

10-17803/10-17878
IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

**BIG LAGOON RANCHERIA, a Federally
Recognized Indian Tribe,**

Plaintiff and Appellee/Cross-
Appellant,

v.

STATE OF CALIFORNIA,

Defendant and
Appellant/Cross-Appellee.

On Appeal from the United States District Court
for the Northern District of California

No. CV 09-1471 CW (JCS)

Hon. Claudia Wilken, District Judge

**APPELLANT/CROSS-APPELLEE STATE OF
CALIFORNIA'S EXCERPTS OF RECORD,
VOLUME IV**

KAMALA D. HARRIS

Attorney General of California

SARA J. DRAKE

Senior Assistant Attorney General

RANDALL A. PINAL

Deputy Attorney General

State Bar No. 192199

110 West A Street, Suite 1100

San Diego, CA 92101

P.O. Box 85266

San Diego, CA 92186-5266

Telephone: (619) 645-3075

Fax: (619) 645-2012

Email: Randy.Pinal@doj.ca.gov

*Attorneys for Appellant/Cross-Appellee
State of California*

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1 Peter J. Engstrom, State Bar No. 121529
 peter.engstrom@bakermckenzie.com
 2 Bruce H. Jackson, State Bar No. 98118
 bruce.jackson@bakermckenzie.com
 3 Irene V. Gutierrez, State Bar No. 252927
 irene.gutierrez@bakermckenzie.com
 4 **BAKER & MCKENZIE LLP**
 Two Embarcadero Center, 11th Floor
 5 San Francisco, CA 94111-3802
 Telephone: +1 415 576 3000
 6 Facsimile: +1 415 576 3099

7 Attorneys for Plaintiff
 BIG LAGOON RANCHERIA

8
 9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA
 11 OAKLAND DIVISION
 12

13 BIG LAGOON RANCHERIA, a Federally
 Recognized Indian Tribe,

14 Plaintiff,

15 v.

16 STATE OF CALIFORNIA,

17 Defendant.
 18
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Case No. CV-09-01471-CW(JCS)

**DECLARATION OF PETER J.
 ENGSTROM IN SUPPORT OF
 PLAINTIFF BIG LAGOON
 RANCHERIA'S MOTION FOR
 SUMMARY JUDGMENT**

Date: August 12, 2010
 Time: 2:00 p.m.
 Place: Courtroom 2, 4th Floor

1301 Clay Street
 Oakland, CA

Before The Honorable Claudia Wilken

Trial Date: Not Set
 Date Action Filed: April 3, 2009

1 I, Peter J. Engstrom, declare as follows:

2 1. I am an attorney at law duly admitted to practice before this Court and the courts of
3 the State of California. I am a partner with the law firm of Baker & McKenzie, counsel for plaintiff
4 Big Lagoon Rancheria, a Federally Recognized Indian Tribe (hereinafter "Plaintiff" or "Big Lagoon
5 Rancheria"), in this action. I make this declaration in support of Plaintiff's motion for summary
6 judgment. I make this declaration of my own personal knowledge, and if called as a witness, I could
7 and would testify competently thereto.

8 2. Attached hereto as **Exhibit 1** is a true and correct copy of the Agreement between the
9 State of California and the Big Lagoon Rancheria for the Settlement of Litigation, Location of a
10 Class III Gaming Facility and Restrictions on the Use of Lands Contiguous to Big Lagoon, dated
11 August 17, 2005.

12 3. Attached hereto as **Exhibit 2** is a true and correct copy of a letter dated September 18,
13 2007 from Chairman Virgil Moorehead to Governor Arnold Schwarzenegger.

14 4. Attached hereto as **Exhibit 3** is a true and correct copy of a letter dated November 19,
15 2007, from Andrea Lynn Hoch, the Legal Affairs Secretary in the Office of the Governor to Peter J.
16 Engstrom, Esq., with a draft Tribal-State Compact Between The State of California and the Big
17 Lagoon Rancheria, attached thereto.

18 5. Attached hereto as **Exhibit 4** is a true and correct copy of a letter dated January 31,
19 2008 from Andrea Lynn Hoch to Peter J. Engstrom, Esq. and Jerome Levine, Esq., with
20 Appendix A, Development Conditions, Rancheria Site attached thereto.

21 6. Attached hereto as **Exhibit 5** is a true and correct copy of a letter dated February 20,
22 2008 from Rory Dilweg to Andrea Hoch, with a revised draft of the Gaming Compact between the
23 State of California and Big Lagoon Rancheria attached thereto.

24 7. Attached hereto as **Exhibit 6** is a true and correct copy of a letter dated March 21,
25 2008 to Andrea Lynn Hoch, Esq. from Rory E. Dilweg of Holland & Knight LLP.

26 8. Attached hereto as **Exhibit 7** is a true and correct copy of a letter dated May 2, 2008
27 from Andrea Lynn Hoch to Peter J. Engstrom, Esq. and Jerome Levine, Esq.

28 9. Attached hereto as **Exhibit 8** is a true and correct copy of a letter dated October 6,

1 2008 from Jerome L. Levine to Andrea Lynn Hoch, Esq.

2 **10.** Attached hereto as **Exhibit 9** is a true and correct copy of a letter dated October 31,
3 2008 from Andrea Lynn Hoch to Jerome L. Levine, Esq., attaching Project Mitigation Measures and
4 a draft Tribal-State compact Between The State of California and the Big Lagoon Rancheria, dated
5 October 31, 2008.

6
7 I declare under penalty of perjury that the foregoing is true and correct and that this
8 declaration was executed by me this 17th day of June 2010 at San Francisco, California.

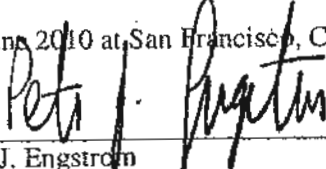
9
10 
Peter J. Engstrom

EXHIBIT 1A

**AGREEMENT BETWEEN THE STATE OF CALIFORNIA
AND THE BIG LAGOON RANCHERIA FOR THE SETTLEMENT OF LITIGATION,
LOCATION OF A CLASS III GAMING FACILITY AND RESTRICTIONS ON THE
USE OF LANDS CONTIGUOUS TO BIG LAGOON**

A. Description of the Parties and Statement of Purpose

This Agreement is made and entered into by and between the State of California ("State") and the Big Lagoon Rancheria, a federally recognized Indian tribe ("Tribe"). The purpose of this Agreement is twofold. First, the parties intend to effect a settlement of pending litigation between the Tribe and the State that will lead to their execution of a Tribal-State Class III Gaming Compact ("Compact") under the terms of the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et seq. ("IGRA"), and to resolve their dispute regarding the location of a class III gaming facility ("Casino"). Second, in return for the State's agreement to permit the Tribe to operate a Casino on a site with greater economic potential than the Tribe's existing trust lands and to ensure that the State receives the benefit of its bargain (elimination of the impact that development of a Casino on the Tribe's existing trust lands would have on the adjacent environment), the Tribe and the State intend to agree to conditions on future development on the Tribe's existing trust lands that are contiguous to park and other environmentally sensitive lands held by the State, for the purpose of reconciling land use along the coast for the mutual benefit of the public and the Tribe.

B. Effective Date

The effective date of this Agreement is the date on which it is executed by the parties.

C. Facts Underlying the Agreement

This Agreement is made with reference to the following facts.

1. The Tribe exercises the sovereign authority permitted it by the United States Constitution and federal law within the bounds of two parcels of property located adjacent to Big

Lagoon. One is an approximately nine acre parcel of property ("Parcel A"), title to which is held in the name of the United States of America. A legal description of this property is set forth in the document attached hereto and incorporated by reference herein as Exhibit I. The other is an approximately eleven acre parcel ("Parcel B"), title to which is held by the United States of America in trust for the Big Lagoon Rancheria. A legal description of this property is set forth in the document attached hereto and incorporated by reference herein as Exhibit II. The descriptions contained in Exhibits I and II are for identification purposes only. Nothing contained in Exhibits I or II or this Agreement shall be construed as an admission by the State as to the actual boundaries between Parcel A and State property or Parcel B and State property on the waterward side of such parcels or as to any limitation on any State interests in those parcels. Likewise, nothing herein shall be construed as an admission by the Tribe as to the validity of any claims the State may have as to the waterward boundary lines of Parcel A or Parcel B.

2. A suit is pending between the Tribe and the State in the United States District Court for the Northern District of California ("Court"), entitled *Big Lagoon Rancheria v. State of California*, U.S.D.C. No. C 99-4995 CW ("Case"), in which the Tribe seeks an order compelling the State to execute a class III gaming compact allowing it to build a Casino on Parcel B. The Case is an outgrowth of a dispute stemming from previously unsuccessful compact negotiations between the Tribe and the State.

3. During negotiations following the institution of the Case, the State has suggested various alternative sites for the Tribe's Casino, including a site within the City of Barstow following the State's determination that the City's elected officials supported a gaming facility there.

4. The Tribe represents that it has entered into agreements with BarWest, L.L.C., a Michigan limited liability company ("BarWest"), the Los Coyotes Band of Cahuilla and Cupeno Indians ("Los Coyotes"), and LCB BarWest, L.L.C., a Michigan limited liability company ("LCB") for the joint development of two compatibly designed class III gaming facilities sharing access, parking and other common amenities on approximately 126.48 acres of land located in the City of Barstow, California ("Casino Site"). The Tribe further represents that BarWest has agreed to convey to the United States of America, in trust for the Tribe, title to approximately 25 acres of land located in Barstow identified as Assessor's Parcel No. 0428-171-69 ("APN 69") should, among other things:

- a. the Secretary of the Interior agree to accept APN 69 in trust for the Tribe;
- b. the Secretary of the Interior determine that class III gaming may occur on APN 69 pursuant to the provisions of 25 U.S.C. § 2719(b)(1)(A) upon the concurrence of the Governor of the State of California; and
- c. the Governor of the State of California concur in the Secretary of the Interior's 25 U.S.C. § 2719(b)(1)(A) determination.

