



May 27, 2025

Via Electronic Submission

CA Department of Justice, Bureau of Gambling Control  
Attention: Regulations  
2450 Del Paso Road, Suite 100  
E-mail: [BGC\\_Regulations@doj.ca.gov](mailto:BGC_Regulations@doj.ca.gov)

Re: Comments on Draft Regulatory Language for Player-Dealer Card Games

Dear Bureau of Gambling Control:

On behalf of the California Nations Indian Gaming Association (CNIGA), a non-profit trade association which represents 54 federally recognized tribal governments throughout California, 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 proposals were circulated by your office on April 11, 2025. We note that the regulations still do not address Baccarat, inherently a banked game that cannot feature a player-dealer position and cannot possibly comply with legally mandated rotation requirements.

CNIGA appreciates and views the proposals as a good first step in providing much-needed clarity on the types of card games permitted at California's state-licensed cardrooms. For nearly a decade, we and many tribal governments throughout California have been seeking relief from what we believe to be unlawful games at cardrooms. 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, thus we recommend that significant and mandatory penalties be imposed for violations of the regulations and posted rules. Our initial comments on the two proposals are set forth below.

1. 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, 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 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. 2076(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.

CNIGA is concerned about the provision which states that the player-dealer must rotate to at least two players every 40 minutes or the game shall end. Proposed Sec. 2076(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. 2076(a)(4).

The regulations do a good job stating that any player may assume the player-dealer position. Proposed Sec. 2076(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.

CNIGA 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, CNIGA 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 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, CNIGA 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, CNIGA recommends 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.

## 2. Approval of Blackjack-Style Games

CNIGA 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) 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.

In addition, the limitations in Proposed Section 2074 are helpful, but there are a number of 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"?

Further, CNIGA 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.

CNIGA 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 says a game that meets certain requirements is prohibited, notes that various modifications also are prohibited, but then says the game is allowed if other modifications are made. We believe that 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 \$1.8 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:

- 124,300 jobs
- \$20 billion in output
- \$9 billion in wages to employees
- \$3.4 billion in taxes and revenue sharing payments to federal, state, and local governments



CNIGA appreciates the effort that went into developing the proposed regulations. While both should be improved significantly, we commend the effort to finally address the lack of clarity about the games permitted at California cardrooms, which has resulted in widespread illegal gaming. In addition to the issues addressed in the proposed rules, we believe it is critical to address other issues, such as licensing of TPPPs, enforcement and prohibition of zero collection games. CNIGA looks forward to working in partnership with the State to help develop a comprehensive and effective set of regulations that clearly distinguish games offered at California cardrooms from the banked games solely authorized to Indian tribes and offered in tribal gaming facilities pursuant to the California Constitution.

Respectfully,

James Siva  
Chairman

# Elk Valley Rancheria, California



June 9, 2025

## VIA ELECTRONIC SUBMISSION

BGC\_Regulations@doj.ca.gov

California Department of Justice, Bureau of Gambling Control  
Attention: Regulations  
2450 Del Paso Road, Suite 100  
Sacramento, CA 95834

Re: Comments on Draft Regulatory Language for Player-Dealer Card Games

Dear Bureau of Gambling Control:

On behalf of Elk Valley Rancheria, California, a federally recognized Indian tribe (the “Tribe”), we respectfully submit these comments on the draft regulatory language circulated on April 11, 2025, regarding: (1) rotation of player-dealer positions and (2) approval of blackjack-style games. We appreciate the Bureau’s efforts to clarify the permissible scope of cardroom games under California law.


We note, however, that the proposed regulations still fail to address Baccarat—an inherently banked game incompatible with the statutory requirements for rotation and the prohibition on house banking. We urge the Bureau to address this issue directly.

The Tribe views these proposals as a step in the right direction to clarify the legal boundaries of games offered at state-licensed cardrooms. For nearly a decade, we and other tribal governments have sought relief from what we believe to be unlawful gaming practices occurring at cardrooms. These regulations have the potential to restore clarity and enforceability. However, their success depends not only on thoughtful drafting but also on robust enforcement. We strongly recommend the imposition of significant, mandatory penalties for violations.

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

The California Constitution prohibits casinos “of the type currently operating in Nevada and New Jersey.” (Cal. Const., art. IV, § 19.) As interpreted by the California Supreme Court, this means facilities offering banked games and slot machines—activities





explicitly prohibited outside of tribal gaming facilities. See *Hotel Employees & Restaurant Employees v. Davis*, 21 Cal.4th 585, 604–05 (1999).

Penal Code § 330 prohibits banking games, and § 330.11 outlines narrow exceptions for non-banked, player-dealer games. These exceptions require systematic and continuous rotation of the player-dealer position, limited wagers, and the absence of a bank operated by any player, observer, or house entity.

In particular:

- The requirement in Section 2076(a)(3) that dealers make a verbal and physical offer of the player-dealer position to each seated player before each hand is essential. However, we recommend further clarity—specifically, that the offer must be made audibly and visibly, such that it is verifiable by regulatory personnel and surveillance.
- Section 2076(a)(4)’s 40-minute rule is insufficient to meet the Penal Code’s “continuous and systematic” requirement. The rule should require rotation in a shorter timeframe and should clarify that ending and restarting a game does not reset the rotation clock. A game cannot restart unless at least two new players assume the player-dealer position.
- We are concerned by cardroom practices that condition the player-dealer role on arbitrary criteria (e.g., cash minimums). The regulations should prohibit cardrooms from limiting who may serve as player-dealer. Employees, licensees, or TPPPs should not count toward the two-player rotation requirement. Employees participating as players must wear identification badges, and only one TPPP should be allowed per table at a time.
- The Tribe is aware that some cardrooms fail to follow the rules and instead employ informal or deceptive practices. For this reason, we urge the Bureau to adopt meaningful and mandatory penalties for violations. Persistent noncompliance should result in the suspension of cardroom authorization to offer player-dealer games until remedial action is taken.
- We also recommend that the regulations prohibit zero-collection games. The collection fee is a defining feature of non-banked games. Cardrooms and TPPPs must be prohibited from subsidizing or waiving collection fees.
- Finally, TPPP regulation must be strengthened. The Bureau should require disclosure of funding sources and prohibit cardroom owners or licensees from having any direct or indirect interest in TPPPs or their funding entities.





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

We appreciate the Bureau's attempt to clarify that cardrooms may not offer blackjack/21, a game constitutionally authorized only for tribal casinos. However, the current regulatory language creates openings for circumvention.

- The definition of blackjack in Section 2073(a) is overly narrow. A slight rule variation—such as altering the timing of wagers or permitting side bets—could be exploited to justify a prohibited game. We recommend a broader approach that focuses on the substance of the game, not just listed features.
- Section 2074 introduces additional restrictions, but critical terms such as “win” remain undefined. This ambiguity invites manipulation. For instance, are “bonuses” considered “wins”? How are promotions or house-funded jackpots handled?
- Enforcement remains a key issue. Without aggressive and consistent enforcement, including significant penalties, the regulations will not resolve the long-standing concerns over illegal cardroom games.
- We recommend a simpler and more effective approach: clearly define the characteristics of permitted games and prohibit all modifications not expressly allowed. This structure would improve transparency and enforceability.

## **Conclusion**

These comments are submitted to help protect the integrity of California's voter-approved tribal government gaming framework, which has enabled tribal governments to provide critical services such as housing, healthcare, education, elder care, and emergency response. Over the past 20 years, limited and non-gaming tribes have received more than \$1.8 billion in revenue sharing, and tribal gaming has generated the following statewide impacts:

- 124,300 jobs
- \$20 billion in total output
- \$9 billion in wages
- \$3.4 billion in tax and revenue-sharing payments to federal, state, and local governments

We commend the Bureau's effort to clarify longstanding ambiguities regarding permissible cardroom games. However, these regulations must go further to prevent unlawful gaming and ensure that the exclusivity granted to tribes under the California Constitution is meaningfully enforced.

We look forward to continuing to work collaboratively with the Bureau to finalize regulations that honor the legal framework established by California voters and uphold the integrity of tribal government gaming.

Respectfully,

Dale A. Miller  
Chairman

cc: Elk Valley Tribal Council  
General Counsel  
COO





# Enterprise Rancheria

Estom Yumeka Maidu Tribe

May 29, 2025

Andreia McMillan, Regulations Coordinator  
California Department of Justice, Bureau of Gambling Control  
2450 Del Paso Road, Suite 100, Sacramento, CA 95834  
*Submitted via email to: BGC\_Regulations@doj.ca.gov*

Re: OAL Notice File Numbers Z-2025-0204-08 and Z-2025-0204-09

Dear Ms. McMillan,

On behalf of the Enterprise Rancheria of Maidu Indians of California (the Tribe), I submit the following comments on the Bureau of Gambling Control's (BGC) proposed regulations for rotation of the "player-dealer position" and "blackjack-style" games. We appreciate the BGC's efforts to address illegal practices that have enabled certain cardrooms to offer banked games in violation of the California Constitution and the California Penal Code. These regulations, however, fail to truly address the problem.

Last year, the Tribe supported the passage of SB 549, the "Tribal Nations Access to Justice Act," which authorized tribes to seek a judicial determination as to whether certain card games operated by California card clubs are illegal banking card games.<sup>1</sup> We remain deeply concerned that cardrooms are, and have been for years, operating banked card games in violation of California's Constitution, state statutes, and the precedents of the California state courts. Moreover, the Tribe's exclusive right to operate banked games—as approved by California voters and memorialized in our Secretarial Procedures<sup>2</sup>—is undermined by the continued operation of illegal banked games by the cardrooms. Strong and clear regulations are needed to enforce state law. Unfortunately, these proposed regulations would simply continue the status quo by making inconsequential alterations in existing cardroom practices. The proposed regulations would not prevent activity that is illegal under California law.

For these reasons, as further detailed below, the BGC should withdraw the proposed regulations and instead enforce state law against the operation of illegal banked card games. The Attorney General should also consult with California tribes on this issue which seriously affects our government-to-government relationship as expressed throughout our gaming compacts and secretarial procedures.

<sup>1</sup> Tribal Nations Access to Justice Act, SB 549, Chapter 860, Statutes of 2024.

<sup>2</sup> See Secretarial Procedures for the Estom Yumeka Maidu Tribe of the Enterprise Rancheria, approved by the Department of the Interior on August 12, 2016 (hereinafter Secretarial Procedures). Note that the same right to exclusivity is set forth in the State of California's gaming compacts with other California tribes.



## **I. Legal Landscape**

### **a. Banking games are illegal under California law.**

As you are aware, the operation of Blackjack games is prohibited by California law.<sup>3</sup> This has been true for most of California's history.<sup>4</sup> In addition to Blackjack, California law also criminalizes the conduct of all banking games, defined as games

“where there is a fund against which everybody has the right to bet, the bank taking all that is lost by the bettors and paying out all that is won by them or all save a percentage which it keeps.” In a banking game the banker or exhibitor pays all the winnings and suffers all the losses; he is the one against the many, which is the supreme test of a banking game.<sup>5</sup>

Minor rules variations do not change the essential legal analysis:

a game will be determined to be a banking game if under the rules of that game, *it is possible* that the house, another entity, a player, or an observer can maintain a bank or operate as a bank during the play of the game. . . . it could then be said of such a player that he or she is “taking on all comers, paying all winners, and collecting from all losers.”<sup>6</sup>

In addition, “a banking game, within the meaning of Penal Code section 330’s prohibition, may be banked by someone other than the owner of the gambling facility.”<sup>7</sup> This is occurring now through the use of Third-Party Proposition Player Services (“TPPPS”) providers, and the proposed regulations would continue this practice.

### **b. Tribes have the exclusive right to operate banking card games in California under Federal and State law.**

In 1988, Congress enacted the Indian Gaming Regulatory Act (the “IGRA”) to “provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments.”<sup>8</sup> Under the IGRA, federally-recognized Indian tribes and states can negotiate compacts, on a government-to-government basis, for the regulation of class III gaming on Indian lands. Class III gaming includes “Vegas-style” casino games such as slot machines and banked card games. Accordingly, in 2000, California voters amended the state Constitution to provide:

Notwithstanding subdivisions (a) and (e), and any other provision of state law, the Governor is authorized to negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of slot machines and for the conduct of lottery games and banking and percentage card games by federally recognized Indian tribes on Indian lands in California in accordance with federal law. Accordingly, slot machines, lottery games,

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<sup>3</sup> CAL. CONST. Art. IV, § 19(e); CAL. PENAL CODE § 330.

<sup>4</sup> See *Hotel Employees and Restaurant Employees Intern. Union v. Davis*, 21 Cal.4th 585, 592 (1999) (herein, “*Hotel Employees*”) (recounting history of gambling regulations in California).

<sup>5</sup> *People v. Ambrose*, 122 Cal.App.2d Supp. 966, 970 (1953) (citation omitted).

<sup>6</sup> *Oliver v. County of Los Angeles*, 66 Cal.App.4th 1397, 1408-9 (1998) (emphasis added) (analyzing the rules of “Newjack,” a Blackjack variant, and holding that it constitutes an illegal banking game).

<sup>7</sup> *Id.* at 608 (citing *Oliver*).

<sup>8</sup> 25 U.S.C. § 2702(2).

and banking and percentage card games are hereby permitted to be conducted and operated on tribal lands subject to those compacts.<sup>9</sup>

Article IV, § 19(f) is, therefore, the only exception to California's constitutional prohibition against banked card games. It grants California Indian tribes, through the mechanism of the class III gaming compacts (which necessarily encompasses secretarial procedures), the exclusive right to operate class III gaming, including banked card games. Under those compacts and secretarial procedures, California tribes operate gaming facilities to provide crucial funding to meet the needs of their citizens, including education, healthcare, housing, infrastructure, environmental stewardship, and cultural preservation.

