



AGUA CALIENTE BAND OF CAHUILLA INDIANS
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February 5, 2021

Via Email
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Stephanie Shimazu
Bureau of Gambling Control
Department of Justice
P.O. Box 168024
Sacramento, California 95816-8024

RE: California-Style Blackjack Regulations – Draft Concept Language

Dear Director Shimazu:

On behalf of the Agua Caliente Band of Cahuilla Indians (“Tribe”), I submit the following comments regarding the Bureau of Gambling Control *California-Style Blackjack Regulations – Draft Concept Language* (“Concept Language”) dated January 5, 2021. The Tribe appreciates the opportunity to provide comments on the Concept Language.

The Tribe supports the Bureau’s efforts to finally put an end to the illegal gaming that is occurring in California card rooms every day. Although the illegal gaming in card rooms has occurred for far longer, it has been almost a decade since this issue was formally raised at the April 2012 Tribal-State Association meeting and it is long past time for the Bureau to address the blatant disregard for California law. The ongoing and prolonged Bureau regulatory delay, specifically regarding prohibited games and bank rotation, suggests that the Bureau condones this illegal activity. Before covering the Tribe’s concerns with the Concept Language, we provide a brief recap of the Tribe’s long-standing concerns with illegal card room activity generally. The Tribe has regularly shared these concerns with the Bureau for many years, and decisive action is long overdue.

- California law expressly prohibits the play of “banked” games (casino style gambling) at any establishment other than an Indian casino. Games are not “banked” when the player-dealer, or banker, position is “continuously and systematically rotated among each of the participants during the play of the game.” For more than a decade, cardrooms have engaged in illegal games where only the offer of bank rotation but no actual bank rotation occurs, although their own Bureau approved game rules prohibit this offer.



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- Illegal games at card rooms cannot be tolerated simply because the illegal activity is lucrative.
- Card rooms cannot be allowed to offer illegal games, particularly Blackjack and Baccarat. The play of these games in cardrooms is constitutionally impermissible, as they are games of the type played in Nevada and New Jersey casinos. Moreover, Penal Code section 330 expressly names “twenty-one” – that is, Blackjack – as a prohibited game.
- Card rooms are circumventing this express constitutional prohibition by advertising and playing games like Pure 21.5 Blackjack, which look and play identically to the illegal game of Blackjack. This is a blatant violation of California law and cannot be tolerated.
- Card rooms offer other illegal games like Baccarat, which by definition cannot be played as anything other than “house-banked” games, and are illegal in California card rooms.
- Because card rooms are prohibited from playing “house-banked” games they have (1) partnered with third party proposition players (“TPPPs”), (2) obtained an improper interest in the funds wagered in their establishments through the use of TPPPs, and (3) have been illegally allowing the wholesale waiver of per-hand collections for all but the so-called third-party proposition players (“TPPs”).

Concept Language Concerns

The Tribe sincerely appreciates the Bureau’s effort to address illegal card games in this Concept Language and believes it represents positive momentum by the Bureau to finally end illegal gaming in California card rooms. However, the Tribe has identified ambiguities and lack of safeguards in the Concept Language that could allow cardrooms to continue offering blackjack and similar games. While we understand this is only Concept Language, we raise the enumerated issues below so that they may be addressed before a formal Bureau rulemaking commences. The Tribe hopes that commencement of a formal rulemaking is planned for the very near future, and the momentum of this Concept Language is not lost.

1. Definition of Blackjack. Section 2073(a) has a very specific definition of blackjack, which is prohibited. Section 2073(b) provides that certain modifications do not distinguish a game from blackjack. However, the Concept



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Language is silent about changes, other than the ones listed in Section 2073(b). A change to the rules listed in Section 2073(a) would appear to prevent the game from being determined a *prohibited game of blackjack* if the change is not one specifically listed in Section 2073(b).

2. Deemed Approval. Section 2071(a)(2) appears to allow card games to be deemed-approved through inaction by the Bureau. No card game should be permitted unless it is affirmatively approved by the Bureau. Otherwise, card rooms could conceivably operate games that should be prohibited if the Bureau fails to act. The Tribe is concerned that the Bureau will be unable to provide the required affirmative approvals without significant additional funding and staff.
3. Collection Fees. Section 2070(e) would make it a violation to "[f]ail to determine the applicable collection fee from each player" However, this language doesn't appear to require the "applicable collection fee" to be more than \$0. As a result, "no collection" card games might still be allowed, notwithstanding their similarity to Las Vegas-style banked card games.
4. Prohibition Needs Clarity. The interplay between section 2073 and section 2074 is unclear. Section 2073 describes the rules for blackjack, which is prohibited. It also states that certain modifications would not distinguish the game from blackjack. However, section 2074 suggests that a game that follows the rules of blackjack ("[a] game that includes rules described in section 2073") is allowed if it meets the requirements of section 2074(a)-(c). At the very least, this is confusing. The proposal should be revised to clearly set forth the specific rules for the permitted game without cross-referencing the rules for a prohibited game.
5. Section 2074(a). This section provides, in part, that: "Whether a player wins or loses shall be determined solely by whether the total points of a player's hand is closer to the target point count when compared with the total point of the player-dealer's hand." This language does not state that the amount of the win must be the same in all cases. Thus, a game could conceivably award more if the player doesn't exceed a target point count and less (perhaps one cent) if they exceed the target point count.
6. Section 2074(b). While the rules would prohibit "21", they would not prohibit "22". Additionally, clarity is needed to address whether the requirement that cards have values that correspond to their face value apply to a game that meets



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the requirements of Section 2074(a)-c). Again, the interplay between Sections 2073 and 2074 is unclear.

7. Use of the word “blackjack”. Whatever a Bureau approved game may ultimately be called, under no circumstances should the word “blackjack” be used in that game name, game advertisement/marketing materials, game description, or game rules. It is misleading, deceptive and suggests to a card room patron that they are playing a variation of a game that is illegal for card rooms to offer.

In closing, we appreciate the Bureau’s attention to this matter and encourage continued and heightened attention to the matter to halt longstanding illegal gaming. It is time for the Bureau to conclusively put a halt to illegal gaming once and for all, and move on to other important matters.

Sincerely,

Jeff L. Grubbe
Chairman, Tribal Council
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CAHUILLA INDIANS**