5. In view of the foregoing circumstances and for the purpose of resolving the Case, the parties wish to reach a full and final settlement of all matters, causes of action and claims mentioned in the preceding paragraphs which have been raised, or which could have been raised, now or in the future, and which arise out of the facts underlying the Case. This Agreement is meant to resolve disputed claims and contentions as set forth in the Case, and nothing contained herein shall be construed as an admission of liability by any party, nor of the validity of any claims or contentions which have been made or could be made.

D. Terms of the Agreement

6. The parties to this Agreement, in consideration of the mutual covenants and agreements to be performed, as set forth below, agree as follows:

a. Prior to the State's execution of this Agreement, the Tribe shall adopt a tribal resolution constituting a valid authorization, properly enacted pursuant to the Tribe's constitution and implementing ordinances, giving the Tribe's attorneys the authority to execute this Agreement and the Stipulation for Entry of Judgment attached as Exhibit III to this Agreement and waiving the Tribe's sovereign immunity with respect to enforcement of the terms of this Agreement, which resolution shall be attached as an exhibit to the Stipulation for Entry of Judgment contemplated by this Agreement.

b. Within 60 days of the date this Agreement is executed, the parties shall execute a Compact in the form of the compact that is attached hereto and incorporated by reference herein as Exhibit IV to this Agreement. This Compact shall limit any and all class III gaming operated by the Tribe to APN 69 under the conditions established by this Agreement and the Compact.

c. Prior to the commencement of any "development" as that term is defined in the California Coastal Act, Public Resources Code section 30000 et seq., on that portion of Parcel B on which there currently exists a partially constructed concrete foundation, the Tribe shall, at its expense, remove the partially constructed concrete foundation and related "development" that currently exists on that portion of the property and restore the grade of that portion from which the partially constructed foundation has been removed to an historic grade of that portion of the property which the State and the Tribe agree in writing is consistent with the protection of the water quality of the Big Lagoon ("Agreed Grade"). If

the parties are unable to timely agree upon a grade, the matter shall be resolved by an arbitrator selected by the Court. The Tribe agrees and commits not to change the grade of the concrete foundation portion of Parcel B from the Agreed Grade or to in any way authorize or permit any other individual or entity to change the grade for that portion of Parcel B from the Agreed Grade.

d. The Tribe and the State agree and commit that, except as specifically set forth in this Agreement, no gaming, including class I, class II or class III gaming as defined by IGRA, or other commercial development shall occur on Parcel A or Parcel B. The Tribe and the State further agree that any development permissible under this Agreement with respect to Parcel A or Parcel B:

(i) shall not be located within 15 feet of the boundary of State property or within 100 feet of the 18-foot contour above sea level (National Geodetic Vertical Datum), whichever is furthest;

(ii) shall not exceed 30 feet in height above the current grade of Parcel B, or the Agreed Grade for the concrete foundation portion of Parcel B, for development on Parcel B or 30 feet in height above the current grade of Parcel A for development on Parcel A;

(iii) shall incorporate lighting practices and low wattage systems consistent with non-commercial development designed and utilized in such a way as to minimize to the maximum extent practicable their impact on the nighttime visual environment of the Big Lagoon and the surrounding park and recreational areas, including impacts due to the emission of glare and sky glow;

(iv) shall, to the extent any non-native vegetation is introduced, remove said vegetation should the existence of that non-native vegetation result in a material adverse effect on the surrounding park and recreation area habitat and, in the event of an infestation of the non-native vegetation into the contiguous park and recreation habitat, the Tribe shall pay to the State the reasonable cost of the removal of that non-native vegetation from that habitat; and

(v) shall be designed in such a way as to avoid a material departure from the non-commercial character of the surrounding Big Lagoon area and shall utilize pervious surfaces such as vegetated swales, filtering strips, or an earthen berm landward of the lagoon set-back line identified in (d)(i) above sufficient to capture and "treat" runoff from any impervious surfaces.

e. For the sole purpose of assuring adherence to subparagraphs c and d, upon at least 15 days' written notice to the Tribe, the State may conduct a one-day inspection of Parcels A and B no more than once a calendar year during normal business hours.

f. The term "commercial development" as used herein includes all development with a business or commercial purpose and further includes apartment buildings and non-single family residential development. The term "commercial development" does not include single family residences for the Tribe's housing needs, or tribal governmental offices, a tribal meeting hall and a tribal cultural center, so long as they are not utilized for any commercial purpose.

E. Attorney Fees and Dispute Resolution

7. Except as specifically provided herein, the State and the Tribe shall each bear their own costs and any attorney fees in connection with the negotiation, drafting, and execution of this Agreement. In the event of any litigation regarding the enforcement, interpretation or any other claim arising out of this Agreement, each party shall bear its own court costs and attorney fees.

8. This Agreement is intended to be incorporated by reference into a Stipulation for Entry of Judgment and a judgment entered pursuant thereto in the Case and, except as provided in the Compact, the sole means for enforcement of the provisions of this Agreement shall be by a proceeding in the Court to enforce the stipulated judgment.

9. Within 21 days of the date this Agreement is executed, the parties shall submit this Agreement and said Stipulation for Entry of Judgment (a copy of which is attached hereto and incorporated by reference herein as Exhibit III) and Judgment Pursuant to Stipulation (a copy of which is attached hereto and incorporated by reference herein as Exhibit V) to the Court for its information and to the Secretary of the Interior requesting either approval or a letter indicating that approval is not necessary pursuant to 25 U.S.C. § 81.

10. Within 15 days of the date the Compact is executed or the Secretary of the Interior approves this Agreement and the Stipulation for Entry of Judgment (Exh. III) pursuant to 25 U.S.C. § 81 (or indicates that approval is not necessary), whichever is last, the parties shall execute the Stipulation for Entry of Judgment (Exh. III) and file that stipulation with the Court and submit the Judgment Pursuant to Stipulation (Exh. V) to the Court for signature and entry.

F. Time of Performing Obligations

11. Time is of the essence in this Agreement.

G. Law Governing.

12. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

H. Enforceability

13. In the event that any provision of this Agreement should be held by a final judgment or order of a state or federal court to be void, voidable or unenforceable, the remaining provisions of the Agreement shall not remain in full force and effect unless the State and the Tribe agree in writing thereafter that each of those provisions shall remain in full force and effect.

I. Entire Agreement

14. This Agreement embodies the entire Agreement of the State and the Tribe respecting the subject matter. There are no promises, terms, conditions or obligations other than those contained in this Agreement. This instrument supersedes all previous communications, representations, or agreements, either verbal or written, between the parties. Any modification to this Agreement shall be in writing and signed by both parties and approved by the Court.

J. Advice of Counsel

15. The State and the Tribe, each for itself, on the basis of ample time to investigate, have independently determined that it is in their respective best interests to enter into this Agreement, regardless of whether or not the facts are as they suppose them to be. Each party is represented by counsel with respect to this Agreement and is relying upon the advice of its counsel in entering into this Agreement.

K. Benefit and Binding Effect

16. Each of the persons signing this Agreement represents that he or she has written authority to execute this Agreement on behalf of the entity for which he or she is signing this

Agreement. This Agreement shall enure to the benefit of and be binding upon the parties and their respective successors and assigns. The Tribal signatory's authority to waive the Tribe's sovereign immunity is set forth in Exhibit C to the Stipulation for Entry of Judgment (Exhibit III to this Agreement). The State has waived its sovereign immunity by virtue of the provisions of Government Code section 98005.

L. Counterparts

17. This Agreement may be executed in counterparts and when so executed by each party shall be deemed an original. This Agreement shall not be effective, and no party shall have any rights or obligations arising out of it, until it has been properly executed by each party.

M. Termination of Obligations Under Paragraph 6

18. The parties' obligations under paragraph 6 and under any judgment entered pursuant to those provisions shall terminate upon the occurrence of any of the following:

a. The Secretary of the Interior, pursuant to 25 U.S.C. § 81, disapproves this Agreement or the Stipulation for Entry of Judgment attached hereto as Exhibit III.

b. The Secretary of the Interior disapproves the Compact, and any administrative or judicial proceeding regarding the disapproval has been concluded, confirming the Secretary's disapproval.

c. The Secretary of the Interior declines to accept APN 69 in trust for the Tribe, or fails to make, with respect to APN 69, the determination set forth in 25 U.S.C. § 2719(b)(1)(A) or to obtain a concurrence in that determination by the Governor of the State of California pursuant to 25 U.S.C. § 2719(b)(1)(A).

d. A final administrative or judicial proceeding determines that APN 69 may not be taken into trust by the United States for the benefit of the Tribe or that APN 69 is not eligible for gaming.

e. The United States of America refuses to execute the instruments necessary to effectuate its acceptance of trust title to APN 69.

f. The Compact is deemed null and void pursuant to the provisions of section 14.2 thereof.

N. Subsequent Negotiations

19. The State and the Tribe agree that should any of the contingencies set forth in paragraph 18 occur, the State and the Tribe will commence new compact negotiations within 30 days of the date either party has been given notice of the occurrence of said contingency by the other party. With respect to any new site that is proposed as an alternative to the Tribe's existing trust lands, the State and the Tribe intend to negotiate the new compact based on the Compact attached as Exhibit IV and agree that if a new compact is not executed between the State and the Tribe within 120 days of the date these compact negotiations commence, notwithstanding the provisions of 25 U.S.C. § 2710(d)(7)(B)(i) the Tribe shall have the right to file suit pursuant to the provisions of 25 U.S.C. § 2710(d)(7)(B)(i) and the State shall have the right to assert any and all defenses it may have to said suit, except that the State hereby waives any right it might have to claim that said suit is premature by virtue of the provisions of 25 U.S.C. § 2710(d)(7)(B)(i).

