required two players for rotation. See Penal Code, Section 330.11 (“The house shall not occupy the player-dealer position.”). If such a representative of the house is playing at the table, they should be required to wear an identification badge, identifying them as an employee. Only one Third Party Proposition Players (“TPPPS”) can occupy a position at a table at a time.

Pechanga is aware that the play of player-dealer games at some cardrooms does not always follow the regulations and posted game rules. Instead, there is a “wink and a nod” approach to how the game is played. As such, Pechanga recommends that significant and mandatory penalties be imposed for violations of the regulations and posted rules. In addition to financial penalties, willful violations should result in a suspension of cardroom privileges to offer player-dealer games until remedial action has been taken. Unless there is active and aggressive enforcement with significant consequences, the proposed regulations are unlikely to be effective and cardrooms will continue to violate California’s laws.

In addition to the rotation requirement, Pechanga urges that regulations be adopted to expressly prohibit zero-collection games. Requiring a collection from all players is one of the distinguishing factors between a legal card game and an illegal banked card game. Thus, the regulations should set minimum collection requirements for all games. Further, we recommend that TPPPs and cardrooms be prohibited from paying, rewarding, or otherwise incentivizing the collection fees of other players.

Finally, Pechanga recommends the adoption of more stringent regulations and transparency for TPPPs. The regulations should require a close review of financial sources before any license is issued and should require ongoing reporting that shows who receives funds generated by a TPPP and exactly what the TPPP is paying for in its agreements with cardrooms. To protect the integrity of the industry, the regulations also should expressly prohibit any person or entity with an ownership interest in a cardroom from also having any financial interest in a TPPP or a TPPP funding source.

2. Approval of Blackjack-Style Games

Pechanga appreciates the effort to try to clarify that cardrooms are not permitted to offer blackjack/21. Blackjack/21 is clearly a game prohibited by the California Constitution, except at tribal gaming facilities on Indian lands. However, we think the proposed language as drafted could be abused to circumvent the intent of the rule.

For example, the definition of blackjack in Proposed Section 2073(a) is very specific. While the language in Proposed Section 2073(b) about modifications helps, it is

not sufficient. As written, the language in Proposed Section 2073(a) could be read to mean that a game with even a slight variation other than those listed would not be a prohibited game. For example, Proposed Section 2073(a)(1) states the player-dealer makes a “single wager against all players.” However, what if the game allows side bets or the wager is broken into two parts? It also states that wagers are placed before the initial deal. What if the first two cards are dealt face down to all players (including the player-dealer) before the initial wagers? These are just two potential openings that could be used to undermine the intent of the proposed regulation.

Additionally, the limitations in Proposed Section 2074 are helpful, but there are several ambiguities with respect to the undefined terms used in that section. For example, what is a “win” in the context of a blackjack-style game? Would a “bonus” for achieving 21 be the same as a “win”? Pechanga would also like to further understand the rationale behind Proposed Section 2075(d) authorizing Gambling Enterprises currently engaged in illegal gaming activities to continue offering blackjack games determined to be illegal for an additional year.

Further, Pechanga recommends that significant and mandatory penalties be imposed for violations of the regulations and posted rules. Unless there is active and aggressive enforcement with significant consequences, the proposed regulations are unlikely to be effective, and the controversy and illegal gaming will remain ongoing.

Pechanga suggests that the entire approach to blackjack-style games be reconsidered. As drafted, the proposal is unduly complicated with too many potential ways around the restrictions. Basically, the rule states a game that meets certain requirements is prohibited, notes that various modifications also are prohibited, but then states the game is allowed if other modifications are made. We believe a better approach would be to clearly define the rules for a game that is allowed, with all modifications prohibited. Such an approach would provide clarity to both cardrooms and the public. It also would make enforcement by the State significantly easier.

Conclusion

Our comments to these regulations seek to protect the voter-approved gaming rights which have been so vital to California tribal governments, providing the means to deliver essential services such as housing, education, healthcare, environmental protections, cultural preservation, elder care, fire services and more. In addition, limited and non-gaming tribes have benefitted from more than \$1.7 billion in vital revenue sharing over the last 20 years. Tribal government gaming also serves as an important economic engine for California, directly and indirectly generating the following total economic and fiscal impacts on the California economy:

- 160,000 jobs
- \$27.5 billion in output
- \$10 billion in wages to employees
- \$4.8 billion in taxes and revenue sharing payments to federal, state, and local governments

Pechanga appreciates the effort that went into developing the proposed regulations and has participated with the State in resolving these issues for over a decade. While both regulations require significant improvement, we commend the effort to finally address these unlawful games being conducted within California cardrooms, which has resulted in widespread and continuing illegal gaming. In addition to the issues addressed in the proposed regulations, we believe it is critical to address other issues such as the house banked games like baccarat, licensing and lack of transparency of TPPPs, enforcement gaps, and prohibition of zero collection games.

Pechanga appreciates the opportunity to comment and looks forward to continuing its participation in the necessary process to address the unlawful games operating in California cardrooms.

Sincerely,

Mark Macarro
Tribal Chairman