The Tribe's Secretarial Procedures were approved by the Department of the Interior in 2016. As a meaningful concession in consideration for the exclusive right to operate class III gaming (including banked card games), the Tribe agreed to make payments into the Special Distribution Fund ("SDF"), to help defray the cost of State gaming regulation and support for local governments, and the Revenue Sharing Trust Fund ("RSTF") to provide essential funding for tribes operating less than 350 gaming machines and those not operating gaming enterprises at all. The Secretarial Procedures also provide for the Tribe to make substantial mitigation payments to the local community through intergovernmental agreements with Yuba County and the City of Marysville. The agreement to make these payments to the State and local communities was wholly dependent upon the Tribe's exclusive right to operate class III gaming on the Tribe's lands.<sup>10</sup>

While section 19(e) of the California Constitution prohibits the Legislature from enacting a law permitting a banking game, Penal Code § 330.11 purports to redefine banked games by exempting certain games featuring a "player-dealer position," but only if the game rules meet three specific conditions:

'Banking game' or 'banked game' does not include a controlled game if [1] 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, [2] ensure that the player-dealer is able to win or lose only a fixed and limited wager during the play of the game, and [3] 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.<sup>11</sup>

Penal Code § 330.11 must be interpreted in accord with the Constitutional prohibition on banked games, as *Hotel Employees* makes clear.<sup>12</sup>

## **II. The Proposed Regulations are Flawed and Should Be Withdrawn.**

### **a. The proposed regulations still allow Blackjack, which is a banked game in violation of State law.**

For most of California's statehood, Penal Code § 330 has specifically identified "twenty-one," also known as Blackjack, in the list of prohibited games. Blackjack is the paradigm of a banked game,

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<sup>9</sup> CAL. CONST. Art. IV, § 19(f).

<sup>10</sup> See Secretarial Procedures, Sections 4.5; see also *In Re Gaming Related Cases*, 331 F.3d 1094, 1112, 1115 (9<sup>th</sup> Cir. 2003) (holding that agreement to make RSTF and SDF payments were meaningful concessions in exchange for the exclusive right to operate class III gaming in California).

<sup>11</sup> CAL. PENAL CODE § 330.11 (2002) (numbering added).

<sup>12</sup> See *Hotel Employees*, 21 Cal.4th at 601-606.



because the players must gamble against a single entity that possesses superior odds and pays all winners and collects from all losers. As discussed above, California law prohibits cardrooms from offering banked games, including Blackjack, where an entity with an odds-based advantage “takes on all comers, pays all winners, and collects from all losers.”<sup>13</sup>

California cardrooms operate variants of Blackjack, and no matter their name or superficial rules differences, Blackjack is a banked game because players gamble against one person or entity that possesses an odds-based advantage and pays all winners and collects from all losers. Nothing in these proposed regulations changes that fact. Blackjack is a classic example of a banking card game, in which each player is competing with, and can win from, the dealer (or “bank”), rather than the other players. In Blackjack, each player competes against the dealer/banker to try to build a hand which, based on the point totals assigned to each card, adds up to but do not exceed a target value (in Blackjack, the target value is 21 points). The point total of every player’s hand is compared with that of the dealer, and not the other players’ hands. A successful player is paid from the dealer, not from the other players. A losing player pays the dealer, not the other players.

The proposed regulations prohibit games called “Blackjack.”<sup>14</sup> But after describing what qualifies as prohibited Blackjack, the regulations go on to describe “permissible Blackjack variations,” completely evading the prohibition on Blackjack in Section 330 of the Penal Code. For example:

- The game cannot be called “Blackjack;”<sup>15</sup>
- The target point total cannot be 21, or more than 21 but less than 22;<sup>16</sup>
- A “push” (*i.e.*, a tie between player and dealer) results in a win for the player, unlike a tie in traditional Blackjack;<sup>17</sup>
- The game cannot have the automatic win feature contained in traditional Blackjack (*i.e.*, when a player gets a 10-point card and an ace in the initial two-card deal, they automatically win from the dealer);<sup>18</sup> and
- The game cannot contain the “bust” feature, in which a player going over the target point value automatically loses to the dealer.<sup>19</sup>

These rules changes are not only minor, they are legally inconsequential. By whatever name a cardroom refers to a game in which players compete against, and either pay losses to or recover winnings from, the dealer rather than against all other players, California law still classifies such a game as a banking game which is criminally prohibited by Section 330 of the Penal Code. Therefore, we recommend that the Bureau strengthen the regulations to preclude the player-dealer, the TPPPS, or any other entity, from maintaining or operating a bank during the conduct of any game the proposed regulations describe as a “permissible Blackjack variation.”

**b. The proposed regulations do not comply with Penal Code § 330.11, the first requirement of which mandates the continuous and systematic rotation of the player-dealer position.**

Section 330.11 of the California Penal Code contains several elements that must be met if a game is permitted, the first of which is that the player-dealer position must “provide that this position must be

<sup>13</sup> *Hotel Employees*, 21 Cal.4th at 592.

<sup>14</sup> Proposed § 2073(a).

<sup>15</sup> Proposed § 2074(b) (“Permissible Blackjack Variations; Required Rules”).

<sup>16</sup> Proposed § 2074(a)(2).

<sup>17</sup> Proposed § 2074(a)(4).

<sup>18</sup> Proposed § 2074(a)(3).

<sup>19</sup> Proposed § 2074(a)(1).

continuously and systematically rotated amongst each of the participants during the play of the game,”<sup>20</sup> the proposed regulations do not meet this standard. The plain language of the words “amongst each of the participants” in Penal Code section 330.11 means that every player must take a turn in the player-dealer position to comply with the statute. Instead, the proposed regulations only require that the player-dealer position be “offered” to each seated player without actually requiring the continuous and systematic rotation of the position amongst each of the participants during the play of the game.<sup>21</sup> This is a fatal deficiency of the proposed regulations, and California courts have invalidated games on this basis.

For example, in *Oliver*, the California Court of Appeals determined that “Newjack” (a Blackjack variant) is a prohibited banked game.<sup>22</sup> In Newjack, each player has the option to act as the player-dealer for two consecutive hands, and then the option to act as player-dealer passes to the player on the left and continues to pass until another player accepts the option.<sup>23</sup> Newjack’s rules allowed players to decline the offer, so one player could serve as the player-dealer for more than two consecutive hands if all other players at the table decline to assume the role. The crucial legal question is whether it is possible for one player to act as a player-dealer for repeated hands.<sup>24</sup>

The proposed regulations do not address this concern. Proposed Section 2076(a) mandates only that the player-dealer position be offered to each player after each hand, but does not mandate that any player accept the player-dealer position. Simply put, an offer to rotate is not actually rotating the player-dealer position, as is required by the law. Instead of requiring “continuous and systematic rotation,” the proposed regulations require only that the player-dealer position be rotated twice to other players than the TPPPS in a 40-minute period.<sup>25</sup> Under the proposed regulations, if no rotation happens in the 40-minute time period, the game stops, no cards are dealt, and no wagers are to be made until another person accepts the player-dealer position.<sup>26</sup> Allowing a game to continue for over 40 minutes with no rotation of the player-dealer position is not “continuous and systematic” rotation, in clear violation of the statute. As stated in *Oliver*, a card game is a banking game if it is possible for a player to act as player-dealer for multiple hands. Under the proposed regulations, it would be possible for a player to act as player-dealer for the entire 40-minute period, making it a banking game in violation of Penal Code §§ 330 and 330.11.<sup>27</sup>

**c. The proposed regulations do not satisfy the second element of Penal Code § 330.11, which limits the player-dealer to winning or losing only a “fixed and limited wager.”**

The second required element under Penal Code § 330.11 is that a game’s rules must “ensure that the player-dealer is able to win or lose only a fixed and limited wager during the play of the game.” While the proposed regulations require the posting of a notice to that effect at gaming tables, nothing in the proposed regulations fixes or limits the amount a player-dealer actually wagers. Again: “In a banking game... the banker ‘pays off all winning wagers and keeps all losing wagers.’”<sup>28</sup> There is nothing in the proposed regulations that explicitly prevents the player-dealer from “‘taking on all comers, paying all winners,’ and collecting from all losers, doing so through a fund generally called the ‘bank.’”<sup>29</sup> Requiring the posting of a sign, without more, is inadequate to prevent the operation of a banked game.

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<sup>20</sup> CAL. PENAL CODE § 330.11.

<sup>21</sup> See Proposed § 2076(a)(1) and (3).

<sup>22</sup> *Oliver*, 66 Cal.App.4th at 1408.

<sup>23</sup> *Id.* at 1407–08.

<sup>24</sup> *Id.*

<sup>25</sup> Proposed § 2076(a)(4).

<sup>26</sup> See Proposed § 2076(a)(5).

<sup>27</sup> See *Oliver*, 66 Cal.App.4th at 1409.

<sup>28</sup> *Hotel Employees*, 21 Cal.4th at 593.

<sup>29</sup> *Id.* at 592 (internal quotation marks and citations omitted).



In practice, the TPPPS usually do not make a “fixed and limited” wager; they pay winners and collect from losers without making any actual wager of their own at all. Viewed against actual practices, requiring adherence to a “fixed and limited wager” amount by TPPPS would ensure the game is not a banking game under state law, because the player-dealer would no longer have a fund at stake sufficient to pay all winners.<sup>30</sup> In addition, the proposed regulations do not define “fixed and limited wager,”<sup>31</sup> nor do they include any modifications of the player-dealer wager within the required rules for permissible Blackjack variations.<sup>32</sup>

**d. The proposed regulations allow player-dealers or TPPPS to act as a bank, thereby violating the third requirement of Penal Code § 330.11.**

The proposed regulations do not “preclude the house, another entity, a player or an observer from maintaining or operating as a bank during the course of the game.”<sup>33</sup> Again, a player-dealer is acting as bank if they have an interest in the outcome of the game, pay all winners, collect from all losers, and compete with the other players as the “one against the many.”<sup>34</sup> Preventing the operation or maintenance of a bank is an important aspect of California’s public policy, because California courts have long recognized the inherent odds-based advantage that the player-dealer has over other players, particularly where (as in the case of TPPPS under contract with the cardroom) the player-dealer has substantially greater available funds than the other players and can hold the deal continuously.<sup>35</sup> A TPPPS pays fees to cardrooms to assume the player-dealer position and assume that odds-based advantage in the games. In addition, they have other interests associated with the operation of the games, as shown by the fact that they often provide equipment, rent space, and pay for advertising. To recoup these expenses and obtain greater profit, the TPPPS have a financial interest in taking all comers and paying all winning wagers and collecting all losing wagers, as the “one against the many.”

California cardrooms enter into contracts with TPPPS who pay for the right to occupy the player-dealer position in Blackjack and other banked games. Whenever a TPPPS acts as the player-dealer, “taking on all comers, paying all winners, and collecting from all losers,” the TPPPS operates as a bank, “the ultimate source and repository of funds dwarfing that of all other participants in the game.”<sup>36</sup> The TPPPS simply takes on the role of the house bank paying out all the wins and losses.

While the player-dealer regulations appear to be intended to further regulate TPPPS players’ activity when they occupy the player-dealer position, in reality, the proposed regulations on the rotation of the player-dealer position do not comply with state law because they do not require cardrooms to comply with all three required elements stated in Penal Code § 330.11. In addition, to the extent that the proposed regulations do not preclude the use of a TPPPS to maintain or operate as a bank and the Bureau has not found that “the rules of the game render the maintenance of or operation of a bank impossible by other means,” Section 330.11 requires that the player-dealer position *must* “mandate acceptance of the deal by *every* player.”<sup>37</sup>

**e. The proposed regulations have no meaningful penalty for violations.**

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<sup>30</sup> See Penal Code § 330.11 or Business and Professions Code § 19805, subdivision (c) (containing identical definitions of “banking game”).

<sup>31</sup> See Proposed § 2010.

<sup>32</sup> See Proposed § 2074.

<sup>33</sup> CAL. PENAL CODE § 330.11.

<sup>34</sup> *Hotel Employees*, 21 Cal.4th 585 at 592–93.

<sup>35</sup> See, e.g., *Oliver*, at 1409 (“A player with a significant amount of money to bet can hold the position of player-dealer for a long time, and thus keep the inherent playing advantage for him or herself.”).

<sup>36</sup> *Sullivan v. Fox*, 189 Cal.App.3d 673, 679 (1987).

<sup>37</sup> CAL. PENAL CODE § 330.11.

The proposed regulations contain no meaningful penalty for violations. If the player-dealer position is not rotated as specified within a 40-minute period, game play is simply to stop unless and until another person accepts the player-dealer position. The proposed regulations allow a violation of state law to continue for 40 minutes, after which time, a patron can evade the law by simply moving to a different table where they can then violate the law in a new location. The fact that the proposed Blackjack regulations allow such easy evasion is a fatal flaw. Highlighting the ease with which the 40-minute game rotation requirement can be circumvented, the proposed regulations do not even attempt to provide any guidance or direction on how that requirement will be monitored and enforced.

### **III. Conclusion.**

Unfortunately, nothing in these proposed regulations changes what California tribes have long sought from the California Department of Justice: action to shut down illegal banked card games. These banked games violate the California Constitution, statutes and judicial precedent, while undermining the class III gaming exclusivity to which California tribes are guaranteed in their gaming compacts and secretarial procedures. For the many reasons examined in this letter, I urge the Bureau to withdraw these regulations and enforce the prohibition on banked games against cardrooms. If you have any questions regarding this request, please contact our attorney, [REDACTED] [REDACTED]

[REDACTED] I appreciate your consideration of our serious concerns.

Sincerely,

[REDACTED]

Glenda Nelson /  
Chairperson



Andreia McMillen, Regulations Coordinator  
California Department of Justice, Bureau of Gambling Control  
2450 Del Paso Road, Suite 100  
Sacramento, CA 95834

May 27, 2025

SENT BY EMAIL ONLY TO: [BGC\\_Regulations@doj.ca.gov](mailto:BGC_Regulations@doj.ca.gov)

**Re: Comments on proposed player-dealer rotation and Blackjack regulations**

Dear Ms. McMillen:

The Federated Indians of Graton Rancheria (the “Tribe”) is a federally recognized tribe with a gaming facility located within our traditional territory in Sonoma County. As Chairman and on behalf of the Tribe, I write in response to the proposed player-dealer and Blackjack regulations recently issued by the California Department of Justice, Bureau of Gambling Control (“Bureau”).<sup>1</sup> This comment letter follows our previous correspondence with many of the same comments and recommendations on virtually identical draft regulations, dated October 23, 2023.