O. Limitation on Right to Conduct Class III Gaming Should Los Coyotes Be Unable to Operate Class III Gaming

20. If Los Coyotes is unable to operate class III gaming on approximately 23 acres of land in the City of Barstow identified as Assessor's Parcel Nos. 0428-171-66, 0428-171-67, and 0428-

171-68 ("APN 66, 67, 68"), the Tribe will not object to another federally recognized Indian tribe, other than Los Coyotes, operating class III gaming on those parcels. The Tribe expressly agrees that it will not commence operating, or that it will immediately discontinue operating, class III gaming on APN 69 if Los Coyotes is unable to operate class III gaming on APN 66, 67, 68 and if all individuals or entities holding title to APN 66, 67, 68 fail to make, within 30 days of a written request by the State to do so, a valid and binding irrevocable offer to convey title to APN 66, 67, 68 to the United States of America to be held in trust for any federally recognized Indian tribe that has agreed to execute an agreement or agreements with the individuals and entities holding title to APN 66, 67, 68, BarWest and the Tribe that are the equivalent to any and all agreements, entered before December 31, 2005, between Los Coyotes, LCB, the Tribe and BarWest related to the acquisition of APN 66, 67, 68 and the conduct of class III gaming on APN 66, 67, 68, including development, management and related agreements with the individuals or entities holding title to APN 66, 67, 68. To effectuate the terms of this paragraph, if Los Coyotes is unable to operate class III gaming on APN 66, 67, 68, the Tribe must make available all such agreements to the State upon thirty days written request to do so.

P. Notice

21. Attached hereto and incorporated by reference herein as Exhibit VI are the current addresses of the State and the Tribe for purposes of notice pursuant to this Agreement. Any party may change such address by delivery to the other of its new address by certified mail, return receipt requested, or recognized national delivery service (Federal Express, UPS, etc.). The new address shall be binding upon a party only upon actual receipt by the party notified. Proof that notice has

been received for the purposes of this Agreement shall consist of a fully executed return receipt card, certificate or other similar document issued by a recognized national delivery service.

Q. Recordation

22. Within 30 days of the date the Judgment Pursuant to Stipulation is entered, the Agreement shall be recorded with the County Recorder of Humboldt County by the State.

Dated: AUGUST 3, 2005

BAKER & MCKENZIE LLP

By: 

PETER J. ENGSTROM

Attorneys for Plaintiff Big Lagoon Rancheria

Dated: AUG 17 2005

BILL LOCKYER,
Attorney General of the State of California
ROBERT L. MUKAI,
Senior Assistant Attorney General
SARA J. DRAKE,
Supervising Deputy Attorney General

By: 

PETER H. KAUFMAN

Deputy Attorney General

Attorneys for Defendant State of California

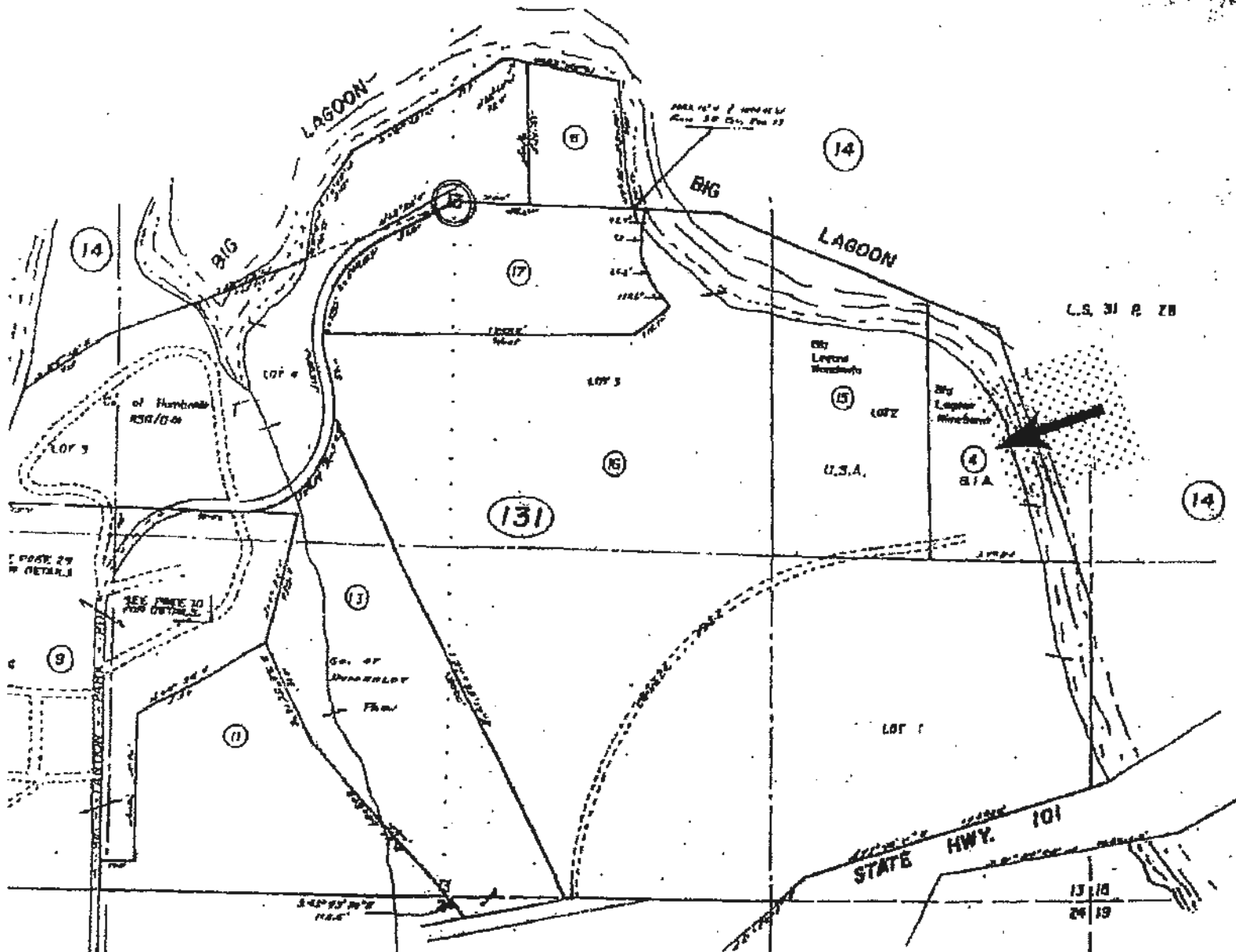
EXHIBIT I

Assessor's Parcel Number 517-131-04

A portion of Lot 2 of Section 15 in Township 34N, Range 1 West of Humboldt Meridian, as shown on the official plat of the government survey of said Township, bounded and described as follows:

BEGINNING at a point on the South line of said Lot 2 distant 10 chains westerly thereon from the Southwest corner of said Lot 2; running thence Northerly 14.68 chains on a line parallel with the West line of said Lot 2 to the margin of the lagoon; thence in a Southeasterly direction along the shore of the Big Lagoon to the line between Lots 1 and 2 of said Section 15; thence West along the South line of said Lot 2, 6.26 chains, more or less, to the point of beginning; containing an area of 5.24 acres, more or less. Subject to right of way for railroad as reserved in deed dated October 7, 1916, recorded in the Recorder's Office of Humboldt County, California, in Book 135 of Page 368.

FOR SEC. 13, T9N, RIW, HB & M



q. 52, 72, B 133

Assessor's Maps Blk. 517 - Pg. 13
County of Humboldt, Calif.

ER-591

EXHIBIT II

Assessor's Parcel Number 517-131-15

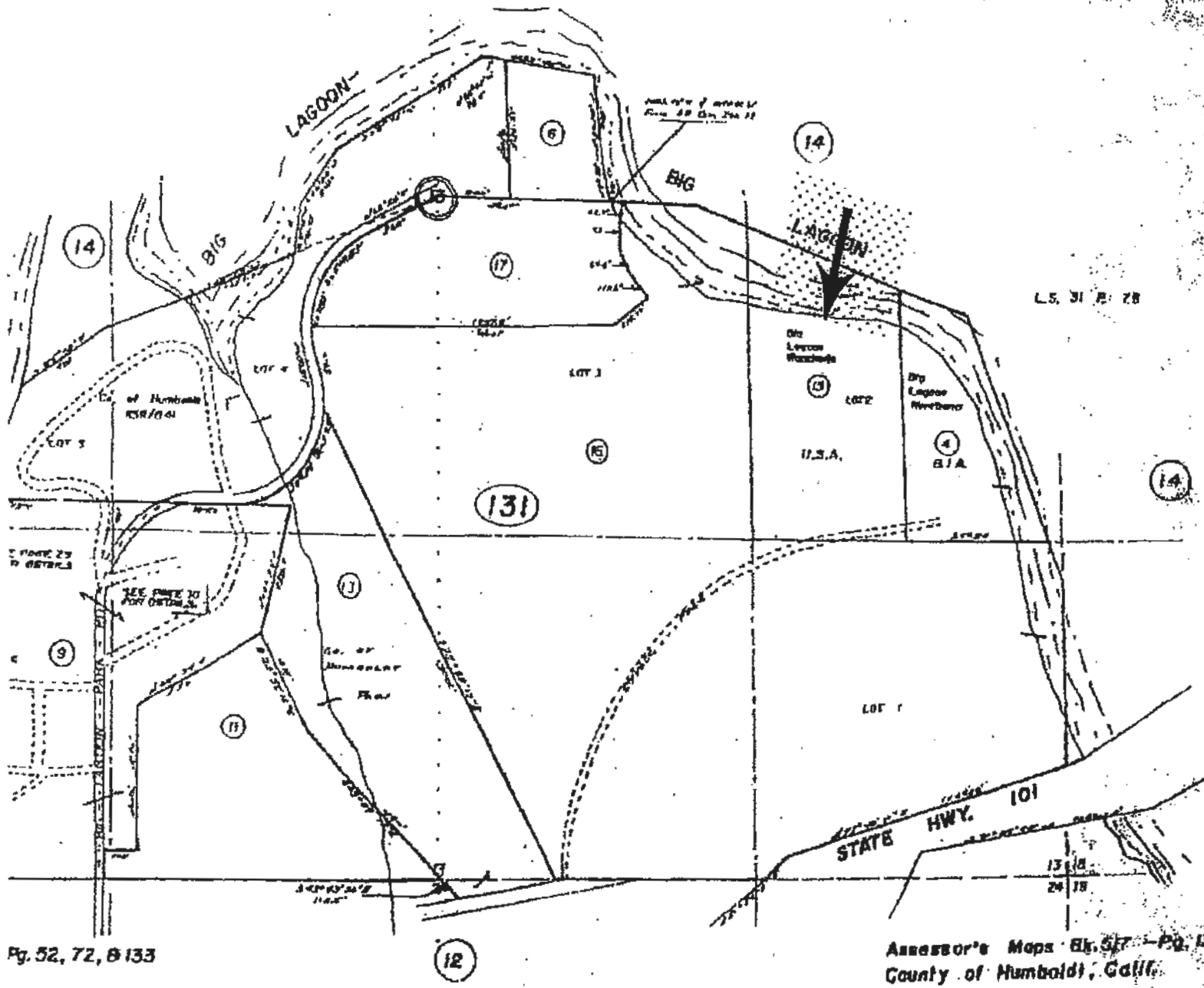
DESCRIPTION

Lot 2 of Section 13, in Township 9 North, Range 1 West of Humboldt Meridian, as shown by the official plat of the Government Survey of said Township.

