



October 26, 2023

**VIA ELECTRONIC MAIL**

(bgc\_regulations@doj.ca.gov)

Andreia McMillen  
Staff Services Manager  
Bureau of Gambling Control  
Attention: Regulations  
PO Box 168024  
Sacramento, CA 95816-8024

**RE: "CONCEPT" LANGUAGE FOR BLACKJACK AND ROTATION REGULATIONS**

Dear Ms. McMillen:

As the Chairman of the Yocha Dehe Wintun Nation, I write to comment on the "concept" language for the "Blackjack-Style Games Regulations" and the "Rotation of Player-Dealer Regulations" that the Bureau of Gambling Control released on September 11, 2023. As an initial matter, we applaud the Bureau for again starting the regulatory process. The first set of concept regulations, issued during the tenure of Attorney General Xavier Becerra in 2019 (rotation) and 2021 (blackjack), acknowledged what tribes had been saying for almost a decade: The cardrooms have been playing illegal banked games by failing to rotate the player-dealer position as the law requires and have been playing illegal blackjack. Those regulations, unfortunately, fell by the wayside. We appreciate Attorney General Bonta's commitment at our May 15, 2023 meeting to see this current version of the regulatory process through to the finish.

**1. BLACKJACK REGULATION**

Before addressing the substance of the blackjack regulation, I want to raise a prefatory point and question.

The concept language for blackjack again demonstrates the Bureau's awareness that it has allowed cardrooms to play illegal games. California tribes have complained about this illegal gaming since the April 12, 2012 Tribal-State Association meeting. It is long past time for the Bureau to take affirmative action beyond issuing conceptual language. Moreover, no regulation is necessary to stop the play of most blackjack games in cardrooms. At an August 30, 2018 meeting, then-Bureau Director Stephanie Shimazu advised tribal representatives that the Bureau would rescind the approvals for blackjack games the cardrooms currently play because the Bureau had concluded they violate Penal Code section 330. Director Shimazu specified that

among those games were Pure 21.5 Blackjack and 21<sup>st</sup> Century Blackjack. While she said the Bureau would provide the cardrooms a few months' grace period so they could roll out legal games to take the place of the illegal ones, more than five years have passed, and we are aware of no action by the Bureau to rescind the approvals for the illegal games. We fail to understand why the Bureau – the agency charged with enforcing the State's gaming laws – allows cardrooms to continue playing games the Bureau approved in the first place and now admits violate those laws. That brings us to the question I mentioned: Will the Bureau allow the cardrooms to continue playing the illegal blackjack games until the current regulatory process ends, which could be years from now? The answer to this question *should be* an automatic – and emphatic – “no.”

Now, to address the concept language. We find that language adequately precludes the cardrooms from playing blackjack or any analogous game. It also appears the concept regulation provides the cardrooms enough room to develop alternative games that are legal, yet are not blackjack. That said, we wonder about the purpose of the phrase “and for game review purposes only” in section 2073(a). Are there situations where “the game of blackjack” means something else? Moreover, we think the qualifier “as used in this Article” sufficiently identifies the limits of the game's definition.

In addition, we find the last sentence in section 2074(a)(2) somewhat ambiguous. According to that sentence, the “points assigned to each card must remain constant throughout the play of the game.” Does the phrase “must remain constant” mean that card values must not change based on the stage of the game (which would address those games that assign a different value only on the initial deal), or that cards may only have a single value (which means an ace can be 1 or 11, but not both)?

Finally, while we greatly appreciate that the Bureau has eradicated the word “blackjack” as well as the number “21” from the lexicon of the games the cardrooms can play, we do not understand why under section 2075(d), the cardrooms have a full year to submit an application to have their games comply with section 2074(b) (which prohibits the use of that word and number). Other provisions in the regulation, such as 2075(a), provide a 60 day deadline, which we think much more appropriate.

## **2. ROTATION REGULATION**

While the concept language is a start, it could go much further to comply with existing law. The proposed regulation requires rotation twice every forty minutes, but the law is much more exacting. Penal Code section 330 prohibits any “banking” game played with cards, and by definition that is any game where one person bets against all others at the table, paying the winners and collecting from the losers. *Sullivan v. Fox*, 189 Cal. App. 3d 673, 678 (1987). We submit that allowing a person to bank even a single hand in a cardroom still results in an illegal banked game.

As such, we do not understand how the Bureau arrived at the twice-every-forty-minutes standard. The Becerra concept regulation proposed a two-hand rotation standard, and we believe that is the more appropriate approach. After all, the cardrooms themselves established mandatory rotation every two hands as an industry standard and they specifically acknowledged that such rotation is required by law. We previously explained to the Bureau that our representatives painstakingly examined every single blackjack rule – 208 of them – on the Bureau’s website. That examination revealed that fully 98 percent of those rules specifically required that the player-dealer position be offered or actually rotate every two hands. Here is an example of the rotation language in those rules:

#### LEGAL

The Player-Dealer position must rotate in a continuous and systematic fashion, and cannot be occupied by one person for more than two consecutive hands. There must be an intervening player-dealer so that no single player can continually occupy the player-dealer position within the meaning of *Oliver v. County of Los Angeles* (1998) 66 Cal. App. 4th 1397, 1408-1409. If there is not an intervening person occupying the Player-Dealer’s position, the game will be “broke” or stopped, as required by the California Penal Code.

It is important to keep in mind that neither the Bureau nor the tribes drafted the rule language. The cardrooms did. Thus, applying a two-hand rotation standard would do nothing more than reflect the *cardrooms’ own understanding* of the legal rotation requirements, and the cardrooms would have no valid basis to complain.

All this aside, the proposed forty-minute rotation is simply arbitrary. In practice, a cardroom TPP could bank a game for nearly all of the forty minutes before rotating twice and that indisputably renders the game illegal under Penal Code section 330.

While the concept regulation seems to codify the highly improper “Lytle letter” offer standard, we do appreciate the Bureau’s very clear requirements in sections 2077(a)(2) and (3) of a written notice regarding the rotation requirement and that the offer must be made physically and verbally such that it is visible to the surveillance cameras. That is a far cry from what happens in cardrooms today.

We also appreciate the proposed regulation’s strong language establishing what must happen when the cardroom fails to rotate the player-dealer position (sections 2077(a)(5) and (6)). Where we have significant concerns, however, is the ability and willingness of the Bureau to enforce the regulation once it goes into effect. Considering the cardrooms’ abysmal record in violating laws – notably the illegal gaming they have carried on for years and the millions of dollars various cardrooms have been fined for money laundering – we have no doubt they will

willingly flaunt whatever regulation the Bureau ultimately passes. Thus, we would like to know what the Bureau's enforcement plan is? What penalties will it impose?

One final point. Our representatives have for years explained and demonstrated – including in August 2022 to Attorney General Bonta and the Bureau's Director, Yolanda Morrow – that baccarat does not actually *have* a player-dealer position. Under Penal Code section 330.11, cardrooms are only allowed to operate games that “feature a player-dealer position.” Consequently, the cardrooms cannot legally offer baccarat and the Bureau should bar them from doing so. In the interim, we want to ensure the rotation regulation is intended to also cover that game. It might even serve to clarify that point somewhere in the regulation.

In closing, we appreciate that the Bureau has – again – taken this step toward stopping the illegal play of blackjack in California cardrooms. We would greatly appreciate it if you could answer the question posed above with respect to blackjack and, in addition, provide us a timeline for the regulatory process for the concept language in these two regulations.

Sincerely,

Anthony Roberts  
Tribal Chairman