Last year, the Tribe strongly supported the passage of SB 549, the “Tribal Nations Access to Justice Act,” which authorized tribes to file a lawsuit seeking a judicial determination as to whether certain card games operated by California card clubs are illegal banking card games.<sup>2</sup> We supported the bill and support the tribes who filed the pending lawsuit<sup>3</sup> as we remain deeply concerned that cardrooms are, and have been for years, operating banked card games in violation of California’s Constitution, state statutes, and the precedents of the California state courts. Moreover, the exclusive right to operate banked games that we bargained for with the State in good faith, and that California voters approved, is undermined by the continued operation of illegal banked games by the cardrooms. Strong and clear regulations are needed to enforce state law. Unfortunately, these proposed regulations would simply continue the status quo by making inconsequential alterations in existing cardroom practices. The proposed regulations would not prevent activity that is illegal under the California Constitution, state statutes and judicial

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<sup>1</sup> Specifically, I am writing in reference to proposed amendments to section 2010 and proposed new sections 2073, 2074, 2075 (concerning “Blackjack-style” games), 2076 and 2077 (concerning rotation of the player-dealer position) to Title II, Division 3, chapter 1 of the California Code of Regulations.

<sup>2</sup> Tribal Nations Access to Justice Act, SB 549, Chapter 860, Statutes of 2024.

<sup>3</sup> *Agua Caliente Band of Cahuilla Indians, et al. v. Parkwest Bicycle Casino, et al.* (Sacramento Superior Court Case No. 25CV000001).

precedent. Moreover, the proposed regulations would fail to protect California tribes' exclusive rights to operate banked games under their class III gaming compacts.

For these reasons, as further detailed below, the Bureau should withdraw the proposed regulations and instead enforce state law against the operation of illegal banked card games. I also reiterate our prior request that the Attorney General consult with the Tribe on this issue which seriously affects our government-to-government relationship as expressed throughout the Tribal-State Gaming Compact.<sup>4</sup>

## **1. Banking games are illegal under California law.**

As you are aware, the operation of Blackjack games is prohibited by California law.<sup>5</sup> This has been true for most of California's history.<sup>6</sup> In addition to Blackjack, California law also criminalizes the conduct of all banking games, defined as games

“where there is a fund against which everybody has the right to bet, the bank taking all that is lost by the bettors and paying out all that is won by them or all save a percentage which it keeps.” In a banking game the banker or exhibitor pays all the winnings and suffers all the losses; he is the one against the many, which is the supreme test of a banking game.<sup>7</sup>

Minor rules variations do not change the essential legal analysis:

a game will be determined to be a banking game if under the rules of that game, *it is possible* that the house, another entity, a player, or an observer can maintain a bank or operate as a bank during the play of the game. . . . it could then be said of such a player that he or she is “taking on all comers, paying all winners, and collecting from all losers.”<sup>8</sup>

In addition, “a banking game, within the meaning of Penal Code section 330's prohibition, may be banked by someone other than the owner of the gambling facility.”<sup>9</sup> This is occurring now through the use of Third-Party Proposition Player Services (“TPPPS”) providers, and the proposed regulations would continue this practice.

## **2. Tribes have the exclusive right to operate banking card games in California under Federal and State law.**

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<sup>4</sup> See Tribal-State Gaming Compact Between the State of California and the Federated Indians of Graton Rancheria, California, March 23, 2023, section 1.0 at 2-3 (herein, “Compact”).

<sup>5</sup> CAL. CONST. Art. IV, § 19(e); CAL. PENAL CODE § 330.

<sup>6</sup> See *Hotel Employees and Restaurant Employees Intern. Union v. Davis*, 21 Cal.4th 585, 592 (1999) (herein, “*Hotel Employees*”) (recounting history of gambling regulations in California).

<sup>7</sup> *People v. Ambrose*, 122 Cal.App.2d Supp. 966, 970 (1953) (citation omitted).

<sup>8</sup> *Oliver v. County of Los Angeles*, 66 Cal.App.4th 1397, 1408-9 (1998) (emphasis added) (analyzing the rules of “Newjack,” a Blackjack variant, and holding that it constitutes an illegal banking game).

<sup>9</sup> *Id.* at 608 (citing *Oliver*).

In 1988, Congress enacted the Indian Gaming Regulatory Act (the “IGRA”) to “provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments.”<sup>10</sup> Under the IGRA, federally-recognized Indian tribes and states can negotiate compacts, on a government-to-government basis, for the regulation of class III gaming on Indian lands. Class III gaming includes “Vegas-style” casino games such as slot machines and banked card games. Accordingly, in 2000, California voters amended the state Constitution to provide:

Notwithstanding subdivisions (a) and (e), and any other provision of state law, the Governor is authorized to negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of slot machines and for the conduct of lottery games and banking and percentage card games by federally recognized Indian tribes on Indian lands in California in accordance with federal law. Accordingly, slot machines, lottery games, and banking and percentage card games are hereby permitted to be conducted and operated on tribal lands subject to those compacts.<sup>11</sup>

Article IV, § 19(f) is, therefore, the only exception to California’s constitutional prohibition against banked card games, and grants through the mechanism of the class III gaming compacts, California Indian tribes the exclusive right to operate class III gaming, including banked card games. Under those compacts, California tribes operate gaming facilities to provide crucial funding to meet the needs of their citizens, including education, healthcare, housing, infrastructure, environmental stewardship, and cultural preservation.

The Tribe first entered into a class III gaming compact with the State of California in 2012, which was ratified by the Legislature. In that compact, and as a meaningful concession in consideration for the exclusive right to operate class III gaming (including banked card games), the Tribe agreed to make payments into the Special Distribution Fund (“SDF”), to help defray the cost of State gaming regulation and support for local governments, and the Revenue Sharing Trust Fund (“RSTF”) to provide essential funding for tribes operating less than 350 gaming machines and those not operating gaming enterprises at all. The 2012 compact also provided for the Tribe to make substantial mitigation payments to the local community through the Graton Mitigation Fund, funded by up to 15% of the Tribe’s gaming operation net win. The agreement to make these payments to the State was wholly dependent upon the Tribe’s exclusive right to operate class III gaming on the Tribe’s lands.<sup>12</sup>

In 2023, the Tribe and the State entered into an amended and restated class III gaming compact, in which the Tribe agreed to provide even greater funding for limited gaming and non-gaming tribes via a supplemental RSTF and to retain the SDF funding for State costs of regulation. The Tribe’s strong support for local communities, limited-gaming and non-gaming

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<sup>10</sup> 25 U.S.C. § 2702(2).

<sup>11</sup> CAL. CONST. Art. IV, § 19(f).

<sup>12</sup> See Tribal-State Gaming Compact Between the State of California and the Federated Indians of Graton Rancheria, California, Section 4.6 (March 27, 2012); see also *In Re Gaming Related Cases*, 331 F.3d 1094, 1112, 1115 (9<sup>th</sup> Cir. 2003) (holding that agreement to make RSTF and SDF payments were meaningful concessions in exchange for the exclusive right to operate class III gaming in California).



tribes, and its support of the State gaming regulatory bodies depends wholly on the exclusive right to operate class III gaming, including banked card games.

While section 19(e) of the California Constitution prohibits the Legislature from enacting a law permitting a banking game, Penal Code § 330.11 purports to redefine banked games by exempting certain games featuring a “player-dealer position,” but only if the game rules meet three specific conditions:

‘Banking game’ or ‘banked game’ does not include a controlled game if [1] 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, [2] ensure that the player-dealer is able to win or lose only a fixed and limited wager during the play of the game, and [3] 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.<sup>13</sup>

Penal Code § 330.11 must be interpreted in accord with the Constitutional prohibition on banked games, as *Hotel Employees* makes clear.<sup>14</sup>

### **3. The proposed regulations still allow Blackjack, which is a banked game in violation of State law.**

For most of California’s statehood, Penal Code § 330 has specifically identified “twenty-one,” also known as Blackjack, in the list of prohibited games. Blackjack is the paradigm of a banked game, because the players must gamble against a single entity that possesses superior odds and pays all winners and collects from all losers. As discussed above, California law prohibits cardrooms from offering banked games, including Blackjack, where an entity with an odds-based advantage “takes on all comers, pays all winners, and collects from all losers.”<sup>15</sup>

California cardrooms operate variants of Blackjack, and no matter their name or superficial rules differences, Blackjack is a banked game because players gamble against one person or entity that possesses an odds-based advantage and pays all winners and collects from all losers. Nothing in these proposed regulations changes that fact. Blackjack is a classic example of a banking card game, in which each player is competing with, and can win from, the dealer (or “bank”), rather than the other players. In Blackjack, each player competes against the dealer/banker to try to build a hand which, based on the point totals assigned to each card, adds up to but do not exceed a target value (in Blackjack, the target value is 21 points). The point total of every player’s hand is compared with that of the dealer, and not the other players’ hands. A

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<sup>13</sup> CAL. PENAL CODE § 330.11 (2002) (numbering added).

<sup>14</sup> See *Hotel Employees*, 21 Cal.4th at 601-606.

<sup>15</sup> *Hotel Employees*, 21 Cal.4th at 592.



successful player is paid from the dealer, not from the other players. A losing player pays the dealer, not the other players.

The proposed regulations prohibit games called “Blackjack.”<sup>16</sup> But after describing what qualifies as prohibited Blackjack, the regulations go on to describe “permissible Blackjack variations,” completely evading the prohibition on Blackjack in Section 330 of the Penal Code. For example:

- The game cannot be called “Blackjack;”<sup>17</sup>
- The target point total cannot be 21, or more than 21 but less than 22;<sup>18</sup>
- A “push” (*i.e.*, a tie between player and dealer) results in a win for the player, unlike a tie in traditional Blackjack;<sup>19</sup>
- The game cannot have the automatic win feature contained in traditional Blackjack (*i.e.*, when a player gets a 10-point card and an ace in the initial two-card deal, they automatically win from the dealer);<sup>20</sup> and
- The game cannot contain the “bust” feature, in which a player going over the target point value automatically loses to the dealer.<sup>21</sup>

These rules changes are not only minor, they are legally inconsequential. By whatever name a cardroom refers to a game in which players compete against, and either pay losses to or recover winnings from, the dealer rather than against all other players, California law still classifies such a game as a banking game which is criminally prohibited by Section 330 of the Penal Code. Therefore, we recommend that the Bureau strengthen the regulations to preclude the player-dealer, the TPPPS, or any other entity, from maintaining or operating a bank during the conduct of any game the proposed regulations describe as a “permissible Blackjack variation.”

#### **4. The proposed regulations do not comply with Penal Code § 330.11, the first requirement of which mandates the continuous and systematic rotation of the player-dealer position.**

Section 330.11 of the California Penal Code contains several elements that must be met if a game is permitted, the first of which is that the player-dealer position must “provide that this position must be continuously and systematically rotated amongst each of the participants during the play of the game,”<sup>22</sup> the proposed regulations do not meet this standard. The plain language of the words “amongst each of the participants” in Penal Code section 330.11 means that every player must take a turn in the player-dealer position to comply with the statute. Instead, the proposed regulations only require that the player-dealer position be “offered” to each seated player without actually requiring the continuous and systematic rotation of the position amongst

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<sup>16</sup> Proposed § 2073(a).

<sup>17</sup> Proposed § 2074(b) (“Permissible Blackjack Variations; Required Rules”).

<sup>18</sup> Proposed § 2074(a)(2).

<sup>19</sup> Proposed § 2074(a)(4).

<sup>20</sup> Proposed § 2074(a)(3).

<sup>21</sup> Proposed § 2074(a)(1).

<sup>22</sup> CAL. PENAL CODE § 330.11.

each of the participants during the play of the game.<sup>23</sup> This is a fatal deficiency of the proposed regulations, and California courts have invalidated games on this basis.

For example, in *Oliver*, the California Court of Appeals determined that “Newjack” (a Blackjack variant) is a prohibited banked game.<sup>24</sup> In Newjack, each player has the option to act as the player-dealer for two consecutive hands, and then the option to act as player-dealer passes to the player on the left and continues to pass until another player accepts the option.<sup>25</sup> Newjack’s rules allowed players to decline the offer, so one player could serve as the player-dealer for more than two consecutive hands if all other players at the table decline to assume the role. The crucial legal question is whether it is possible for one player to act as a player-dealer for repeated hands.<sup>26</sup>

The proposed regulations do not address this concern. Proposed Section 2076(a) mandates only that the player-dealer position be offered to each player after each hand, but does not mandate that any player accept the player-dealer position. Simply put, an offer to rotate is not actually rotating the player-dealer position, as is required by the law. Instead of requiring “continuous and systematic rotation,” the proposed regulations require only that the player-dealer position be rotated twice to other players than the TPPPS in a 40-minute period.<sup>27</sup> Under the proposed regulations, if no rotation happens in the 40-minute time period, the game stops, no cards are dealt, and no wagers are to be made until another person accepts the player-dealer position.<sup>28</sup> Allowing a game to continue for over 40 minutes with no rotation of the player-dealer position is not “continuous and systematic” rotation, in clear violation of the statute. As stated in *Oliver*, a card game is a banking game if it is possible for a player to act as player-dealer for multiple hands. Under the proposed regulations, it would be possible for a player to act as player-dealer for the entire 40-minute period, making it a banking game in violation of Penal Code §§ 330 and 330.11.<sup>29</sup>

##### **5. The proposed regulations do not satisfy the second element of Penal Code § 330.11, which limits the player-dealer to winning or losing only a “fixed and limited wager.”**

The second required element under Penal Code § 330.11 is that a game’s rules must “ensure that the player-dealer is able to win or lose only a fixed and limited wager during the play of the game.” While the proposed regulations require the posting of a notice to that effect at gaming tables, nothing in the proposed regulations fixes or limits the amount a player-dealer actually wagers. Again: “In a banking game... the banker ‘pays off all winning wagers and keeps all losing wagers.’”<sup>30</sup> There is nothing in the proposed regulations that explicitly prevents the player-dealer from “taking on all comers, paying all winners,’ and collecting from all losers,

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<sup>23</sup> See Proposed § 2076(a)(1) and (3).

<sup>24</sup> *Oliver*, 66 Cal.App.4th at 1408.

<sup>25</sup> *Id.* at 1407–08.

<sup>26</sup> *Id.*

<sup>27</sup> Proposed § 2076(a)(4).

<sup>28</sup> See Proposed § 2076(a)(5).

<sup>29</sup> See *Oliver*, 66 Cal.App.4th at 1409.

<sup>30</sup> *Hotel Employees*, 21 Cal.4th at 593.

doing so through a fund generally called the “bank.”<sup>31</sup> Requiring the posting of a sign, without more, is inadequate to prevent the operation of a banked game.

