

# Elk Valley Rancheria, California



October 27, 2023

California Bureau of Gambling Control  
Attn: Regulatory Affairs Division  
2399 Gateway Oaks Drive, Suite 220  
Sacramento, CA 95833

Re: Proposed Card Room Regulations - Player-Dealer Rotation & Card Room  
Play of Blackjack-Style Games

Dear Members of the Regulatory Affairs Division:

On behalf of the Elk Valley Rancheria, California, a federally recognized Indian tribe (the "Tribe"), please find the Tribe's insights and concerns regarding the proposed card room regulations concerning player-dealer rotation and blackjack, as outlined by the California Bureau of Gambling Control. This issue is of considerable importance to our Tribal community, and we value the opportunity to provide input from our perspective.


Although these draft regulations are intended to help bring those games into compliance with California law, we recognize both proposals require work to achieve necessary clarity and ensure all interested parties have a clear understanding regarding games offered at card rooms versus banked games authorized solely to Indian tribes pursuant to voter-approved amendments to the California Constitution. Most importantly, these regulations are useless without meaningful enforcement and penalties for violators. The Tribe recommends that the regulations provide significant and mandatory penalties be imposed for violations of the regulations and posted rules.

## **Rotation of Player-Dealer Position**

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, the Tribe is pleased 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 ensure 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 additional clarity on how the dealer must make the offer to each player. For instance, the offer must be audible enough for all players to hear and for regulatory personnel that might be monitoring the game play. In addition, the regulations need to address requirements for placement and visibility of timers both for players and surveillance purposes.

The Tribe is concerned that the player-dealer must rotate to 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 standard of continuous and systematic. While we support the 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. The regulations should make clear that ending a game after an appropriate amount of time does not restart the 40-minute clock. The game cannot restart unless two players take the player-dealer position, per Sec. 2077(a)(4).





The regulations appropriately provide 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 (even if on breaks) should not qualify as one of the required two players for rotation. If they are playing at the table, they should be required to wear an identification badge, identifying them as an employee. Only one TPPPS can occupy a position at a table at a time.

As you are aware, play of player-dealer games at some cardrooms does not always follow the regulations and posted game rules. As such, recommend 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 cardroom not being allowed 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.


In addition to the rotation requirement, regulations should 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, the Tribe urges the adoption of more stringent regulations for Third Party Proposition Players (TPPP). The regulations should require a close review of financial sources before any license is issued and ongoing reporting that shows who receives funds generated by a TPPP. 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.

### **Approval of Blackjack-Style Games**

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. Therefore, the Tribe recommends that the BGC's attempt to address blackjack-style games be reconsidered. However, if the BGC continues in its effort to authorize blackjack-style games to cardrooms, the Tribe believes the proposal is unduly complicated with too many potential ways around the restrictions. Basically, the rule provides that a game that meets certain requirements is prohibited, notes that various modifications also are prohibited, but then provides that the game is allowed if other modifications are made. The proposed language could be abused to circumvent the intent of the proposed 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) says that 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 says 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.

The limitations in Proposed Section 2074 are helpful, but there are numerous 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"?

Again, the Tribe 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 will remain ongoing.

The Tribe believes 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 State enforcement significantly easier.

In addition to the above, our concerns and recommendations regarding player-dealer rotation and blackjack-style games are as follows:

**Safeguarding Tribal Sovereignty:**


It is essential that any regulations pertaining to player-dealer rotation or blackjack style games respect and uphold the rights of tribal nations granted through the California Constitution and tribal-state compacts. These regulations should not infringe upon established tribal gaming compacts or hinder the economic stability provided by our gaming enterprises.

**Balancing Economic Viability and Regulation:**

We recognize the importance of maintaining integrity in gaming operations. Cardrooms should be held to the legal standards of California law and regulations. It is equally crucial to strike a balance that allows tribal gaming enterprises to remain economically viable. The Tribe has made significant investments and provides significant benefits to the surrounding community much the same as tribal government gaming throughout the State. While we understand that the cardroom industry will assert the same, the Tribe believes that California cardrooms, in some cases, have done so illegally and should not continue to offer games that violate California law.

**Consultation and Collaboration:**





Meaningful consultation with tribal governments is fundamental in crafting regulations that consider the unique circumstances and interests of tribal communities. Inclusion of tribal perspectives ensures that regulations are crafted with a comprehensive understanding of the potential impacts on tribal gaming operations.

**Preserving Revenue Sharing and Economic Development:**

Tribal gaming revenues are essential to funding critical programs and services within our communities, such as healthcare, education, and infrastructure. The proposed regulations should not hinder the ability of tribal governments to continue these vital contributions by continuing to authorize cardrooms to circumvent the restrictions of California law as recognized by the California Supreme Court in 1999.

**Ensuring Clarity and Consistency:**

Clear, consistent, and unambiguous guidelines are essential for all stakeholders in the gaming industry. We urge the BGC to provide explicit and easily comprehensible regulations to minimize any unnecessary confusion or misinterpretation. Our suggestions above highlight our initial concerns about the proposed regulations.

**Conclusion**

We appreciate the BGC's dedication to creating a fair, transparent, and compliant gaming environment in the state of California. By considering the Tribal perspective and involving us in the regulatory process, we believe that we can work together to develop a framework that respects the rights and interests of all stakeholders.

Thank you for your consideration. We look forward to continued collaboration in preserving the interests of Tribal nations in the gaming industry.

Sincerely,

Dale Miller  
Chairman  
Elk Valley Rancheria, California