EXCEPTING THEREFROM that portion thereof, described as follows:

BEGINNING at a point on the South line of said Lot 2, distant 10 chains Easterly thereon from the Southwest corner of said Lot 2; running
thence Northerly 14.50 chains on a line parallel with the West line of said Lot 2, to the waters of Big Lagoon;
thence in a Southeasterly direction, along the shore of the Big Lagoon, to the line between Lots 1 and 2 of said Section 13;
thence West along the South line of said Lot 2, 9.24 chains more or less, to the point of beginning.

FOR SEC. 13, T9N, R1W, HB&M



Pg. 52, 72, & 133

Assessor's Maps Blk. 57 - Pg. 13
County of Humboldt, Calif.

ER-595

EXHIBIT III

1 **BILL LOCKYER**
 Attorney General of the State of California
 2 **ROBERT L. MUKAI**
 Senior Assistant Attorney General
 3 **SARA J. DRAKE**
 Supervising Deputy Attorney General
 4 **PETER H. KAUFMAN**, State Bar No. 52038
 Deputy Attorney General
 5 110 West A Street, Suite 1100
 San Diego, CA 92101
 6 P.O. Box 85266
 San Diego, CA 92186-5266
 7 Telephone: (619) 645-2020
 Fax: (619) 645-2012

8 Attorneys for Defendant the State of California

9
 10 **IN THE UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**
 12 **OAKLAND DIVISION**

13 **IN RE INDIAN GAMING RELATED CASES**

CASE NO. C-97-4693-CW

14 **BIG LAGOON RANCHERIA**, a Federally
 15 **Recognized Indian Tribe,**

CASE NO. C-99-4995-CW

16 **Plaintiff,**

STIPULATION FOR ENTRY OF JUDGMENT

17 **v.**

18 **STATE OF CALIFORNIA,**

19 **Defendant.**

20 **Courtroom:** 2, 4th Floor
Judge: Hon. Claudia
 21 **Wilken**

22
 23 **Defendant State of California (hereafter the "State") by and through its attorney, Bill**
 24 **Lockyer, Attorney General, by Deputy Attorney General Peter H. Kaufman, and the Big Lagoon**
 25 **Rancheria (hereafter the "Tribe") by and through its attorneys Baker & McKenzie LLP, by Peter**
 26 **J. Engstrom, hereby stipulate and agree to the following in order to settle and compromise all**
 27 **disputes that have been raised or could have been raised in this matter.**

28 **///**

STIPULATION FOR ENTRY OF JUDGMENT

1 1. The State and the Tribe shall comply with each and every applicable term of the
2 Agreement attached hereto and incorporated by reference herein as Exhibit A.

3 2. This Stipulation and its attached exhibits shall constitute the entirety of the
4 agreement between the State and the Tribe and shall not be modified except by a writing
5 executed by each of them and approved by the Court.

6 3. The State and the Tribe waive any right to appeal the judgment entered pursuant
7 to this Stipulation.

8 4. The State and the Tribe shall each pay their own court costs and attorney fees.

9 5. The State and the Tribe agree that the Court shall retain jurisdiction of this matter
10 for the sole purpose of assuring that the terms of this Stipulation and any judgment entered
11 pursuant thereto may be enforced.

12 6. The State and the Tribe agree that any proceedings to enforce, whether by
13 contempt or otherwise, this Stipulation and the judgment entered pursuant thereto shall be
14 against entities and not individuals, unless enforcement can only occur if the action is brought
15 against an individual.

16 7. The Tribe represents that the United States of America, acting by and through the
17 Secretary of the Interior, the Honorable Galè Norton, has approved this Stipulation pursuant to
18 25 U.S.C. § 81 as set forth in the letter, and the authority cited therein, attached hereto and
19 incorporated by reference herein as Exhibit B and that, as set forth in that letter, this Stipulation
20 and any judgment entered pursuant thereto may be enforced against the Tribe.

21 8. The Tribe further agrees that by virtue of its submission to the Court's jurisdiction
22 as a result of its filing of this action, the Tribe has waived any and all claims that its sovereign
23 immunity would preclude the State from seeking to enforce this Stipulation and any judgment
24 entered pursuant thereto in the Court. The Tribe represents that Tribal Resolution No. 2005-202
25 adopted on July 27, 2005, attached hereto and incorporated by reference herein as Exhibit C,
26 constitutes a valid authorization, properly enacted pursuant to the Tribe's constitution and
27 implementing ordinances, to the Tribe's attorneys to execute this Stipulation and the Tribe's
28 waiver of the Tribe's sovereign immunity contained herein.

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Dated: _____

BAKER & MCKENZIE LLP

By: _____
PETER J. ENGSTROM
Attorneys for Plaintiff Big Lagoon
Rancheria

Dated: _____

BILL LOCKYER,
Attorney General of the State of California
ROBERT L. MUKAI,
Senior Assistant Attorney General
SARA J. DRAKE,
Supervising Deputy Attorney General

By: _____
PETER H. KAUFMAN
Deputy Attorney General
Attorneys for Defendant State of California

aug 2 final stipulation for entry of judgment big lagoon.wpd



BIG LAGOON RANCHERIA

P.O. BOX 3060, TRINIDAD, CALIFORNIA 95570, PH. (707) 826-2079 FAX (707) 826-0495

Resolution Number: 2005-202


A Resolution to Authorize Tribal Chairperson and Legal Counsel to Enter Into and Execute a Settlement Agreement and Stipulation for Entry of Judgment With the State of California.

We, members of the tribal council of the Big Lagoon Rancheria, hereby authorize the Chairperson, Virgil Moorehead, and legal counsel for the Big Lagoon Rancheria, Baker & McKenzie LLP, by Peter J. Engstrom, Attorney at Law, to enter into and execute on behalf of the Big Lagoon Rancheria for the Settlement of Litigation, Location of Class III Gaming Facility and Restriction on the Use of Lands Contiguous to Big Lagoon, and accompanying Stipulation for Entry of Judgment, in Civil Case No. 99 CV 4995 CW pending in the United States District Court for the Northern District of California. Said authority to enter into and execute said agreement stipulation includes the power and ability to waive the sovereign immunity of the Big Lagoon Rancheria against the State enforcing the agreement and stipulation and stipulated judgment, and to make any other terms necessary for the enforcement of said agreement.

IT IS SO AUTHORIZED.

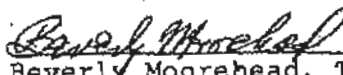
CERTIFICATION

As Chairperson of the Big Lagoon Rancheria Tribal Council, I do hereby certify that at a special meeting duly called; noticed and convened on the 27th day of July, 2005, at which time a quorum of 4 was present, this resolution was adopted by a vote of 4 for and 0 against, 0 abstaining and said resolution has not been rescinded or amended in any way.



Virgil Moorehead, Chairperson

July 27, 2005
Date



Beverly Moorehead, Tribal Secretary

July 27, 2005
Date

Exhibit C

EXHIBIT IV

TRIBAL-STATE COMPACT

BETWEEN

THE STATE OF CALIFORNIA

AND THE

BIG LAGOON RANCHERIA

**TRIBAL-STATE COMPACT
BETWEEN THE STATE OF CALIFORNIA AND THE
BIG LAGOON RANCHERIA**

The Big Lagoon Rancheria ("the Tribe"), a federally recognized Indian tribe listed in the Federal Register, and the State of California ("the State") enter into this tribal-state compact pursuant to the Indian Gaming Regulatory Act of 1988 ("IGRA").