In practice, the TPPPS usually do not make a “fixed and limited” wager; they pay winners and collect from losers without making any actual wager of their own at all. Viewed against actual practices, requiring adherence to a “fixed and limited wager” amount by TPPPS would ensure the game is not a banking game under state law, because the player-dealer would no longer have a fund at stake sufficient to pay all winners.<sup>32</sup> In addition, the proposed regulations do not define “fixed and limited wager,”<sup>33</sup> nor do they include any modifications of the player-dealer wager within the required rules for permissible Blackjack variations.<sup>34</sup>

**6. The proposed regulations allow player-dealers or TPPPS to act as a bank, thereby violating the third requirement of Penal Code § 330.11.**

The proposed regulations do not “preclude the house, another entity, a player or an observer from maintaining or operating as a bank during the course of the game.”<sup>35</sup> Again, a player-dealer is acting as bank if they have an interest in the outcome of the game, pay all winners, collect from all losers, and compete with the other players as the “one against the many.”<sup>36</sup> Preventing the operation or maintenance of a bank is an important aspect of California’s public policy, because California courts have long recognized the inherent odds-based advantage that the player-dealer has over other players, particularly where (as in the case of TPPPS under contract with the cardroom) the player-dealer has substantially greater available funds than the other players and can hold the deal continuously.<sup>37</sup> A TPPPS pays fees to cardrooms to assume the player-dealer position and assume that odds-based advantage in the games. In addition, they have other interests associated with the operation of the games, as shown by the fact that they often provide equipment, rent space, and pay for advertising. To recoup these expenses and obtain greater profit, the TPPPS have a financial interest in taking all comers and paying all winning wagers and collecting all losing wagers, as the “one against the many.”

California cardrooms enter into contracts with TPPPS who pay for the right to occupy the player-dealer position in Blackjack and other banked games. Whenever a TPPPS acts as the player-dealer, “taking on all comers, paying all winners, and collecting from all losers,” the TPPPS operates as a bank, “the ultimate source and repository of funds dwarfing that of all other participants in the game.”<sup>38</sup> The TPPPS simply takes on the role of the house bank paying out all the wins and losses.

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<sup>31</sup> *Id.* at 592 (internal quotation marks and citations omitted).

<sup>32</sup> See Penal Code § 330.11 or Business and Professions Code § 19805, subdivision (c) (containing identical definitions of “banking game”).

<sup>33</sup> See Proposed § 2010.

<sup>34</sup> See Proposed § 2074.

<sup>35</sup> CAL. PENAL CODE § 330.11.

<sup>36</sup> *Hotel Employees*, 21 Cal.4th 585 at 592–93.

<sup>37</sup> See, e.g., *Oliver*, at 1409 (“A player with a significant amount of money to bet can hold the position of player-dealer for a long time, and thus keep the inherent playing advantage for him or herself.”).

<sup>38</sup> *Sullivan v. Fox*, 189 Cal.App.3d 673, 679 (1987).

While the player-dealer regulations appear to be intended to further regulate TPPPS players' activity when they occupy the player-dealer position, in reality, the proposed regulations on the rotation of the player-dealer position do not comply with state law because they do not require cardrooms to comply with all three required elements stated in Penal Code § 330.11. In addition, to the extent that the proposed regulations do not preclude the use of a TPPPS to maintain or operate as a bank and the Bureau has not found that "the rules of the game render the maintenance of or operation of a bank impossible by other means," Section 330.11 requires that the player-dealer position *must* "mandate acceptance of the deal by *every* player."<sup>39</sup>


## **7. The proposed regulations have no meaningful penalty for violations.**

The proposed regulations contain no meaningful penalty for violations. If the player-dealer position is not rotated as specified within a 40-minute period, game play is simply to stop unless and until another person accepts the player-dealer position. The proposed regulations allow a violation of state law to continue for 40 minutes, after which time, a patron can evade the law by simply moving to a different table where they can then violate the law in a new location. The fact that the proposed Blackjack regulations allow such easy evasion is a fatal flaw. Highlighting the ease with which the 40-minute game rotation requirement can be circumvented, the proposed regulations do not even attempt to provide any guidance or direction on how that requirement will be monitored and enforced.

## **Conclusion.**

Simply put, nothing in these proposed regulations changes what California tribes have long sought from the California Department of Justice: action to shut down illegal banked card games. These banked games violate the California Constitution, statutes and judicial precedent, while undermining the class III gaming exclusivity to which California tribes are guaranteed in their gaming compacts. For the many reasons examined in this letter, I urge the Bureau to withdraw these regulations and enforce the prohibition on banked games against cardrooms. Doing so will ensure that the State of California lives up to its compact obligations with California tribes.

Sincerely,

A solid black rectangular box used to redact the signature of Greg Sarris.

Greg Sarris, Chairman

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<sup>39</sup> CAL. PENAL CODE § 330.11.



YUHA AVIATAM  
OF SAN MANUEL NATION

May 22, 2025

Submitted via email to: BGC\_Regulations@doj.ca.gov  
Andreia McMillen, Regulations Coordinator  
California Department of Justice, Bureau of Gambling Control  
2450 Del Paso Road, Suite 100, Sacramento, CA 95834

**Re: Joint Letter of California Tribal Nations in Response to Proposed  
Rulemaking Regarding Rotation of the Player-Dealer Position and Blackjack**

Dear Ms. McMillen:

On behalf of the undersigned federally-recognized California Tribal Nations (the "Tribes"), we welcome the opportunity to submit comments regarding the Bureau of Gambling Control's proposed regulations for the rotation of the "player-dealer position" and "blackjack-style" games. On February 14, 2025, the Bureau provided Notice of Proposed Rulemaking to adopt sections 2076 and 2077 concerning rotation of the player-dealer position and to amend section 2010 and adopt sections 2073, 2074, and 2075 concerning blackjack-style games in Title 11, Division 3, Chapter 1, Article 7 of the California Code of Regulations.<sup>1</sup> On March 28, 2025, the Bureau extended the public comment period by withdrawing the earlier notices and restarted the rulemaking proceedings.

The undersigned Tribes are Plaintiffs in the lawsuit *Agua Caliente Band of Cahuilla Indians, et al. v. Parkwest Bicycle Casino, et al.* (Sacramento Superior Court Case No. 25CV000001), which was filed pursuant to the Tribal Nations Access to Justice Act to "determine whether certain controlled games operated by California card clubs are illegal banking card games or legal controlled games, thereby resolving a decade-long dispute between California tribes and California card clubs[.]" 2024 Cal. Legis. Serv. Ch. 860 (S.B. 549). As

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<sup>1</sup> In addition to the issue of illegal banked card games offered by California card clubs, the undersigned Tribes are concerned that the State has failed to take any action to enforce against other illegal forms of gaming, including so-called daily fantasy sports, online casino sweepstakes and offshore online gaming.

such, we are deeply concerned that cardrooms operate banked card games in violation of California's Constitution, Penal Code section 330, and California Supreme Court precedent, and that their illegal conduct violates the exclusive rights that Californians voted to approve for tribes and which tribes bargained for in class III gaming compact negotiations.

The proposed regulations are inadequate to prohibit California cardrooms from unlawfully operating banked card games or to protect the tribes' exclusive rights to operate those games pursuant to their class III gaming compacts. Therefore, we provide the comments herein to clarify the legal issues, to identify deficiencies in the proposed regulations, and to provide specific recommendations to strengthen the regulations in accordance with California law.

## **I. The California Constitution's Article IV, Section 19(e) Prohibits Cardrooms From Operating Banked Card Games.**

Since 1872, banked card games have been prohibited in California under Penal Code section 330. In 1984, Californians voted to approve an initiative to amend the Constitution to prohibit commercial casinos, providing that "[t]he Legislature has no power to authorize, and shall prohibit, casinos of the type currently operating in Nevada and New Jersey." CAL. CONST. art. IV, § 19(e). In 1987, the U.S. Supreme Court held in *California v. Cabazon Band of Mission Indians* that Indian tribes possess sovereignty under federal law to regulate gambling on Indian lands. 480 U.S. 202 (1987). In 1988, Congress enacted the Indian Gaming Regulatory Act (the "IGRA") to "provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." 25 U.S.C. § 2702(2). Under the IGRA, Indian gaming is "not only 'a source of substantial revenue' for tribes, but the lifeblood on 'which many tribes have come to rely.'" *Chicken Ranch Rancheria of Me-Wuk Indians v. California*, 42 F.4th 1024, 1032 (9th Cir. 2022) (quoting *In re Indian Gaming Related Cases*, 331 F.3d 1094, 1097, 1099–1100 (9th Cir. 2003)). In fact, Indian gaming has become the most successful economic development initiative ever for Indian Country, lifting many tribes out of poverty and providing them with critical funding for education, healthcare, infrastructure, and cultural preservation.

Under the IGRA § 2710(d)(3)(A), federally-recognized Indian tribes and states are authorized to negotiate compacts to regulate class III gaming on a government-to-government basis. Class III gaming includes "Vegas-style" casino games such as slot machines and banked card games. 25 C.F.R. § 502.4. In 1998, California voters approved a proposed initiative statute designated on the ballot as Proposition 5, which authorized certain Class III gaming on Indian lands in California. Tribal Government Gaming and Economic Self-Sufficiency Act of 1998 (codified at CA GOV'T CODE § 98000 et seq. (1998)) (ratified by voters as Prop. 5 in the November 3, 1998 election), invalidated by *Hotel Employees & Restaurant Employees Intern. Union v. Davis*, 21 Cal.4th 585 (1999).

The Hotel Employees and Restaurant Employees International Union ("HERE") filed a lawsuit to prohibit the Governor from implementing Proposition 5, claiming, in relevant part, that the measure conflicted with the Constitution's Article IV, section 19(e). The California

Supreme Court held that the Constitution's prohibition against "casinos of the type currently operating in Nevada and New Jersey" prohibited the types of class III gaming authorized by Proposition 5, including banked card games. *Hotel Employees*, 21 Cal.4th at 605. The Court ruled, in relevant part:

[T]he 'type' of casino referred to [in article IV, section 19(e)] must be an establishment that offers gaming activities including *banked table games*.... 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*....

*Id.* (emphasis added) (internal quotation marks and citations omitted). The Court defined banking games as, "a person or entity that participates in the action as the one against the many, taking on all comers, paying all winners, and collecting from all losers, doing so through a fund generally called the bank." *Id.* at 592 (internal quotation marks and citations omitted). Relevant here, the Court also held that banked games include games that are "banked by someone other than the owner of the gambling facility." *Id.* at 608. As a result, the Court not only invalidated Proposition 5, but also held that section 19(e) was intended "to elevate statutory prohibitions on a set of gambling activities to a constitutional level," and clarified that California cardrooms were constitutionally prohibited from operating banking card games and that the Legislature was barred from allowing cardrooms to operate banking card games under section 19(e). *Id.* at 605–06. The Court emphasized that when section 19(e) was incorporated into the Constitution:

[a] California card room... was not permitted to offer gaming activities in the form of... banking games... or [] games proscribed by name, including twenty-one—all of which were prohibited at least by statute. Thus, a casino of "the type... operating in Nevada and New Jersey" may be understood, with reasonable specificity, as one or more buildings, rooms, or facilities, whether separate or connected, that offer gambling activities including those statutorily prohibited in California, especially banked table games and slot machines.... [T]he available legislative history suggests section 19(e) was designed, precisely, to elevate statutory prohibitions on a set of gambling activities to a constitutional level.

*Id.* (internal quotation marks and citations omitted).

Following the invalidation of Proposition 5, Indian tribes presented the question of Indian gaming to California voters again in 2000, seeking a constitutional amendment in Proposition 1A. Legalizing Tribal Casinos in California (codified at CAL. CONST. art. IV, § 19(f) (2000)) (ratified by voters as Prop 1(a) on March 7, 2000). California voters approved Proposition 1A and incorporated article IV, section 19(f) into the Constitution, which provides:

Notwithstanding subdivisions (a) and (e), and any other provision of state law, the Governor is authorized to negotiate and conclude compacts, subject to ratification

by the Legislature, for the operation of slot machines and for the conduct of lottery games and *banking* and percentage card games by federally recognized Indian tribes on Indian lands in California in accordance with federal law. Accordingly, slot machines, lottery games, and *banking* and percentage card games are hereby permitted to be conducted and operated on tribal lands subject to those compacts.

CAL. CONST. art IV, § 19(f) (emphasis added). Article IV, section 19(f) provides the sole exception to California's constitutional prohibition against banked card games, and grants California's Indian tribes the exclusive right to operate banked games pursuant to class III gaming compacts. Under tribal-state compacts, California Indian tribes have bargained with the State for exclusive rights to offer banked games on Indian lands. In consideration of these exclusive rights, California tribes make payments to the State's Special Distribution Fund established by the Legislature. *See* Indian Gaming Special Distribution Fund, CAL GOV'T CODE §§ 12710–18. These payments are significant, representing tens of millions of dollars per year to the State's coffers. Thus, not only is exclusivity currently mandated by the Constitution, but the tribes also have meaningfully bargained with the State and paid for their exclusive rights to operate banked games.

California cardrooms, on the other hand, never obtained a constitutional amendment to operate banked games after the Supreme Court decided *Hotel Employees*. Instead, the cardrooms lobbied the Legislature to adopt Penal Code section 330.11, which codified the definition of banked games. Specifically, Section 330.11 exempted certain games featuring a "player-dealer position," *but only if* the published rules of the game satisfy each of three specific conditions set forth in the statute, which provides:

'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.

CAL. PENAL CODE § 330.11 (2002). Because Section 19(e) prohibits the Legislature from enacting a law that would permit a banking game, Penal Code section 330.11 must be interpreted and applied to prohibit a game that would be a banking game under the *Hotel Employees* decision.



Following the passage of section 330.11, cardrooms adopted game rules that purport to "rotate" the player-dealer position from player to player, claiming this prevents any single entity from banking the game. However, the cardroom rules fail to satisfy the requirements in section 330.11. For example, these rules typically do not require actual rotation of the player-dealer position, only the mere offering of it. Thus, a single player may bank the game uninterrupted when no other player accepts an offer to bank.