PREAMBLE

WHEREAS, the lands which constitute the Big Lagoon Rancheria are contiguous to Big Lagoon along the coastline of Humboldt County, contiguous to the Harry A. Merlo Recreation Area, adjacent to the Big Lagoon County Park, and across the lagoon from Humboldt Lagoons State Park; and

WHEREAS, the Tribe seeks to establish a casino on the lands that constitute the Big Lagoon Rancheria; and

WHEREAS, the State has cited various environmental concerns over the impact of a casino at that site, which include that Big Lagoon is a State ecological preserve managed by the Department of Fish and Game and is one of the few remaining naturally functioning coastal lagoons in California, is an important part of a fragile ecosystem that functions to support diverse populations of species, including three species listed under the federal Endangered Species Act, and is an environmentally sensitive habitat area within the meaning of the California Coastal Act; and

WHEREAS, in light of the State's articulated concerns regarding the potential environmental impacts of constructing and operating a casino on the lands that constitute the Big Lagoon Rancheria, the State has expressed its preference that the Tribe establish its casino at a location off of the Big Lagoon Rancheria site; and

WHEREAS, the Tribe has instituted litigation against the State to compel the State to enter a compact authorizing Class III Gaming on the Big Lagoon Rancheria site; and

WHEREAS, during the course of the litigation, the State attempted to locate a new site for the Tribe's casino which would not result in the perceived environmental impacts and which would also be supported by the local jurisdiction; and

WHEREAS, the City of Barstow has expressed a strong desire (subject to a proper environmental review) to host a tribal Gaming Facility within Barstow in order to boost economic development and employment; and

WHEREAS, in pursuit of that objective, the City of Barstow entered into an agreement with the Los Coyotes Band of Cahuilla and Cupeno Indians ("Los Coyotes Band") in support of that tribe's efforts to locate a Gaming Facility in Barstow; and

WHEREAS, at the request of the State, the Los Coyotes Band agreed to consider a single, unified casino project in which the Los Coyotes Band and the Tribe would share a parcel approved by the City of Barstow for purposes of developing two adjacent Gaming Facilities; and

WHEREAS, following careful deliberations and a determination that it would best serve their respective interests, the Los Coyotes Band and the Tribe thereafter entered into an agreement for the joint development of two compatibly designed Class III Gaming Facilities sharing access, parking, and other common amenities on a single location in the City of Barstow; and

WHEREAS, federal law allows a tribe to operate a Gaming Facility on lands that are acquired in trust for the benefit of a tribe after IGRA's effective date if after consultation with the tribe, the State, and local officials, the Secretary of Interior determines that a Gaming Facility would be in the best interests of the tribe and its members and not detrimental to the surrounding community, and the governor of the state concurs in that determination; and

WHEREAS, the Tribe has agreed to request the Secretary of Interior to take into trust for the benefit of the Tribe a parcel (the "25 Acre Parcel") pursuant to the federal process referred to above and which is within the site identified by the City of Barstow; and

WHEREAS, the Tribe and the State share an interest in fully mitigating the impacts of the operation of a Gaming Facility in the City of Barstow and in subjecting the operation of the Gaming Facility to a thorough environmental review; and

WHEREAS, in light of (i) the Tribe's willingness to relocate its Gaming Facility to the City of Barstow; (ii) the Tribe's sovereign agreement to forgo gaming and other adverse development on the environmentally sensitive land at its rancheria (which in the State's view, would have significant impacts on the environmentally

sensitive contiguous and adjacent lands); (iii) the City of Barstow's anticipated support for the proposed Gaming Facility; and (iv) the other covenants of this Compact, the Governor anticipates concurring in a determination by the Secretary of Interior that the Gaming Facility would be in the best interests of the Tribe and its members and not detrimental to the surrounding community, as long as (a) the Barstow City Council has approved of the Gaming Facility's location in the form of a resolution or other appropriate instrument, and (b) the affected community's support for the Gaming Facility is further demonstrated to the Governor; and

WHEREAS, in consideration of the exclusive rights enjoyed by the Tribe to engage in certain Gaming Activities and to operate the number of Gaming Devices specified herein, and the other meaningful concessions offered by the State, the Tribe has agreed, inter alia, to provide to the State, on a sovereign-to-sovereign basis, a fair revenue contribution from the Gaming Devices and banking and percentage card games operated pursuant to this Compact; and

WHEREAS, the Tribe and the State share a joint sovereign interest in ensuring that tribal Gaming Activities are free from criminal and other undesirable elements; and

WHEREAS, this Compact will afford the Tribe primary responsibility over the regulation of its Gaming Facility and will enhance tribal economic development and self-sufficiency; and

WHEREAS, the State and the Tribe have therefore concluded that this Compact protects the interests of the Tribe and its members, the surrounding community, and the California public, and will promote and secure long-term stability, mutual respect, and mutual benefits; and

WHEREAS, the State and the Tribe agree that all terms of this Compact are intended to be binding and enforceable;

NOW, THEREFORE, the Tribe and the State agree as set forth herein:

SECTION 1.0. PURPOSES AND OBJECTIVES.

The terms of this Compact are designed to:

- (a) Foster a mutually respectful government-to-government relationship that will serve the mutual interests of the parties.

**SECTION 4.0. AUTHORIZED LOCATION OF GAMING FACILITY,
NUMBER OF GAMING DEVICES, AND REVENUE CONTRIBUTION.**

Sec. 4.1. Authorized Number of Gaming Devices. Subject to sections 3.1, subdivision (b), and 4.2, the Tribe is entitled to operate up to 2,250 Gaming Devices pursuant to the conditions set forth in section 4.3.3.

Sec. 4.2. Authorized Gaming Facility.

(a) In the event the Secretary of Interior makes the determination set forth in section 20(b)(1)(A) of IGRA that a Gaming Facility on the 25 Acre Parcel would be in the best interest of the Tribe and its members and would not be detrimental to the surrounding community, the Governor anticipates concurring in that determination so long as both of the following have occurred:

(i) following two or more public meetings at which the subject of the Tribe's Gaming Facility has been on the agenda and discussed, the Barstow City Council has approved the Gaming Facility's location on the 25 Acre Parcel in the form of a resolution or other appropriate instrument, which may take the form of an MSA; and

(ii) a fair and scientific telephone survey of Barstow city residents, which meets the standards set forth in exhibit B hereto and which is conducted after May 1, 2005, or a more reliable polling of public sentiment, demonstrates public support for a Gaming Facility in the City of Barstow.

However, nothing herein shall be construed to authorize the conduct of Class III Gaming on the 25 Acre Parcel if the Governor fails to concur in a determination by the Secretary of Interior pursuant to section 20(b)(1)(A) of IGRA in connection with the 25 Acre Parcel. Further, any failure of the Tribe to comply with all terms set forth in the settlement agreement in the action referenced in section 4.3, subdivision (b), at any time after the execution of this Compact, shall be grounds for the Governor to refuse to concur in the determination of the Secretary of Interior.

(b) The Tribe may only engage in Class III Gaming on eligible Indian lands on the 25 Acre Parcel and agrees not to engage in Gaming Activities on its other Indian lands in California as set forth in section 4.3.

Sec. 4.3. Tribe's Agreement to Forgo Gaming Activities

(a) The Tribe agrees not to engage in, authorize, or permit Gaming Activities on any of its Indian lands in California, other than its Indian lands on the 25 Acre Parcel, and represents that, in the exercise of its sovereignty, it will not

engage in class II gaming activities other than on the 25 Acre Parcel during the term of this Compact.

(b) The Tribe shall comply with all terms set forth in the stipulation for entry of judgment, and judgment entered pursuant to that stipulation in the action in the U.S. District Court for the Northern District of California entitled *Big Lagoon Rancheria, a Federally Recognized Indian Tribe, Plaintiff, v. State of California, Defendant*, case nos. C 97-4693 CW and C 99-4995 CW.

Sec. 4.3.3. Revenue Contribution.

- (a) Subject to the deduction allowed under subdivision (c), the Tribe shall pay to the State the following percentages of its Net Win generated from the operation of Gaming Devices and banking and percentage card games:

<u>Annual Net Win</u>	<u>Percentage</u>
\$0-\$100 million	16%
Over \$100 million to \$200 million	20%
Over \$200 million	25%

The payment specified herein has been negotiated between the parties as a fair contribution, based upon the location of the Gaming Facility within the City of Barstow, its location for traffic on route to Las Vegas and other market conditions, the exclusivity provisions specified in section 4.4, and the Tribe's circumstances.

- (b) (1) The Tribe shall remit to such agency, trust, fund, or entity, as the State Director of Finance, pursuant to law, from time to time, shall specify to the Tribe in writing, the payments referenced in subdivision (a) in quarterly payments. Said quarterly payments shall be based on the Net Win generated during that quarter from both Gaming Devices and banking and percentage card games, which payments shall be due on the thirtieth day following the end of each calendar quarter (i.e., by April 30 for the first quarter, July 30 for the second quarter, October 30 for the third quarter, and January 30 for the fourth quarter). The specific percentage applied to the quarterly Net Win pursuant to subdivision (a) shall be determined by the cumulative total of the Net Win earned since the beginning of the calendar year. Thus, for instance, if the cumulative Net Win in the fourth calendar quarter exceeds \$100 million (but is less than \$200 million), the percentage

EXHIBIT 2



BIG LAGOON RANCHERIA

P.O. BOX 3060, TRINIDAD, CALIFORNIA 95570, PH. (707) 826-2079 FAX (707) 826-0495

September 18, 2007

Governor Arnold Schwarzenegger
Attn: Legal Affairs Secretary Andrea Hoch
Governor's Office
State Capitol
Sacramento, CA 95814

Via U.S. Mail and E-Mail

RE: Big Lagoon Rancheria

Dear Ms. Hoch:

This letter, pursuant to Sections N and P of the Agreement Between the State of California and the Big Lagoon Rancheria for the Settlement of Litigation, Location of a Class III Gaming Facility and Restrictions on the Use of Lands Contiguous to Big Lagoon, dated August 17, 2005, is to give notice of the occurrence of the contingency set forth in paragraph 18(f) of said Agreement, namely, that the Tribal-State Compact Between the State of California and the Big Lagoon Rancheria dated September 9, 2005, as amended by the Agreement Between the State of California and Big Lagoon Rancheria to Extend the Dates Set Forth in Subdivisions (c) and (d) of Section 14.2 of the Tribal-State Compact Between the State of California and the Big Lagoon Rancheria, is now deemed null and void pursuant to the provisions of Section 14.2 of the Compact because the Compact did not take effect prior to September 17, 2007, on account of the Legislature's failure to ratify the Compact.

Accordingly, as required by paragraph 19 of the foregoing Agreement, the State and Tribe are to commence new compact negotiations within 30 days of the date of this notice. The Tribe hereby requests the State to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of Class III gaming activities on the trust lands that constitute the Big Lagoon Rancheria contiguous to Big Lagoon along the coastline in Humboldt County. We look forward to hearing from your office some proposed dates within the next month, as well as a place, for such compact negotiations.

Very truly yours,

Virgil Moorehead
Tribal Chairperson
Big Lagoon Rancheria

cc: Peter J. Eugstrom, Esq.
Deputy Attorney General Peter H. Kaufman

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EXHIBIT 6

Holland + Knight

Tel 213 896 2400
Fax 213 896 2450

Holland & Knight LLP
633 West Fifth Street, 21st Floor
Los Angeles, CA 90071-2040
www.hklaw.com

Rory E. O'Byrne
213 896 2563
rory.o'byrne@hklaw.com

March 21, 2008

VIA UPS

Andrea Lynn Hoch, Esq.
Legal Affairs Secretary
Office of Governor Arnold Schwarzenegger
State Capitol
Sacramento, CA 95814

Re: Information Regarding the Proposed Big Lagoon Gaming-Hotel Facility

Dear Ms. Hoch:

This is a follow-up to our meeting in Sacramento on February 25, 2008, with you, various other State representatives, and Tribal Chairman Virgil Moorehead. The purpose of the meeting was to discuss the Tribe's plan to move forward with a gaming facility in Humboldt County. As you know, at the State's earlier request, the Tribe delayed its plans to do gaming on its trust lands for many years while it considered various alternatives were on non-tribal lands in Humboldt and San Bernardino Counties. None of the proposals came to fruition, however, and the delays have cost the Tribe heavily in terms of lost jobs, income, and competitive opportunities.

After the effort in Barstow failed, and the Tribe informed you that it was moving forward with gaming development on its trust lands, as more than fifty (50) tribes in California have done for decades, you prepared a draft gaming compact in which several key areas were left open pending further discussion. The site of the proposed gaming facility was one of the issues to be discussed.

In a January 31, 2008, letter you provided several alternatives in Humboldt County for the Tribe to consider. These alternatives were rank in order of desirability from the State's perspective. All but the lowest ranked site (the Tribe's existing trust land, where it is prepared to proceed) involved land that would have to be acquired and placed into trust, which is an uncertain process involving administrative discretion and political considerations. In the best case scenario, such alternatives are likely add three to five years to the process before construction of a gaming facility could commence.

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Andrea Lynn Hoch, Esq.
March 21, 2008
Page 2

In order to avoid any misunderstanding that the Tribe would or could tolerate further delays in having the jobs, government income, or other benefits of a gaming facility, Chairman Moorehead made it clear at our last meeting that the possible sites other than the Tribe's existing trust lands would have to be rejected.

In discussing the scope of a project on the Tribe's trust lands, you made reference to your January letter's description of project with up to 175 gaming devices with a 50 room hotel. The Tribe explained that this proposal was too limiting. Humboldt County has seen an increase in the quantity and quality of gaming facilities since the Tribe began this project, and a 175 gaming device casino with a 50 room hotel will not allow the Tribe to adequately compete in the local market. The compact terms agreed to by the parties must allow the Tribe's project to grow to meet the demands of its customers and the competition. The Tribe believes that the project should not be subjected to artificial constraints but instead allow the market to determine the scope and size.

To aid in getting the project into perspective, we suggested during the meeting that the parties use the environmental assessment ("EA") developed by the Tribe in 2001. The EA described a stand-alone gaming facility and addressed the impacts that would arise from such a facility. At the time, we believed that the EA had been updated in 2004 to include a hotel. We agreed to provide the EA and follow-up documents to you, so the parties could be clear on the scope and size of the Project. Upon further review of the documents, however, we discovered that neither the EA nor the follow-up documents contain an in-depth look at the combined impacts of a proposed casino-hotel facility. Therefore, instead of providing the environmental documents, we propose that any class III gaming compact between the Tribe and the State allow for the following first phase (with room for expansion in subsequent phases): (1) a casino with at least 350 gaming devices, (2) a lodge with at least 120 guestrooms, and (3) all amenities (restaurants, spa, meeting rooms, etc.) associated with a modestly-sized, upscale facility. The Project would be no more than 5 stories tall and designed to be compatible with the heavily forested landscape surrounding Big Lagoon. Wastewater treatment and parking would be contained within the approximately 20 acres of trust land currently held by the Tribe.

Any class III gaming compact should provide for the project described above as well as for future expansion. At this time, one cannot know how the gaming market in Humboldt County will change in the coming years. The compact must allow the Tribe, while addressing environmental concerns, to expand and grow to meet future demand.

During the meeting, we also discussed the possibility of placing all of the gaming portion of the Project on the "original" Rancheria, instead of the later acquired contiguous 11 acre trust parcel. To date, all of the Tribe's plans have been to construct the entire Project on the 11 acre contiguous parcel, and the Tribe continues to believe that this is the best utilization of the Tribe's trust lands. Placing part of the project on the "original" Rancheria, would not only displace the Tribal housing that currently exists there, but by moving the construction closer to the water, it could also have a greater potential of impacting the visual aesthetics of the lagoon's shore.

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Andrea Lynn Hoch, Esq.
March 21, 2008
Page 3

We propose that the next step be for the State to provide the Tribe with a response to the Tribe's draft compact that was delivered to you shortly before the February 25, 2008, meeting. We would like to set a another meeting to discuss your response and the proposed project in this letter as soon as possible.

Please contact me or Jerry Levine, (213)896-2565, with any comments or questions.

Sincerely yours,

HOLLAND & KNIGHT LLP



Rory E. Dilweg

cc: The Honorable Virgil Moorehead (w/o enclosures)
Jerome L. Levine, Holland & Knight LLP (w/o enclosures)
Peter J. Engstrom, Baker & McKenzie (w/o enclosures)

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EXHIBIT 8

Holland + Knight

Tel 213 896 2400
Fax 213 896 2450

Holland & Knight LLP
633 West Fifth Street, 21st Floor
Los Angeles, CA 90071-2040
www.hkllaw.com

Jerome L. Levine
213 896 2565
jerome.levine@hkllaw.com

October 6, 2008

Andrea Lynn Hoch, Esq.
Legal Affairs Secretary
Office of Governor Arnold Schwarzenegger
State Capitol
Sacramento, CA 95814

Re: Gaming Compact Negotiations between the Big Lagoon Rancheria and the State of California

Dear Andrea:

I am writing to review our negotiations regarding the Big Lagoon Rancheria's ("Tribe") class III gaming compact and to set a direction for the future. The Tribe and I truly appreciate your and your colleagues' willingness to meet repeatedly over these past months and the progress that was made. Unfortunately, however, while in late August I had thought we were getting close to finality, it appears that instead we have reached an impasse.

The Tribe began its negotiations with the State for a compact approximately ten years ago, which was for a modest class III gaming operation on its reservation in Humboldt County (the "Site"). During the course of those negotiations, which are supposed to be concluded within six months under the Indian Gaming Regulatory Act, the State and the Tribe apparently reached its first impasse, which resulted in the Tribe's initiation of IGRA litigation before federal Judge Wilken in the Northern District of California (*Big Lagoon Rancheria v. State of California*, Case No. CV 04995 - CW (N.D. Calif., filed November 18, 1999)). Activity on the case was suspended by mutual agreement when, at the urging of the State, the Tribe was persuaded to negotiate a gaming compact with it for a site in Barstow, California, which is more than five hundred miles from the Tribe's reservation. The Barstow property would have had to have been acquired at the Tribe's considerable expense (whereas there is no land acquisition cost associated with using the Site), and would have had to be taken into trust for the Tribe's benefit and for gaming purposes by the Secretary of the Interior, a prospect which, given the distance from the Tribe's reservation, was destined to be challenging.

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October 6, 2008
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Although the State and the Tribe reached agreement and executed a compact regarding the Barstow location, in 2007 that process failed when the California Legislature refused for a second time to ratify the Governor's agreement to the compact, as is required by law.

Following that failure, the Tribe and the State resumed its earlier negotiations to establish a gaming facility on the Site, and because of the inordinate amount of time that had elapsed and the earlier delays, time became of the essence. Aside from the loss of many years of income, the delays significantly prejudiced the Tribe's ability to compete in its own local market. During that time at least four other tribes in the area built or expanded competitive gaming and hospitality facilities. Meaningful and timely resolution of any issues regarding the Site therefore was imperative if the negotiations were going to be concluded without further damage to the Tribe.

This recent round of negotiations began, and I became involved, in late 2007. To the Tribe's surprise, despite the prior delays and the continuing strengthening of the Department of Interior's policies discouraging off-reservation Tribal casinos, the State once again proposed that the Tribe move its project to a location off the reservation, a prospect that, even if achievable, would have delayed the Tribe from reaching its goal for several more years. Although the possible sites proposed by the State this time would have been in the same county as the reservation, the property still needed to be acquired and paid for by the Tribe and a further delay, potentially measured in years, would have necessarily followed as the parcel was subjected to the federal fee to trust process, with no certainty of success. Nevertheless, in a demonstration of the good faith and patience that the Tribe had exhibited, it once again considered the proposal, but rejected it.

The potential for a further substantial delay was a factor in the rejection, but equally important was the fact that the Site, which is on the reservation and has always been the Tribe's first choice, sits on Tribal land that has a dramatic view of Big Lagoon and is ideal for a hotel/lodge and casino that could easily be designed to capture the beauty of its surroundings. It would become a unique and highly desirable Northern California destination, particularly for those who are already visitors to Northern California's coastal areas. The success of such a project, if pursued expeditiously, would hopefully offset some of the damage being suffered by the Tribe in having been forced to wait so long in order to participate in its own market.

Notwithstanding earlier failed attempts to move the Tribe off of its reservation, it should be noted that the Tribe continued to consider in good faith all requests by the State, including an informal suggestion recently that the parties explore whether it would be feasible to develop and conduct a temporary gaming operation on the Site and then relocate to an off-reservation site within the County when and if an acceptable site was acquired and taken into trust. Although that was not an official offer or proposal from either side, there was yet another delay while that

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concept was discussed and investigated. The State ultimately decided, however, that it would not consider that approach.

The discussions then returned to completing the pending negotiations regarding the Tribe's development of a hotel and casino facility on the Site, and the Tribe made it clear that no other site distractions would be considered.