Notably, section 330.11 does not "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." Hence, the rotation amongst every player would not be required if the rules prohibited player-dealers from collecting all wagers and paying all winners rather than "los[ing] only a fixed and limited wager." But the cardrooms do not impose any such rules. Instead, the cardrooms have contracted with entities known as third-party proposition players ("TPPPs") who pay the cardrooms to assume the player-dealer position in blackjack, baccarat, pai gow, and other banked games—and who take on the role of the house bank paying out all the wins and losses. In fact, the TPPPs typically do not make wagers at all, but operate as a bank, "the ultimate source and repository of funds dwarfing that of all other participants in the game." *Sullivan v. Fox* 189 Cal.App.3d 673, 679 (1987). Allowing the use of TPPPs violates the requirement in section 330.11 that precludes an entity from "maintaining or operating as a bank." Thus, because the rules of the game do not otherwise bar the TPPPs from maintaining or operating as a bank, the game rules *must* "mandate acceptance of the deal by *every* player" under Section 330.11. (Emphasis added).

In sum, California law does not require the house to be the entity banking the game for it to qualify as an illegal banked game. *Hotel Employees*, 21 Cal. 4th at 607–08. "[A] game will be determined to be a banking game if under the rules of that game, it is possible that the house, another entity, a player, or an observer can maintain a bank or operate a bank during the play of the game." *Oliver v. Cnty. of L.A.*, 66 Cal.App.4th 1397, 1408 (1998). Hence, the TPPPs illegally maintain and operate a bank during the course of the games in which they participate in cardrooms throughout the State. Unfortunately, the proposed regulations fail to prohibit cardrooms from continuing this farcical circumvention of California law that violates the exclusive rights of tribes to operate banking games under their class III gaming compacts and the California Constitution.

## **II. The Proposed Regulations Concerning the Rotation of the Player-Dealer Position Fail to Prohibit Cardrooms from Offering Banked Card Games.**

The proposed regulations do not comply with Penal Code § 330.11. Section 330.11 requires three conditions for a game to fall outside the definition of a prohibited banked game; specifically, the game must: (1) 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; (2) ensure that the player-dealer is able to win or lose only a fixed and limited wager during the play of the game; and (3) preclude the house, another entity, a player or an observer from maintaining or operating as a bank during the course of the game. All three

conditions must be met to fall outside the definition of a prohibited banked game, and the Bureau's proposed regulations fail to require cardrooms to comply with any of these conditions. Furthermore, as discussed above, to the extent that the proposed regulations do not preclude the use of a TPPP to maintain or operate as a bank and the Bureau has not found that "the rules of the game render the maintenance of or operation of a bank impossible by other means," section 330.11 requires that the game rules *must* "mandate acceptance of the deal by *every* player." (Emphasis added).

**A. The Proposed Regulations Fail to Require the Player-Dealer Position to be Continuously and Systematically Rotated Amongst Each of the Participants.**

The proposed regulations do not require the player-dealer position to be "continuously and systematically rotated amongst each of the participants during the play of the game." CAL. PENAL CODE § 330.11. Instead, proposed section 2076(a) only requires that the player-dealer position is "offered" to each seated player without actually requiring the continuous and systematic rotation of the position amongst each of the participants during the play of the game. Cal. Dep't of Justice, Bureau of Gambling Control Proposed Regulations (proposed February 14, 2025) (to be codified at CAL. CODE REGS. tit. 11, § 2076–77) (hereinafter Proposed Player-Dealer Regulations). In *Oliver v. County of Los Angeles*, the California Court of Appeals considered whether the game "Newjack"—a variant of blackjack—constituted a prohibited banked game. *Oliver*, 66 Cal.App.4th at 1408. In Newjack, each player has the option to act as the player-dealer for two consecutive hands, and then the option—not the player-dealer position—passes to the player on the left until another player accepts the option. *Id.* at 1407–08. Newjack's rules allow players to decline the offer, so one player could serve as the player-dealer for more than two consecutive hands if all other players at the table decline to assume the role. The court held it is the *potential* for Newjack to be a banked game that matters, not how it may actually be played. *Id.* The determinative question is whether it is possible for one player to act as a player-dealer for repeated hands. *Id.*

The proposed regulations do not sufficiently address this concern and the potential for one player to act as player-dealer for repeated hands. Proposed section 2076(a) mandates only that the player-dealer position be offered to each player after each hand, but does not mandate that any player accept the offer. The mere "offering" of the position does not mean that position is *actually* rotated on a continuous basis, as required by the law.

Instead of requiring "continuous and systematic rotation," the proposed regulations arbitrarily provide for a *minimum number of rotations* within a 40-minute period. Proposed section 2076(a)(4) provides that:

The player-dealer position shall rotate to at least two players other than the TPPPS every 40 minutes or the game shall end. If there is only one player at the table in addition to the TPPPS, the player-dealer position shall rotate to that player a minimum of two times every 40 minutes, or the game shall end.

Proposed Player-Dealer Regulations § 2076(a)(4). The proposed regulations provide that the player-dealer position must rotate to two players other than the TPPPS within a 40-minute period and, if no rotation occurs, the game must stop and no cards shall be dealt and no wagers shall be made until another person accepts the player-dealer position. *See* Proposed Player-Dealer Regulations § 2076(a)(5). However, this proposed regulation fails to require *actual continuous rotation*, and instead allows a game to continue for over 40 minutes without any rotations in clear violation of the statute. *See* Proposed Player-Dealer Regulations § 2076(a)(6) ("If the 40-minute mark is reached during a round of play, the round of play may be completed before the game ends.") As articulated in *Oliver v. County of Los Angeles*, a game is a banking game if it would be *possible* for a single player to hold the player-dealer position for repeated hands. Under proposed section 2076(a), a single player could hold the player-dealer position for at least 40 minutes. In fact, based on the Bureau's estimate that a single round of play averages three minutes, one player could potentially hold the player-dealer position for *over 13 hands*. *See* Cal. Dep't of Justice, Bureau of Gambling Control, Initial Statement of Reasons, pg. 6. Although game play would have to be stopped if there was no rotation for a 40-minute period, it would be possible for a single player to hold the player-dealer position during that entire 40-minute period, making it a banking game in violation of Penal Code § 330. *See Oliver*, 66 Cal.App.4th at 1409.

Additionally, the proposed regulations fail to require rotation "amongst each of the participants during the play of the game" as required by Penal Code section 330.11. The plain language of the words "amongst each of the participants" in Penal Code section 330.11 clearly means that *every player* must take a turn in the player-dealer position to comply with the statute. *Each*, Oxford Languages (2024) ("used to refer to every one of two or more people or things, regarded and identified separately"). The proposed regulations, by contrast, do not require the player-dealer position to be rotated amongst every one of the players of the game. Therefore, to comply with the section 330.11 requirement that the player-dealer position be rotated "continuously and systematically rotated amongst each of the participants," the proposed regulations must be replaced with regulations that require the *actual rotation of the player-dealer position to every player* to comply with the statute.

**B. The Proposed Regulations Fail to Ensure that the Player-Dealer is Able to Win or Lose Only a Fixed and Limited Wager.**

In addition to the requirement that the player-dealer position be continuously and systematically rotated, section 330.11 requires that game rules "ensure that the player-dealer is able to win or lose only a fixed and limited wager during the play of the game." Proposed section 2027(a)(2) requires a notice stating that "[t]he player that assumes the player-dealer position cannot win or lose more than the amount they wager," and the Bureau's Initial Statement of Reasons states that this provision "is necessary to ensure that the game does not fall within the definition of a banking game or banked game under Business and Professions Code § 19805, subdivision (c)," which is the same definition provided in Penal Code section 330.11. Cal. Dep't of Justice, Bureau of Gambling Control, Initial Statement of Reasons, pg. 5. However, the words "fixed and limited wager" are conspicuously absent from the proposed regulations, and nothing in the proposed regulations expressly fixes or limits the amount the player-dealer may wager.

"In a banking game... the banker 'pays off all winning wagers and keeps all losing wagers.'" *Hotel Employees*, 21 Cal.4th at 593. Nothing in the proposed regulations explicitly prevents the player-dealer from "taking on all comers, paying all winners,' and collecting from all losers, doing so through a fund generally called the "bank." *Id.* at 592 (internal quotation marks and citations omitted). Contrary to the Bureau's Initial Statement of Reasons, absent some provision limiting or fixing the amount a player-dealer may wager, the notice requirement in proposed section 2076(a)(2) is not adequate to preclude a game from being a banked game.

Furthermore, the TPPPs do not typically make a "fixed and limited" wager; they pay out variable winnings and collect variable losses without making any actual wager of their own. A fixed or limited wager amount is absolutely necessary to prevent a banked game when a game involves the use of a TPPP who may be contractually obligated to pay out winnings on all successful bets made, whatever they may be. To ensure that the game does not fall within the definition of a banking game or banked game under Penal Code section 330.11 or Business and Professions Code section 19805, subdivision (c), the proposed regulation must require the player-dealer and the TPPP to make a fixed and limited wager and to prohibit the player-dealer and the TPPP from paying out variable winnings and losses without making any actual wagers of their own.

### **C. The Proposed Regulations Fail to Preclude the Player-Dealer or TPPP from Maintaining or Operating as a Bank.**

The proposed regulations also fail to "preclude the house, another entity, a player or an observer from maintaining or operating as a bank during the course of the game." CAL. PENAL CODE § 330.11. According to the California Supreme Court, a player-dealer maintains or operates as a bank if they have an interest in the outcome of the game, pay off all winning wages and collect all losing wages, and participate by competing with all other participants as the "one against the many." *Hotel Employees*, 21 Cal.4th 585 at 592–93.

As discussed above, cardrooms have introduced variants of casino-style banked table games, such as blackjack, and the rules for these variants on banked games specify that a "player-dealer" will bank the game while a representative of the cardroom (the "House Dealer") deals cards, collects player fees, and otherwise runs the game. The player-dealer framework is a direct outgrowth of the cardroom industry's efforts to evade California's prohibition on banked games outside of tribal lands and has given rise to TPPPs, which operate banked games as defined by the Supreme Court in *Hotel Employees*. TPPPs have a substantial interest in the outcome of the games, and the proposed regulations do not prohibit them from holding the player-dealer position for extended periods while they compete against multiple players and pay all winners and collect from all losers.

The California courts have long recognized that the player-dealer has an inherent advantage over other players, especially if the player-dealer has funds that dwarf the other players and is able to hold the position continuously. *See, e.g., Oliver v County of Los Angeles*, at 1409 ("A player with a significant amount of money to bet can hold the position of player-

dealer for a long time, and thus keep the inherent playing advantage for him or herself."). TPPPs pay cardrooms hundreds of thousands of dollars in annual fees to assume the player-dealer position. They also take on a host of other responsibilities and expenses associated with running a cardroom casino, such as providing equipment (*e.g.*, surveillance cameras, cards, and shuffling machines), contributing to rent for the gaming space, and advertising for the banked games from which they profit. TPPPs pay for the player-dealer position and other cardroom expenses with the expectation that they will not only make their money back, but profit from the games in which they participate. The more the other players in the games win, the less the player-dealer TPPP may collect, giving them a clear interest in the outcome of the game. To enjoy the inherent advantage of the player-dealer position, TPPPs have a financial interest in taking all comers and paying off all winning wages and collecting all losing wages, as "one against the many." As the player-dealer, TPPPs have a substantial interest in the outcome of the games, a key characteristic of operating as a bank.

In addition, just as the with a house bank, the player-dealer's advantage and their ability to earn a profit lies in the player-dealer's ability to take on all comers and to collect from all losers. TPPPs have the financial resources to place wagers to compete with all other participants as the "one against the many." But the proposed regulations do not fix or limit the amount that a player-dealer may pay to cover all wagers in the game, nor prevent one player from holding the player-dealer position for an entire 40-minute period before a game must be stopped. The mere *option* for rotation of the player-dealer position does not preclude TPPPs or others from operating or maintaining as banks. *See Oliver*, 66 Cal.App.4th at 1408. As a result, TPPPs, who have a substantial interest in the outcome of the card games, will be able to hold the player-dealer position for extended periods, while they compete one against the many, and pay all winners and collect from all losers. As such, the regulations will not prevent TPPPs from operating or maintaining a bank, and therefore allow for banked games as defined in Penal Code section 330.11.

Finally, the TPPPs' contractual relationships with cardrooms violate the California Business and Professions Code section 19984(a), which prohibits "[a]ny agreement, contract, or arrangement between a gambling enterprise and a third-party provider of proposition player services" in which "a gambling enterprise or the house have any interest, whether direct or indirect, in fund wagered, lost, or won." The TPPPs make *all* of their money from "funds wagered, lost, or won" and then pay the cardrooms from those funds under the terms of their contracts. The cardrooms thus have an "interest" – and arguably a direct one – in the "funds wagered, lost, or won." Therefore, the proposed regulations should also be strengthened to prevent TPPPs from entering into contracts with cardrooms that enable them to operate banking games.

### **III. The Proposed Regulations Concerning the Blackjack-Style Games Fail to Prohibit Cardrooms from Offering Banked Card Games.**

Since 1885, Penal Code section 330 has specifically identified "twenty-one," also known as blackjack, in the list of prohibited games. Blackjack, as defined in section 2073 of the

proposed regulations, is fundamentally a banked game, because the players must gamble against a single player-dealer who possesses superior odds and maintains a robust fund, and who takes on all comers, and pays all winners and collects from all losers. As discussed above, California law prohibits cardrooms from offering banked games, including blackjack, where an entity with an odds-based advantage "takes on all comers, pays all winners, and collects from all losers." *Hotel Employees*, 21 Cal.4th at 592.

California cardrooms have devised variants of blackjack in an attempt to circumvent the law, disguise their banked essence, and superficially distinguish them from the games found in Nevada and New Jersey casinos. Nevertheless, such blackjack-style games are still banked games because they allow players to gamble against one player-dealer that possesses an odds-based advantage. Section 2074(a) of the proposed blackjack-style regulations would permit a blackjack variation to be played if the game rules provide the following modifications: (1) the game rules do not have the "bust" feature; (2) the game rules prescribes a target point count that is not 21; (3) under the game rules a hand will not immediately win if the player or player-dealer receives an ace and a 10, etc.; and (4) the game rules provide that in the event of a tie, the player—not the player-dealer—wins. However, none of the required modifications in section 2074 would prohibit banking by the player-dealer or TPPPs, because it would permit a blackjack variation in which the player-dealer or TPPPs would take on all comers and paying all winners and collecting from all losers. Therefore, the Bureau should strengthen the regulations to preclude the player-dealer, the TPPPs, or any other entity from maintaining or operating a bank during the course of any "blackjack-style" game.