Despite the delays, I thought we were making good progress. In order to expedite matters, the Tribe had agreed (subject to a final overall agreement) to include a number of compact provisions which the State was now using in other compacts and wanted to incorporate into our negotiations, including some terms that were changing continually. See, e.g., terms in the Big Lagoon compact drafts that parallel those in the compacts entered into with the Yurok tribe, then the Buena Vista tribe, followed by the North Fork tribe, and those involving the Shingle Springs tribe. We would hope that the State acknowledges the Tribe's good faith willingness and flexibility in trying to work with the State on its own developing compact goals.

On the remaining terms, the State raised issues related primarily to parking, drainage, height and setback, along with a more generalized need to be assured that typical environmental considerations regarding off-reservation impacts would be addressed. The Tribe took each of the State's concerns seriously and spent considerable legal and consulting fees exploring and providing a responsible response for each of them. The Tribe engaged an architect and environmental engineer to provide guidance and gave you compromises and commitments on each subject that were close to what the State had proposed, and, in the case of off-reservation impacts, exceeded those. Thus the Tribe agreed to a set back from the high tide line similar to other construction in the vicinity (although it is not required to do so under federal law); a lowering of the height of the gaming facility to 80 feet (which would actually read much lower than that because it was set against a rear upslope); a plan at considerable extra cost to put most of the parking under the facility, as opposed to being on surface lots, which would alleviate concerns about aesthetics and drainage issues; and a lowering of the number of hotel rooms to 100. The Tribe, which had already conducted an environmental study, provided a detailed mitigation plan regarding possible off-reservation impacts.

Importantly, the Tribe expressed a willingness to lower the number of slot machines to 300 (below which virtually no financing can be obtained, and which is below that of most of the competition), and, unfair though it was, to give fair consideration to the State's insistence that it receive a share of the Tribe's slot machine revenues, even though none could be justified.

As you know, IGRA was enacted by Congress to enable tribal governments to become self-sufficient and free from public funding. In doing so, it virtually prohibited a State from exacting a tax on tribes in order to get its consent to a compact. Nevertheless, the State and some tribes have sought to rationalize the State's demand for gaming revenues by providing a quid pro

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Andrea Lynn Hoch, Esq.

October 6, 2008

Page 4

quo in which the State agrees to forego certain economic benefits under the compact if a tribe's gaming market exclusivity becomes impaired under State law (other than from other tribal governments). The concept is that by imposing an economic consequence on the State if it permits an incursion into the gaming market now reserved to tribal governments, the State will be motivated to resist legislative or administrative actions that might cause such an incursion. But throughout our discussions the Tribe has made it clear that it has no need or desire for any "exclusivity" protection provisions and sees no justification for sharing its revenue with the State.

The reservation is in an area in which non-Tribal gaming is unlikely to proliferate, so "exclusivity" is meaningless. In addition, for 8 years now approximately 40 other tribes within the State have and will continue to have, until at least the year 2020, the right to operate up to 350 slot machines with no payment to the State of any kind (except actual and reasonable regulatory costs). Those tribes also receive a Revenue Sharing Trust Fund annual distribution of \$1.1 million, which is distributed to all tribes in California from other, more successful gaming tribes, and thus helps ensure that tribal government gaming revenues benefit all tribes. The Tribe, like most tribes with no or fewer than 350 slot machines, depends heavily on the RSTF distribution to fund its essential governmental programs and services. Nevertheless, the State continues to insist that the Tribal government share its gaming revenues with the State on all machines (not just those over 350), and has proposed repeatedly that the Tribe consider waiving its right to continue to receive its RSTF distribution.

Moreover, the State required that its take of the Tribe's gaming revenues be no less than 10% of the Tribe's gross income (which is what "net win," on which the 10% fee is technically based, truly is, since under all compacts it amounts to the only receipts that actually are ever held by the Tribe). In other words, the State insists on taking a substantial share of the gross revenues before profits, if any, have been determined. Despite the fact that the taxation of Tribal gaming revenues is prohibited by IGRA and defeats congressional intent to strengthen the economics and self-sufficiency of tribes, *the fact that forty or so other tribes are not required to pay anything to the State out of their gaming revenues, whereas the State now demands that 10% of the gross be the minimum it will accept if it is going to agree to any new compact or amendment, means that the State insists on arbitrarily treating one class of similarly situated tribes in California differently from another.*

The practical effect of this disparate treatment is particularly harsh on Big Lagoon and other small operations; because of their size they will be unable to reach any real economy of scale as to labor, equipment costs and facilities development and maintenance. Ten percent of their gross will necessarily consume a substantial share of their profits.

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Andrea Lynn Hoch, Esq.
October 6, 2008
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Giving the State a substantial part of the Tribal government's main source of revenue for virtually nothing except the State's agreement to sign the compact (which we contend is compelled in any event by federal law) is simply unjustified, as the recent *Rincon* decision establishes. Nevertheless, consistent with its flexibility throughout these negotiations, the Tribe was willing to consider some revenue sharing (but less than the 10% of gross being sought) as a way to expedite matters and reach closure. But the State was unwilling to compromise by deviating from the amount of its arbitrary and apparently minimum uniform tax rate on tribal slot machine revenues.

Finally, although submitting a draft compact along the lines described above and following months of discussion, and including detailed mitigation measures to be implemented as a matter of contractual commitment (as opposed to leaving that to the uncertainties of a later environmental process), we have had no meaningful response to that proposal other than the request, and the Tribe's willingness, to clarify language in the mitigation measures to ensure that compliance was mandatory.

The 2008 legislative session has now closed. In light of where the Tribe now finds itself, it is no longer willing to pay the State what simply amounts to a tax, although it is still willing to abide by the mitigation measures.

The Tribe has instructed me to notify you through this letter that unless we reach a final, executed agreement by Friday, November 7, 2008, the Tribe will resume its litigation. Any final compact will have to include the following:

1. The right to operate the same gaming permitted to the tribes under the 1999 compacts;
2. The right to operate up to 350 class III gaming devices without payment of any taxes or fees, including any license fees;
3. The right to participate in the license pool described in those 1999 compacts at a minimum, but, if licenses are not available, to have some other mechanism for operating more than 350 machines in the future;
4. Agreement that any payments sought with respect to the operation of more than 350 machines up to 2000 be paid solely into the RSTF, as is the case with most of the other tribes in the State;
5. Agreement that the Site is the proper location for the casino, and that its casino may be combined with a hotel having up to 100 rooms, with appropriate provisions for possible expansion;
6. Providing that any restriction on the height of the facility be no lower than 85 feet from the first ground level floor, that it need not be sited further than 100 feet from the mean high tide line, and that meeting the criteria in the mitigation measures that have been

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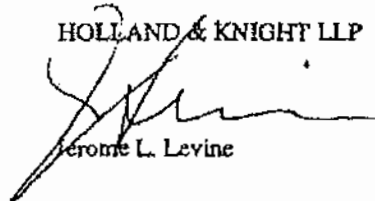
Andrea Lynn Hoch, Esq.
October 6, 2008
Page 6

submitted be deemed to be sufficient for any environmental tests to be applied under the compact.

In closing, and despite the impasse we seem to have reached, we do appreciate the extent to which the State has been willing to meet and discuss these issues, and we are not unaware of the pressure on all State officials and staff over these past few weeks given the State Budget issues and their distractions. Nevertheless, the Tribe must move this process forward and definitively. We hope that we can resolve this impasse amicably and quickly. If not, we regret that we were not able to come to agreement, and hereby reserve any and all of the Tribe's rights.

Very truly yours,

HOLLAND & KNIGHT LLP



Jerome L. Levine

cc: Virgil Moorehead, Chairman Big Lagoon Rancheria
Peter Engstrom, Esq.
Rory E. Dilweg, Esq.

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ER-620

EXHIBIT 9A



OFFICE OF THE GOVERNOR

October 31, 2008

Via U.S. Mail & Electronic mail

Jerome L. Levine, Esq.
Holland & Knight LLP
633 West Fifth Street 21st Floor
Los Angeles, CA 90071-2040

Re: Big Lagoon Rancheria Gaming Compact

Dear Mr. Levine:

This is in response to your letter of October 8, 2008. In that letter, you indicate that unless the Big Lagoon Rancheria (Big Lagoon or Tribe) and the State of California have executed a tribal-state class III gaming compact by November 7, 2008, the Tribe will file a new bad faith negotiation lawsuit. Further, in that letter, you set forth what we understand to be non-negotiable terms that any such compact must include. Specifically, in order to avoid litigation, the State must agree that:

- Big Lagoon may operate up to 350 slot machines without any revenue sharing contribution;
- Should the Tribe choose to operate more than 350 slot machines it will not be required to make any contribution to any fund other than the Revenue Sharing Trust Fund;
- The Big Lagoon Rancheria is the proper location for a casino;
- A hotel of 100 rooms may be included as part of the Gaming Facility and that this hotel may be expanded in the future;
- The Gaming Facility can have an elevation of at least 85 feet from any ground floor;
- The Gaming Facility can be sited within 100 feet of the mean high tide line;
- The Tribe's proposed mitigation measures shall be the only environmental mitigation required of the Gaming Facility.

GOVERNOR ARNOLD SCHWARZENEGGER • SACRAMENTO, CALIFORNIA 95814 • (916) 445-2841

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Jerome L. Levine, Esq.
October 31, 2008
Page 2

A. Revenue Sharing on 1999 Compact Terms is Not Acceptable to the State

We are disappointed that the Tribe has chosen to present the State with a final offer on the basis of terms both you and the Tribe know have always been unacceptable to the State. First, you insist on 1999 compact revenue sharing terms and access to the 1999 compact licensing pool. The Davis Administration, however, did not offer 1999 compact revenue terms for compacts it executed in 2003 (see the La Posta Band of Mission Indian's compact, the Santa Ysabel Band of Diegueno Mission Indian's compact and the Torres Martinez compact, each of which require a general fund revenue sharing contribution of five percent of net win for a maximum of 350 gaming devices). Further, this Administration has not offered 1999 compact revenue terms to any tribe and has repeatedly stated throughout its negotiations with Big Lagoon that it would not agree to 1999 compact revenue terms. The Tribe will receive significant value from a compact that provides it with a class III gaming monopoly. In return for its agreement to provide the Tribe with that monopoly, the State seeks consideration in the form of general fund revenue sharing. The amount of that revenue sharing remains negotiable, but to be consistent with the consideration requested of other tribes, our proposal is that the Tribe pay to the State's general fund fifteen percent of its net win on a maximum of 349 slot machines. Should the Tribe desire to operate more than 349 slot machines, it would be entitled to request a compact amendment.