#### **IV. The Proposed Regulations Fail to Provide for Enforcement or Impose Meaningful Penalties for Violations.**

A fundamental question, particularly with respect to the rotation regulation, is whether the Bureau has the capacity to track and enforce the proposed 40-minute period. We think it would be very difficult for the Bureau to know where each table is on the 40-minute clock in a small cardroom operating ten tables, and impossible in a large cardroom operating scores of tables. Even if the proposed rotation regulation provided for a workable tracking and enforcement mechanism, it would not solve the problem of operating an illegal banked game.

Assuming the Bureau could track the 40-minute period, noticeably absent from the proposed regulations are any meaningful penalties for violations. The proposed rotation regulations provide that if the player-dealer position is not rotated within the 40-minute period, play of the game shall cease, and no further play shall be allowed unless and until another person accepts the player-dealer position. Merely requiring the game to stop after prolonged violation of the State's criminal code is woefully inadequate to serve as a deterrence against violations of the law. Indeed, according to section 2076 of the proposed regulations, after a violation of Penal Code section 330 continues for nearly an hour, the patron may, even if the regulation is enforced and the game has been stopped, simply move to different a table in the cardroom where they will be allowed to continue illegal banked gaming.

Similarly, the proposed blackjack regulations fail to provide any penalties for cardrooms that continue to operate illegal banked variants of blackjack in violation of the law. Therefore, we recommend that the Bureau strengthen the proposed player-dealer rotation and blackjack regulations to include serious consequences in the form of financial penalties and enforcement actions for violations, up to and including the revocation of gaming licenses and closure orders for repeated violations.

### **Conclusion**

On behalf of the undersigned Tribes, thank you for the opportunity to provide comments to the Bureau's proposed regulations. We are hopeful that the Bureau will consider and incorporate our comments and recommendations to strengthen the proposed regulations in accordance with California law.

Sincerely,

Reid Milanovich  
Chairman  
Agua Caliente Band of Cahuilla Indians

Raymond Welch  
Chairman  
Barona Band of Mission Indians

Mark Macarro  
Tribal Chairman  
Pechanga Band of Indians

Cody Martinez  
Chairman  
Sycuan Band of Kumeyaay Nation

John Christman  
Chairman  
Viejas Band of Kumeyaay Indians

Anthony Roberts  
Chairman  
Yocha Dehe Wintun Nation

Lynn Valbuena  
Chairwoman  
Yuhaaviatam of San Manuel

VIA U.S. MAIL AND ELECTRONIC MAIL  
[BGC\\_Regulations@doj.ca.gov](mailto:BGC_Regulations@doj.ca.gov)

May 28, 2025

California Department of Justice  
Bureau of Gambling Control  
Attention: Regulations  
2450 Del Paso Road, Suite 100  
Sacramento, CA 95834

**RE: COMMENTS OF THE RINCON TRIBE OF LUISEÑO INDIANS AND THE SANTA YNEZ BAND OF CHUMASH INDIANS TO PROPOSED RULEMAKING REGARDING “ROTATION OF PLAYER-DEALER POSITION” AND “BLACKJACK STYLE GAMES” AT COMMERCIAL CARDROOMS**

Dear Director Marlow:

I am Scott Crowell. It has been my pleasure and privilege to represent tribal governments as their legal counsel on gaming issues for nearly forty years. On behalf of the Rincon Tribe of Luiseño Indians (“Rincon Tribe”) and the Santa Ynez Band of Chumash Indians (“Chumash Tribe”), I submit the following comments in response to the Bureau of Gambling Control's ("Bureau") request for comments dated April 11, 2025, in the context of the Bureau's proposed rulemaking regarding “Rotation of Player-Dealer Position” and “Blackjack Style Games”. Because the underlying issues regarding the two proposals are inextricably intertwined, the Rincon and Chumash Tribes request that these comments be considered for each and both proposals.

I must say at the outset, that I am experiencing a great sense of déjà vu all over again, and although today represents yet another baby step in yet again the right direction, very little has changed and much of the oral and written comments I present today is identical to past comments. But while this process remains stuck in molasses, the illegal gaming at cardrooms, and the unjust cannibalization of legal banked games on Indian lands, continues to the tune of depriving tribal and local treasuries of hundreds of millions of dollars annually in needed governmental revenue. Also, while the process is stuck in molasses, it is now but one of many examples where California's agencies, primarily this Bureau and the CGCC, have failed the people of California while illegal gaming in the State becomes rampant. Now, in addition to the illegal banked games at California's commercial cardrooms, we have seen the State stall in its promised opinion letter regarding the legality of online parlay games under the guise of “daily fantasy sports”, and we have seen horrific growth of illegal online sweepstakes sites that allow for real money gaming, and most recently, we have seen horrific growth of online sports betting under the guise of “prediction-market-contracts”. While California is now the 4th largest economy in the world, its gaming regulatory agencies cannot hold a candle to the efforts of its sister states as they work to stem the tide of illegal gaming. The pending litigation between the commercial cardrooms and the California tribes should not be viewed as an excuse to hold back and delay in doing what you can to bring an end to unlawful gaming in California. **At some point, the State's complacency has stepped over the line and become complicity. That will be your legacy,** Director Marlow, as well as dark stains on the legacy of Attorney General Bonta and Governor Newsom, unless you heed these words and become proactive in bringing illegal gaming to an end.



The issue that the proposals seek to address, the current unlawful activity at California's commercial cardrooms, should be viewed in the context of California's tribal gaming since 1987. The United States Supreme Court in 1987 ruled in favor of two California tribes in litigation brought by the State of California, holding that tribes have always had the sovereign right to offer and regulate gaming on their Indian lands. *California v. Cabazon Band of Mission Indians*, (1987) 480 U.S. 202. The United States Congress, in 1988, codified the *Cabazon* decision with the passage of the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §§ 2701 et seq. The Wilson Administration, however, thwarted the efforts of California tribes to secure gaming compacts under IGRA by refusing to negotiate compacts in good faith, and instead, asserted Eleventh Amendment immunity, which the United States Supreme Court ruled in 1996 could not be abrogated by Congress in the passage of IGRA, preventing tribes from exercising the remedies intended by Congress. *Seminole Tribe v. Florida*, (1996) 517 U.S. 44. Frustrated with the Wilson Administration's recalcitrance, most California tribes unified in a coalition to take the matter directly to the citizens of California, which in 1997 resulted in the successful passage of Proposition Five. Proposition Five, a statutory rather than a constitutional amendment, included a provision that expressly authorized banked blackjack by means of the tribes maintaining a trust fund on behalf of the players, into which losing wagers were collected, and out of which winning wagers were paid. *Hotel Emps. & Restaurant Emps. Int'l Union v. Davis ("H.E.R.E.")*, (1999) 21 Cal. 4th 585, 600. Before the ink was dry on the certification of the successful passage of Proposition Five, legal actions were brought against it in California state courts, resulting in the California State Supreme Court's 1999 *H.E.R.E.* decision. The Tribes and the Davis Administration unsuccessfully argued that Proposition Five's blackjack game did not violate the State Constitution's prohibition of "casinos of the type currently operating in Nevada and New Jersey", Cal. Const. art. IV, § 19(e). In its decision, the California Supreme Court reasoned:

We conclude the card games in question are ... banking games.... [A]s in other banking games, the tribe, through the prize pool, simply "pays off all winning wagers and keeps all losing wagers," which are variable "because the amount of money" it "will have to pay out," or be able to take in, "depends upon whether each of the individual bets is won or lost.... That the tribe must pay all winners, and collect from all losers through a fund that is styled a "players' pool" is immaterial: the players' pool is a bank in nature if not in name. It is a "fund against which everybody has a right to bet, the bank ... taking all that is won, and paying out all that is lost.... A California card room or card club was not permitted to offer gaming activities in the form of ... banking games, whether or not played with cards

...  
*H.E.R.E.*, 21 Cal. 4th at 606-608.

Confronted with the California Constitutional prohibition, now clarified by the California Supreme Court, the Davis Administration, with the support of most of California's tribes, worked with the State Legislature to place Proposition 1A on the ballot in the spring of 2000, in order to amend the State Constitution to exempt the Constitutional prohibition only on tribal lands. Proposition 1A was passed by a resounding majority. *Flynt v. California Gambling Control Comm'n*, (2002) 104 Cal. App. 4th 1125, 1128. Before the ink was dry on the certification of the successful passage of Proposition 1A, California's cardrooms filed yet another legal challenge, this time arguing unsuccessfully that the State could not amend the Constitution in a manner that benefitted only the tribes. *Artichoke Joe's Grand California Casino v. Norton*, (9th Cir 2003) 353 F.3d 712. See also, *Flynt*, 104 Cal. App. 4th at 1137.

Despite the clear statements from both the California State Supreme Court and the Ninth Circuit Court of Appeals, the commercial cardrooms continue to offer games that clearly violate the State Constitution's prohibition of "casinos of the type currently operating in Nevada and New Jersey." Apparently, California's commercial cardrooms believe that the prohibition should be interpreted in one manner when tribes argue that their games are not house banked, and in another manner when commercial, for-profit entities make the same argument. We continue to hear that no court has addressed the issue of whether the games operated by commercial card rooms, by using "proposition player dealers" and discouraging the use of the term "blackjack," are legal. Such claims are nonsense. The California Supreme Court looks through such smokescreens, and if an entity is taking all that is won, and paying out all that is lost, then it is a banked game in violation of the California Constitution unless played on Indian lands subject to a federally-approved gaming compact or Secretarial Procedures. Thus, there is no circumstance in which a proposition player-dealer can lawfully assume the role of the bank. Thus, there is no version of the banked game that can isolate itself under a label other than "blackjack". Accordingly, the proposed Concept Language is woefully deficient. It is from this clear point of law that the Rincon and Chumash Tribes submits their comments.

**A. The appropriate rule would create a bright line of no banked card games at cardrooms.**

The Bureau is to be applauded for finally recognizing that the banked games currently being offered by the cardrooms are illegal, but the problem will not be fixed with poorly-designed band aids, as represented by the proposed rulemaking. Rather, the problem will be truly fixed by enforcing a ban on banked card games at cardrooms. For decades, California's commercial cardrooms lawfully offered traditional non-banked poker games. Third-party proposition players for many decades served as a useful tool to enhance the entertainment value of such traditional non-banked poker games. The third-party proposition players were paid by the establishment to enhance play at the card table. Now, however, the establishments are paid by the third-party proposition player for the opportunity to bank the game. To equate the two – the establishment paying the proposition to player to enhance the game, with the player paying the establishment for the opportunity to bank the game – is disingenuous and deceitful. They are not the same thing and never will be. The Rincon and Chumash Tribes have no objection to the concept of continuous and systematic rotation of the dealer position to enhance the entertainment value of traditional non-banked poker games, but there is no version of continuous and systematic rotation of the dealer position that can be used to make an unlawful banked game otherwise lawful. For decades, with some flagrant abuses, cardrooms have generally avoided using "blackjack" in their promotional vernacular. Instead, the cardrooms have come up with a number of names which strongly suggest the game of blackjack ("California 21", "21", "21 and ½", etc.) and massage the game rules such that the player has the identical experience as playing the traditional game of blackjack. But acknowledgment that "blackjack" is illegal for cardrooms to operate does not mean that there are forms of banked games that can be lawfully played so long as they do not meet the definition of blackjack. A banked game by any other name is still a banked game, and therefore is illegal if played off of Indian lands. Rather than promulgating a rule which implies that there is a lawful form of banked gaming, so long as there is continuous and systematic rotation of the player dealer position, and so long as the game is not "blackjack," the Bureau is better advised to enforce the bright line defined by the California Supreme Court in the *H.E.R.E.* litigation: if an entity is taking all that is won, and paying out all that is lost, then it is a banked game in violation of the California Constitution, unless played on Indian lands subject to a federally-approved gaming compact or Secretarial Procedures.

**B. The proposed rules both properly reflect the reality that ongoing activities at California's commercial cardrooms are illegal.**

As you know, these comments are provided in the context of more than a decade of efforts by several tribes throughout the State to persuade the Bureau and/or the CGCC to take action against the illegal games offered at California's commercial cardrooms. That decade has been peppered by hearings, meetings, consultations and workshops that have never resulted in concrete action. The illegal games wrongly deprive the California tribes of hundreds of millions of dollars (and according to the California Gaming Association, two billion dollars) per year in tribal governmental revenue, and wrongly coopt thousands of jobs that would otherwise be available at properly-regulated tribal casinos. The study prepared by Berkeley Economic Advising and Research on behalf of the BGC and distributed in connection with the proposed rulemaking confirms that the cannibalization of tribal governmental revenue is quite significant. Although the proposed rules are mere baby steps in the right direction of correcting the situation, the Bureau's acknowledgment that the games currently being operated by the commercial cardrooms are illegal is welcome and to be applauded.

**C. The workability/enforceability of the proposed rules is doubtful.**

The efforts to ensure that there is a systematic and continuous rotation (and by "continuous", we mean "continuously" or "without break") are embedded in the proposed rules. Yet, to be properly implemented, each and every table will need to be properly monitored and audited for compliance. The cardrooms have a long track record of skirting the law, not only with dealer rotations, but with illegal advertising and non-compliance with FINCEN's money laundering regulations, all in addition to offering banked card games. Any rule along the lines proposed will be another empty process without the controls (including proper video surveillance immediately accessible to state regulators) required to document cardroom activities, followed up with serious, frequent and detailed forensic auditing to ensure compliance. The Rincon and Chumash Tribes note that the proposed rules regarding player-dealer rotation differ slightly from the language circulated in 2019, by replacing an obligation to offer rotation with a provision that requires rotation at least every 40 minutes, or the table is shut down. Although this change seems to acknowledge the deficiency in the prior language, it is still fraught with problems, even if properly enforced. For example, the cardrooms can minimize the impact of the rule by having a constant rotation of open tables such that every five minutes, a few tables close while new tables open up, so that each table stays live for 40 minutes. Notably, the proposed rule does not include a provision that a closed table must remain closed, even for a limited period of time. Instead of coming up with a set of rules that is fraught with circumvention issues, the Bureau is better advised to adopt a bright line of no banked games. The proposed language does appear to provide a comprehensive definition, consistent with industry standards, and does appear to target most ways in which card rooms currently and fraudulently distinguish the game, BUT the proposed language that there is a permissible blackjack variation must be rejected – it would result in a regulation which recognizes that a version of a banked card game is permissible. The Bureau is better advised to adopt a bright line of no banked games.

**D. Ending on a positive note – the Rincon and Chumash Tribes acknowledge that the proposed language, if adopted and enforced, would result in a material improvement over the status quo.**

The Rincon and Chumash Tribes do applaud the proposed language as a significant, yet redundant, concession that the cardrooms' current operation of the games is illegal. The reality is that if these proposed rules go into effect **and are enforced**, the cardrooms will have to undergo major changes in the play of their games that will likely differentiate the player's experience, such that the wrongful cannibalization of tribal games will be seriously reduced. The study prepared by Berkeley Economic Advising and Research on behalf of the BGC and the Department of Finance analysis confirms that the proposed rules will result in restoring a significant portion of that revenue back to tribal treasuries, where it belongs. The Rincon and Chumash Tribes do question the assumption that only half of the lost revenue will be recovered by the California tribes, and question the assumption that cardrooms will be able to recover much of the revenue from the loss of blackjack games with new games – any new games must, as a matter of law, be non-banked games. But even accepting those wrong assumptions, the BGC's own analysis confirms that the illegal banked games at commercial cardrooms have been depriving California tribes of hundreds of millions of dollars in governmental revenue. The Rincon and Chumash Tribes expect to hear the same stale arguments from the cardrooms that the rule changes will put thousands out of work – that is incorrect – those impacted employees are encouraged to continue the same jobs, but as tribal employees at lawfully-operated and well-regulated tribal casinos. If the proposed language is adopted and enforced, perhaps the resulting change in the market will minimize the need for further improvement. But that said, the proposed language nevertheless represents a woefully deficient baby-step in the correct direction. The Bureau is better advised to adopt a bright line of no banked games.

Respectfully,

Scott Crowell, tribal attorney  
on behalf of the Rincon Tribe of Luiseno Indians and the Santa Ynez Band of Mission Indians



5/28/2025

Via Electronic Submission

CA Department of Justice, Bureau of Gambling Control  
Attention: Regulations  
2450 Del Paso Road, Suite 100  
E-mail: [BGC\\_Regulations@doj.ca.gov](mailto:BGC_Regulations@doj.ca.gov)

Re: Comments on Draft Regulatory Language for Player-Dealer Card Games

Dear Bureau of Gambling Control:

On behalf of **Middletown Rancheria of Pomo Indians of CA**, 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 proposals were circulated by your office on April 11, 2025. We note that the regulations still do not address Baccarat, inherently a banked game that cannot feature a player-dealer position and cannot possibly comply with legally mandated rotation requirements.

**Middletown Rancheria of Pomo Indians of CA** appreciates and views the proposals as a good first step in providing much-needed clarity on the types of card games permitted at California's state-licensed cardrooms. For nearly a decade, we and many tribal governments throughout California have been seeking relief from what we believe to be unlawful games at cardrooms. 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, thus we recommend that significant and mandatory penalties be imposed for violations of the regulations and posted rules. Our initial comments on the two proposals are set forth below.

1. 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, 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 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. 2076(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.

**Middletown Rancheria of Pomo Indians of CA** is concerned about the provision which states that the player-dealer must rotate to at least two players every 40 minutes or the game shall end. Proposed Sec. 2076(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. 2076(a)(4).

The regulations do a good job stating that any player may assume the player-dealer position. Proposed Sec. 2076(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.

**Middletown Rancheria of Pomo Indians of CA** 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, **Middletown Rancheria of Pomo Indians of CA** 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 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, **Middletown Rancheria of Pomo Indians of CA** 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, **Middletown Rancheria of Pomo Indians of CA** recommends 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.

## 2. Approval of Blackjack-Style Games



**Middletown Rancheria of Pomo Indians of CA** 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) 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.

In addition, the limitations in Proposed Section 2074 are helpful, but there are a number of 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"?

Further, **Middletown Rancheria of Pomo Indians of CA** 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.

**Middletown Rancheria of Pomo Indians of CA** 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 says a game that meets certain requirements is prohibited, notes that various modifications also are prohibited, but then says the game is allowed if other modifications are made. We believe that 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 \$1.8 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:

- 124,300 jobs
- \$20 billion in output
- \$9 billion in wages to employees
- \$3.4 billion in taxes and revenue sharing payments to federal, state, and local governments

**Middletown Rancheria of Pomo Indians of CA** appreciates the effort that went into developing the proposed regulations. While both should be improved significantly, we commend the effort to finally address the lack of clarity about the games permitted at California cardrooms, which has resulted in widespread illegal gaming. In addition to the issues addressed in the proposed rules, we believe it is critical to address other issues, such as licensing of TPPPs, enforcement and prohibition of zero collection games. **Middletown Rancheria of Pomo Indians of CA** looks forward to working in partnership with the State to help develop a comprehensive and effective set of regulations that clearly distinguish games offered at California cardrooms from the banked games solely authorized to Indian tribes and offered in tribal gaming facilities pursuant to the California Constitution.

Respectfully,

Jose Simon III

Tribal Chairman

Middletown Rancheria of Pomo Indians of  
CA

FORMAN SHAPIRO & ROSENFELD LLP  
ATTORNEYS AT LAW

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GEORGE FORMAN  
JAY B. SHAPIRO  
MARGARET CROW ROSENFELD

May 28, 2025

VIA E-MAIL ONLY: BGC\_Regulations@doj.ca.gov

CA Department of Justice, Bureau of Gambling Control  
Attn: Regulations  
2450 Del Paso Road, Suite 100  
Sacramento, CA 95834

Re: Proposed regulations for dealer rotation and blackjack-style games

Dear People:

The undersigned serves as the Attorney General for the Morongo Band of Mission Indians, the federally recognized Indian Tribe exercising jurisdiction over the lands of the Morongo Indian Reservation in Riverside County, California. The following comments on the Bureau of Gambling Control's proposed – and long overdue – regulations governing card games featuring rotation of the player-dealer position and “blackjack-style” card games are submitted on behalf of the Morongo Band of Mission Indians.

Article 2, Definitions

Sec. 2010(H), “Round of Play[,]” assumes the legality of the “player-dealer” position to be occupied by a representative of a Third Party Provider of Proposition Player Services. Presumably, this assumption rests on the premise that, regardless of the player's source of funds, because the “player-dealer” cannot lose more than what s/he has wagered against all other game participants, the game is not a banking game, and thus is not unlawful. This premise is incorrect; as the California Supreme Court noted in *Unite-HERE v. Davis*,

But, as we explained in *Western Telcon*, the fact that payouts on wagers must be made from a limited fund of money does not transform a banking game into a lottery. [\*\*\*\*47] (*Western Telcon, supra*, at [\*\*1006] pp. 493-494.) Such a banker simply finds itself “in the enviable position of a gambler who has, by law, an upper limit to his losses.”  
*Hotel Emps. & Rest. Emps. Internat. Union v. Davis*, 21 Cal. 4th 585, 607 (1999).

Played in the manner contemplated by the proposed regulations, the game would not be a round game; rather, it would pit a single player, funded by a TPPPS, against all other game

participants, risking a fixed sum against the potential to recover multiples of that wager from other game participants.

#### Article 7, Games

Sec. 2073, Blackjack Prohibited: For the sake of clarity, “Any game of blackjack shall not be approved for play” should be revised to state, “No game of blackjack may be approved for play.”

Sec. 2074, Permissible Blackjack Variations; Required Rules: Sec. 2074(a)(1)-(4): Removing the “bust” feature of the game, along with requiring – and strictly enforcing – rotation of the “player-dealer” position, such that no game participant would have a statistical edge over other participants, would make the game distinguishable from a prohibited form of blackjack, but as long as one participant is playing with funds provided by a TPPPS, the TPPPS is both a participant in the game and interested in its outcome. Thus, the game would remain a banking game, and would be unlawful.

Sec. 2075, Effect of Regulations on Previously Approved Games; Effect of Regulations on Pending Game Applications: Sec. 2075(a) and (b) of the proposed regulation would seem to permit a gambling establishment operating a game that violates the proposed new game restrictions to continue doing so for up to 150 days. Sec. 2075(e) seemingly would allow continued operation of an unlawful game for as long as fifteen months after the effective date of the regulation. California Tribal-State Class III Gaming Compacts all provide that no game may be conducted unless it first has been approved by the Tribal Gaming Agency. The same should apply to state-authorized card games; that the Bureau of Gambling Control has erroneously and unlawfully authorized the operation of banked games is no reason to allow such games to continue while under review.

Sec. 2076, Games with a Player-Dealer Position; Rotation; Operation of Game: Sec. 2076(a)(2) requires provision of a written statement that, “The player that assumes the player-dealer position cannot win or lose more than the amount they wager.” It is not clear from the other provisions of the proposed regulation that this assumption is valid. While the player-dealer cannot lose more than s/he has wagered, and thus is not obligated to pay all winners, nothing would seem to preclude the player-dealer from collecting from all losers – unless the regulation also limits the aggregate wagers of all other game participants to no more than the player-dealer’s wager; there is no such provision in the proposed regulation. Sec. 2076(a)(4)’s requirement that the player-dealer position must rotate every 40 minutes is a good one, but it also should require that a TPPPS player-dealer must participate in each game in which another player occupies the player-dealer position, in order to give the other player(s) the same opportunity to win from the TPPPS player as that player enjoyed while occupying the player-dealer position. Sec. 2076(c)’s limitation of one TPPPS player per table is essential to prevent evasion of the player-dealer rotation requirement.

Sec. 2077, Effect of Regulations on Previously Approved Games; Effect of Regulations on Pending Game Applications: The proposed regulation would allow operation of games with rotating player-dealer positions to continue as currently operated for as much as 180 days (or longer). As noted above, Tribal card games must be approved *before* being operated, not after the fact. If a game

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is not compliant with the proposed regulation when the proposed regulation takes effect, the game should be discontinued until approved pursuant to the proposed regulations.

The proposed rules are an improvement over the *status quo*. However, even the best rules are no better than the means by which the rules actually are enforced. Tribal gaming facilities are directly regulated and kept under constant surveillance by tribal gaming regulators independent of gaming management. No comparable regulatory system exists for commercial card rooms, and the Bureau of Gambling Control does not – and likely never will – have the same oversight capacity to ensure that its rules are constantly and consistently enforced. This is a systemic problem that the Bureau must address.

The Morongo Tribal Council appreciates the time and effort that the Bureau of Gambling Control has devoted to this process over the past several years. However, as currently drafted, the proposed regulations still fall short of what should be the Bureau's stated objective: *i.e.*, compliance with Article IV, Sec. 19 of the California Constitution and Penal Code Sec. 330.

Very truly yours,  
FORMAN SHAPIRO & ROSENFELD

George Forman



**PALA BAND OF  
MISSION INDIANS**

May 27, 2025

Via Email ([BGC\\_Regulations@doj.ca.gov](mailto:BGC_Regulations@doj.ca.gov))

A. McMillen, Regulations Coordinator  
Bureau of Gambling Control, California Department of Justice  
2450 Del Paso Road, Suite 100  
Sacramento, California 95834

**RE: BGC Proposed Regulations Noticed April 11, 2025 Re Rotation of Player-Dealer  
Position in Specified Controlled Games**

Dear Regulations Coordinator McMillen,

The Pala Band of Mission Indians hereby submits these written comments in response to the Bureau of Gambling Control (“BGC”) April 11, 2025, notice of intent to adopt regulations regarding rotation of the player-dealer position in specified controlled games.

The Pala Band of Mission Indians submitted on October 26, 2023, written comments on the BGC’s “concept language” on this topic, which are incorporated herein by reference. Unfortunately, the BGC’s 2023 “concept language” has been gutted in many areas to weaken its impact and compliance with California law. Our detailed written comments to the newly proposed BGC regulation language are attached at **Tab A**, which seek to restore our written comments from 2023 as well as specific BGC proposed concept language.

As you know, the Pala Band submitted on October 3, 2012, a request that your BGC office investigate certain gaming practices at California cardrooms, which the Tribe believes are violating the California Constitution, the Penal Code and the Gambling Control Act, as well as its implementing regulations, to the detriment of our tribal gaming business.

Pursuant to the plain language of California Penal Code Section 330.11, the player-dealer position can only be used where the published game rules require all three of the following:

- (1) The player-dealer position “must be continuously and systematically rotated amongst each of the participants during the play of the game”;
- (2) “Ensure that the player-dealer is able to win or lose only a fixed and limited wager during the play of the game”; **and**
- (3) “Preclude the house, another entity, a player or an observer from maintaining or operating as a bank during the course of the game.”

Section 330.11 further provides that: “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.” (Emphasis added).

A review of rotation of the player-dealer position requires that the position itself as played in each game is authorized by Penal Code Section 330.11. Any interpretation of the meaning of “continuously and systematically rotated amongst each of the participants during the play of the game” must take into account and comply with the three statutory requirements of the player-dealer position as well as California constitutional, statutory, and case law that establishes, as a matter of law, what is and what is not a prohibited “banking game” within the meaning of California law. For this reason, we have included at **Tab B** a summary of California law pertaining to banking games at California gambling establishments and any player dealer position, including the California Constitution, case law, and legislative history of Penal Code Section 330.11.

The BGC proposed regulation must comply with the law and therefore we urge you to incorporate our comments of detailed revisions at **Tab A**, highlighted in bold underline text and strikethrough/deleted text. These revisions conform to the law set out at Tab B and further urge enforcement of the law and game rules, concluding: “**Game play shall be monitored by the BGC to ensure the rules of the game and play pursuant thereto render the maintenance of or operation of a bank impossible.**”

Finally, a resounding assertion at past BGC workshops on this issue by the cardroom industry is to urge the BGC not to issue any regulation. We agree that no new regulation may be necessary. BGC enforcement of the black letter law set out at Tab B would be sufficient.

Robert Smith, Chairman

Pala Band of Mission Indians

## **TAB A: Pala Band of Mission Indians Written Comments** **In Redline Text**

### **CALIFORNIA DEPARTMENT OF JUSTICE TITLE 11. LAW DIVISION 3. GAMBLING CONTROL CHAPTER 1. THE BUREAU OF GAMBLING CONTROL**

#### **TEXT OF PROPOSED REGULATIONS**

#### **Article 7. Games**

##### **§ 2076. Games with a Player-Dealer Position; Rotation; Operation of Game.**

(a) A game that features a player-dealer position shall include in its rules the following:

(1) The player-dealer position may only be occupied by a person seated at the table, and shall be offered to the other seated players at the table before every hand. The game rules shall specify the means by which the player-dealer position is selected at the opening of a new game, and upon rotation of the player-dealer position to the next person.

(2) There shall be written notice at each table informing patrons when a player may accept the player-dealer position. The written notice shall state "Any player can assume the player-dealer position when it is offered. The player that assumes the player-dealer position cannot win or lose more than the amount they wager on any single round of play. If the player-dealer does not have sufficient funds to cover all wagers, players will not get paid and wagers will be settled according to the approved game rules." Such rules must comply with subdivision(b) herein and expressly prohibit the TPPS from covering wagers when not occupying the player-dealer position.

(3) Before every hand, the dealer shall offer the player-dealer position verbally and physically to each of the seated players at the table. The offer shall be visible to surveillance cameras.

(4) The player-dealer position shall rotate continuously and systematically to another player after every two consecutive hands ~~to at least two players other than the TPPPS every 40 minutes~~ or the game shall end. ~~If there is only one player at the table in addition to the TPPPS, the player-dealer position shall rotate to that player a minimum of two times every 40 minutes, or the game shall end.~~



TAB A Attachment To Pala Band of Mission Indians Correspondence To BGC Regulation Coordinator  
McMillen May 2025 Written Comments on BGC Proposed Regulation Noticed April 11, 2025  
Re Rotation of Player-Dealer Position in Specified Controlled Games

(5) If rotation of the player-dealer position has not occurred and the game ends as prescribed in subdivision (a)(4) of this section, game play shall stop, the table shall be cleared of all wagers and cards, no cards shall be dealt, and no wagers shall be made. No further play shall be allowed or commenced unless and until another person accepts the player-dealer position. **Play may not resume at the table until after the shuffling of all cards and new game begins.**

~~(6) If the 40-minute mark is reached during a round of play, the round of play may be completed before the game ends.~~

~~(7)~~ If the player-dealer position is occupied by a TPPPS, as defined in California Code of Regulations, title 4, section 12002, subdivision (ap), the next person in the rotation of the player-dealer position shall not be the TPPPS **and shall not have a financial relationship with that owner, employee or TPPPS.**

(b) A game that features a rotating player-dealer position shall not:

(1) Allow any person to place a wager directly **or indirectly** against the TPPPS when the TPPPS is not occupying the player-dealer position.

(2) Allow the TPPPS settle any wagers at the table when they are not occupying the player-dealer position.

**(3) Allow any person to place a wager as a supplement to the wager of the person occupying the player-dealer position.**

**(4) Allow any persons to combine funds to place a single wager, regardless of whether either person is an active, seated participant in the game.**

(c) No more than one third-party provider of proposition player services shall be permitted to offer services at a table where a game that features a rotating player-dealer position is being offered for play.

**(d) Game play shall be monitored by the BGC to ensure the rules of the game and play pursuant thereto render the maintenance of or operation of a bank impossible.**

## **TAB B: Analysis and Summary of California Law Pertaining to Banking Games at California Gambling Establishments and Any Player-Dealer Position**

It is axiomatic that the California Constitution, at Article 4 Section 19, prohibits banking card games for any gambling establishment in California, other than an Indian tribe authorized by a Tribal-State Gaming Compact.

The California Constitution, as interpreted by the California Supreme Court, the California appellate court in the Oliver case, and Section 330.11 of the Penal Code make clear that any player-dealer position must continuously and systematically rotate.

This requirement for any player-dealer position to continuously and systematically rotate is to avoid the creation of a prohibited banking game, described by the California Supreme Court as a game where: One player or entity "participates in the action as the one against the many, taking on all comers, paying all winners, and collecting from all losers, doing so through a fund generally called the bank." (HERE v. Davis, (1999) 21 Cal.4<sup>th</sup> 585)(internal citations omitted).

The California Supreme Court in HERE specifically held that a banking game prohibited by the Constitution and statute includes games "banked by someone other than the owner of the gambling facility," citing, Oliver v. Los Angeles County, (1998) 66 Cal.App.4<sup>th</sup> 1397.

A player-dealer position had been used in California cardrooms since the early 1980s and a line of California court cases considered whether this method of play was a prohibited banking game.

In Huntington Park Club v. Los Angeles County (1988) 206 Cal. App.3d 241, the appellate court found that Pai Gow was not a banking game because during the play of the game, "the dealer position continuously and systematically rotates among each of the participants." Thus, the court found, "the record does not establish that either plaintiffs (the house) or any other entity maintains or operates a 'bank.' "

However, in Oliver v. Los Angeles County (1998) 66 Cal. App.4<sup>th</sup> 1397, subsequently adopted by and given constitutional stature by the Supreme Court in the HERE case above, the same appellate court considered the game of Newjack, where the rules of play allowed players to decline the rotation of the bank, thus allowing a player to be the player-dealer for "more than two consecutive hands." The court found that it is "the potential for a banked game under Newjack's rules, and not the current mode of play, which determines whether Newjack is a banking game." The Oliver court held:

"We now hold that a game will be determined to be a banking game if under the rules of that game, it is possible that the house, another entity, a player, or an

**TAB B Attachment To Pala Band of Mission Indians Correspondence to BGC Regulations Coordinator  
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Re Rotation of Player-Dealer Position in Specified Controlled Games**

observer can maintain or operate as a bank during the play of the game. In Newjack, the player-dealer position does not have to rotate among players. If the other players decline to accept the player-dealer position, one player can act as a player-dealer for repeated hands and such a player need not go broke after a few hands. A player with a significant amount of money to bet can hold the position of player-dealer for a long time, and thus keep the inherent playing advantage for him or herself. The effect would be a banked game because it could be said of such a player that he or she is 'taking on all comers, paying all winners, and collecting from all losers.' Sullivan [v. Fox (1987)] 189 Cal.App.3d at 678, 235 Cal. Rptr. 5.) Because the rules permit such an occurrence, we hold Newjack is a banking game and therefore, as presently constituted, prohibited under section 330."

(Id. at 1409-1410) (emphasis added).

Following the HERE and Oliver court cases, efforts began in the Legislature to amend the Penal Code to add a provision addressing the player-dealer position. Ultimately, Penal Code section 330.11 was added, which now provides:

"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." (Emphasis added).

The history of this legislation enacting Penal Code Section 330.11 is instructive. In his floor statement to the Assembly, the author of AB 1416, Assembly Member Herb Wesson stated:

"This bill attempts to clarify that card clubs may offer games that feature a playerdealer position, so long as the rules of the game require a continuous and systematic rotation of the player-dealer position . . . This bill clarifies that these game are not "banked games." Moreover, this bill does not legalize 21 or any other new card game."

The Attorney General similarly advised the Governor that with respect to AB 1416 that .the judicially-ascribed meaning of "banking game" has been constitutionalized (citing, HERE v. Davis, (1999) 21 Cal.4<sup>th</sup> 585) and cannot be narrowed by statute" and noted he "understood that

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an urgency measure will be introduced early in the next session to correct these deficiencies... [and the Division] can probably continue to deter violations of the constitutional prohibition in the brief interim." AB 1416 was signed by the Governor with the message that, "I have been assured by the author of this bill that such clean-up legislation will be introduced early in the next session."

Accordingly, AB 54 (Wesson) was introduced and passed, resulting in the current language of Section 330.11.

Subsequent legislative efforts in 2008 attempted to weaken the required mandatory consistent and systematic rotation of the player-dealer position by requiring only that the deal be "offered" around the table to all seated players, AB 1664 (Yee), failed.

May 29, 2025

Via Electronic Submission

CA Department of Justice, Bureau of Gambling Control

Attention: Regulations

2450 Del Paso Road, Suite 100

Sacramento, CA 95834

E-mail: [BGC\\_Regulations@doj.ca.gov](mailto:BGC_Regulations@doj.ca.gov)

Re: Comments on Draft Regulatory Language for Player-Dealer Card Games

Dear Bureau of Gambling Control and Members of the Regulatory Affairs Division:

The Santa Rosa Rancheria Tachi Yokut Tribe (“Tribe”) is a federally recognized Indian tribe located in Kings County. The Tribe owns and operates the Tachi Palace Casino Resort. As Chairman of the Tribe, I write to provide comments on the draft regulatory language for (1) rotation of player-dealer position and (2) approval of blackjack-style games. Your office circulated both proposals on April 11, 2025. The issues addressed by your draft regulatory languages are of considerable importance to our Tribal community, and we value the opportunity to provide input from our perspective.

While both proposals need significant work to ensure all interested parties have a clear understanding regarding games offered at cardrooms versus banked games authorized solely to Indian tribes pursuant to the California Constitution, the Tribe believes that the proposals are an adequate first step in providing clarity on the types of card games permitted at California's state licensed cardrooms.<sup>1</sup> Our initial comments on the two proposals are set forth below.

1. 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.”

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<sup>1</sup> While we appreciate the proposed regulations, the Tribe notes that the regulations do not address Baccarat, which is inherently a banked game that cannot feature a player-dealer position and therefore cannot comply with legally mandated rotation requirements.



*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 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. 2076(a)(3).

However, additional clarity on how the dealer must make the offer to each player would strengthen the proposed regulations. 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 about the provision which states that the player-dealer must rotate to at least two players every 40 minutes or the game shall end. Proposed Sec. 2076(a)(4). 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 less than 40 minutes does not restart the 40-minute clock. Additionally, the game cannot restart unless two players take the player-dealer position as required by Proposed Section 2076(a)(4).

The regulations appropriately require that any player may assume the player-dealer position. Proposed Sec. 2076(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. Additionally, only one Third Party Proposition Player (“TPPP”) can occupy a position at a table at a time.

The Tribe is aware that play of player-dealer games at some cardrooms does not always follow the regulations and posted game rules. As such, we 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 curtailing the play of illegal banked games.

Regulations should also 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 TPPPs. 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.

## 2. Approval of Blackjack-Style Games

The Tribe appreciates the effort to prohibit Blackjack and identity impermissible modifications that fail to distinguish a game from the game of Blackjack. Proposed Section 2073(b). However, we think the proposed language as drafted could be abused to circumvent the intent of the rule. For example, while the language impermissible 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 who have placed a wager.” 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”?

The Tribe 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 says a game that meets certain requirements is prohibited, notes that various modifications also are prohibited, but then says the game is allowed if other modifications are made. We believe that 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.

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 Bureau of Gambling Control 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

The Tribe sincerely appreciates the effort that went into developing the proposed regulations to finally address the lack of clarity about the games permitted at California cardrooms, which has resulted in widespread illegal gaming. The Tribe also feels compelled to note that these regulations will protect the California-voter approved gaming rights that allow California tribes and tribal governments to provide essential services to members such as housing, education, healthcare, environmental protections, cultural preservation, elder care, fire services and more. Along with the benefits to limited gaming and non-gaming tribes, California benefits from tribal gaming, which has been a vital economic engine for California's economy by:

- Creating 124,300 jobs;
- Providing \$20 billion in output;
- Paying \$9 billion in wages to employees; and
- Allocating \$3.4 billion in taxes and revenue sharing payments to federal, state, and local governments.

The Tribe looks forward to working in partnership with the State to help develop a comprehensive and effective set of regulations that clearly distinguish games offered at California cardrooms from the banked games solely authorized to Indian tribes and offered in tribal gaming facilities pursuant to the California Constitution. We believe these regulations are a helpful step in stemming illegal gaming, licensing of TPPPs, and enforcing prohibitions on zero collection games. Thank you for your consideration.

Sincerely,

Leo Sisco  
Chairman, Santa Rosa Rancheria Tachi-Yokut Tribe

May 29, 2025

Via Electronic Submission

CA Department of Justice, Bureau of Gambling Control  
Attention: Regulations  
2450 Del Paso Road, Suite 100  
E-mail: [BGC\\_Regulations@doj.ca.gov](mailto:BGC_Regulations@doj.ca.gov)

Re: Comments on Draft Regulatory Language for Player-Dealer Card Games

Dear Bureau of Gambling Control:

On behalf of the Tribal Alliance of Sovereign Indian Nations (TASIN), an intergovernmental association of federally recognized tribal governments throughout Southern California, we write to provide comments on the draft regulatory language for (1) rotation of player-dealer position and (2) approval of blackjack-style games. Both proposals were circulated by your office on April 11, 2025. We note that the regulations still do not address Baccarat, inherently a banked game that cannot feature a player-dealer position and cannot possibly comply with legally mandated rotation requirements.

TASIN appreciates and views the proposals as a good first step in providing much-needed clarity on the types of card games permitted at California's state-licensed cardrooms. For nearly a decade, we and many tribal governments throughout California have been seeking relief from what we believe to be unlawful games at cardrooms. 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, thus we recommend that significant and mandatory penalties be imposed for violations of the regulations and posted rules. Our initial comments on the two proposals are set forth below.

1. 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, 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 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. 2076(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.

TASIN is concerned about the provision which states that the player-dealer must rotate to at least two players every 40 minutes or the game shall end. Proposed Sec. 2076(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. 2076(a)(4).

The regulations do a good job stating that any player may assume the player-dealer position. Proposed Sec. 2076(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.

TASIN 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, TASIN 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 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, TASIN 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, TASIN recommends 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.

## 2. Approval of Blackjack-Style Games

TASIN 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) 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.

In addition, the limitations in Proposed Section 2074 are helpful, but there are a number of 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"?

Further, TASIN 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.

TASIN 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 says a game that meets certain requirements is prohibited, notes that various modifications also are prohibited, but then says the game is allowed if other modifications are made. We believe that 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 \$1.8 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:

- 124,300 jobs
- \$20 billion in output
- \$9 billion in wages to employees
- \$3.4 billion in taxes and revenue sharing payments to federal, state, and local governments

TASIN appreciates the effort that went into developing the proposed regulations. While both should be improved significantly, we commend the effort to finally address the lack of clarity about the games permitted at California cardrooms, which has resulted in widespread illegal gaming. In addition to the issues addressed in the proposed rules, we believe it is critical to address other issues, such as licensing of TPPPs, enforcement and prohibition of zero collection games. TASIN looks forward to working in partnership with

the State to help develop a comprehensive and effective set of regulations that clearly distinguish games offered at California cardrooms from the banked games solely authorized to Indian tribes and offered in tribal gaming facilities pursuant to the California Constitution.

Respectfully,

Lynn Valbuena  
Chairwoman

Catalina Chacon  
Vice Chairwoman

Steven Estrada  
Secretary

Rosemary Morillo  
Treasurer