B. The State is Entitled to Seek Consideration in the Form of Revenue Sharing In Return for Agreeing to a Compact Providing the Tribe With a Class III Gaming Monopoly

We understand that the Tribe refuses to provide revenue sharing on any basis other than a contribution to the RSTF as under the terms of the 1999 compacts. This Administration, however, has never agreed to accept an RSTF contribution as full consideration for the class III gaming monopoly a compact provides. Instead, it has required general fund revenue sharing. Indeed, Big Lagoon itself has executed a compact with the State that included general fund revenue sharing. Moreover, the Secretary of the Interior has expressly approved compacts providing for general fund revenue sharing.

Contrary to the views expressed in your letter, the Tribe has no entitlement to a class III gaming monopoly in California. Article IV § 19(f) of the California Constitution does not grant a class III gaming monopoly to Big Lagoon; rather, it merely makes available to the Tribe a right to negotiate for a compact that grants that monopoly. Further, nothing in Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 (IGRA) compels the State to reach an agreement with the Tribe within six months or at all. Thus, as with any contract, the Tribe must offer the State something of value in return for what it is receiving, the exclusive right to conduct gaming in the most populous state in the

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Page 3

union. The Ninth Circuit has expressly found that the type of progressively increasing net win percentage the State has requested of other tribes in return for the gaming monopoly a compact with the State provides is appropriate consideration. *In re Indian Gaming Related Cases*, 331 F.3d 1094, 1115 (9th Cir. 2003).

Moreover, it is not accurate to suggest, as your letter does, that the State has asked for a revenue sharing amount that it knows the Tribe cannot afford. The Tribe, in fact, has provided the State with no figures or financial analysis demonstrating that Big Lagoon could not afford to pay the revenue sharing amounts that have been under discussion.

C. A Casino at the Big Lagoon Rancheria is not the Only Means by Which the Tribe Can Attain Revenue from Gaming.

In addition to rejecting any form of revenue sharing other than an RSTF contribution on 1999 compact terms (which in the Tribe's case amounts to no revenue sharing because the Tribe would operate less than 350 slot machines), your letter suggests that IGRA's objectives can only be met by the siting of a casino on the Big Lagoon Rancheria. That view misperceives IGRA's objectives. Currently, Big Lagoon, as a Non-Compact Tribe, receives revenue from gaming in the form of distributions from the RSTF. As the Ninth Circuit found in *In re Indian Gaming Related Cases*, 331 F.3d at 1111-1114, distributions from the RSTF can achieve the objectives of IGRA by providing tribes with poor sites for gaming with gaming derived revenue. The RSTF is not the only mechanism for providing tribes with gaming revenue without actually operating a casino. In other states (Arizona and Washington for example), tribes with poor locations for gaming have the opportunity to earn increased revenue from gaming by transferring gaming rights they have to other tribes with better locations in return for a share of the gaming tribe's revenue from utilization of those rights. The State has agreed to a similar concept in the North Fork and Wiyot compacts. The Wiyot Tribe in Humboldt County has agreed to forgo gaming in return for payments from the North Fork Tribe.

Also, contrary to the Tribe's suggestion, the State will agree that Big Lagoon can continue to receive distributions from the RSTF as long as it does not operate more than 349 slot machines and the RSTF is not used for payment of any costs arising out of, connected with, or relating to any gaming activities.

Further, with respect to alternative sites for a Big Lagoon casino, the parties have indeed explored many such options. Contrary to the suggestion in your letter, however, the Tribe was part of the reason some of the proposals did not come to fruition. For example, during the Davis Administration, the Merlo Recreation Area property proposal

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Jerome L. Levine, Esq.
October 31, 2008
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did not come to fruition because the Tribe was unwilling to convey sixteen acres of land adjacent to Big Lagoon for the proposed casino site in the Recreation Area that was adjacent to Highway 101. The same is true for more current proposals in which the Save the Redwoods League was willing to acquire a casino site for the Tribe in return for those same sixteen acres. Also, your letter does not acknowledge that the Tribe rejected both the Davis Administration's offer and this Administration's suggestion that the Tribe utilize, for casino purposes, five acres of land the Tribe now owns in fee (at the corner of Park Road and Highway 101) that is now the subject of a trust application by the Tribe.

Finally, your description of the parties' efforts with respect to the location of an alternative site fails to mention the fact that the Tribe asked us to consider development of a casino on alternative sites, specifically, sites close to Eureka and Trinidad. After discussing these alternative sites and after the State informed the Tribe that it was willing to agree to locate a casino on the Rancheria, the parties focused their efforts on the Rancheria Site.

D. Mitigation Measures for the Rancheria Site

The State is willing to agree to locating the casino on the Rancheria. It must be understood, however, that a location on the Rancheria must take into account the constraints on development inherent in placing an intense urban project adjacent to a State ecological reserve, a State recreation area, and across the lagoon from a State park.

Though both the Davis Administration and this Administration have consistently required that compacts include provisions requiring tribes to mitigate the adverse off-trust land impacts of proposed Gaming Facilities in the form of intergovernmental agreements between affected government agencies and the tribes, the Tribe has objected to such a proposal in its compact. Instead it has asked that the State agree to negotiate mitigation measures with the Tribe in advance of presenting the State with an actual project for analysis. The Tribe's principal objection has been the supposed delay an analysis of the project's impact would cause to a casino opening date as well as the delay negotiations over mitigation requirements with affected government's might cause.

While the State agrees that some mitigation measures can be agreed upon in advance of knowing the specific details of a project, it does not agree that appropriate mitigation can be designed for all potential impacts in advance of knowing the actual design of a Gaming Facility. Further, the environmental mitigation provisions of the compacts this Administration has executed with other tribes establish strict time limits for the conclusion of negotiations over mitigation, which ensure that the project is not unduly delayed. Moreover, they provide for ultimate resolution of any disputes over the necessity of a particular mitigation measure through binding arbitration, which also must

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be completed within strict time limits. Thus, the need to prepare an adequate analysis of the off-rancheria impacts of any proposed Gaming Facility or to negotiate appropriate mitigation measures with affected governmental agencies will not result in unacceptable delay to the Tribe's casino project.

To accommodate the Tribe's concerns as much as possible, however, the State will agree to incorporate a list of environmental mitigation measures that can be determined at this time into the compact. The need for additional environmental mitigation measures would need to be demonstrated through the environmental review process for the specific project; as with this Administration's previous compacts. Attached to this letter is a list of the measures, which is included as Exhibit C to the enclosed draft compact.

We note that we appear to have a disagreement regarding the permissible height of any Project development. Your letter insists that the Tribe be entitled to construct a tower of at least 85 feet in height to accommodate a casino and 100-room hotel. It is our view that a tower of that height would unnecessarily degrade significantly adjacent and irreplaceable State resources. A 20-acre project site can accommodate a 349 slot machine casino and hotel in something other than an 85 foot tower. For example, a two to three-story hotel could be located adjacent to the casino either immediately or at a future date.

If the environmental review for the Project identifies significant impacts that would not be fully mitigated by the measures in the attached list, these impacts would be mitigated in accord with an intergovernmental agreement negotiated between the Tribe, the State, and the County, or, in the event of a dispute, be mitigated in accord with a program adopted in the decision of an arbitrator. As we have discussed previously, and as agreed to in the Tribe's previous compact with the State, impacts and needed mitigation to the state highway will be addressed through a separate agreement with Caltrans.

Though you have asked that the parties come to an agreement on a compact by November 7, 2008, you have not provided the State with a complete compact the Tribe would agree to execute. Enclosed with this letter, please find a complete compact proposal from the State for your consideration.

Finally, though your letter states that the Tribe will initiate litigation in the event the parties fail to execute an agreement by November 7, 2008, we urge you and the Tribe to reconsider that position and continue to negotiate. In this regard, please be advised that should the Tribe file suit, the State will consider the negotiations for a compact closed, and will defend the case on the basis of the negotiation record to date.

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Jerome L. Levine, Esq.
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Page 6

I hope this letter and the enclosed compact proposal provide the basis for an agreement between the State and the Tribe. I appreciate your and the Tribe's recognition of the State's good faith efforts during our compact discussions. I, too, appreciate the Tribe's willingness to explore different alternatives and approaches to try to reach a mutually acceptable agreement. Please feel free to contact me to discuss the State's proposed compact terms.

Sincerely,


ANDREA LYNN HOCH
Legal Affairs Secretary

Enclosure

BL000920

ER-627

1 Peter J. Engstrom, State Bar No. 121529
peter.j.engstrom@bakernet.com
2 Bruce H. Jackson, State Bar No. 98118
bruce.h.jackson@bakernet.com
3 Irene V. Gutierrez, State Bar No. 252927
irene.v.gutierrez@bakernet.com
4 **BAKER & MCKENZIE LLP**
Two Embarcadero Center, 11th Floor
5 San Francisco, CA 94111-3802
Telephone: +1 415 576 3000
6 Facsimile: +1 415 576 3099

7 Attorneys for Plaintiff
8 **BIG LAGOON RANCHERIA**

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION

12
13 BIG LAGOON RANCHERIA, a Federally
Recognized Indian Tribe,
14 Plaintiff,
15 v.
16 STATE OF CALIFORNIA,
17 Defendant.

Case No. CV-09-01471-CW(JCS)

Related Case No. C 99-04995-CW

**PLAINTIFF BIG LAGOON
RANCHERIA'S REQUEST TO TAKE
JUDICIAL NOTICE IN SUPPORT OF
ITS MOTION FOR SUMMARY
JUDGMENT**

Date: August 12, 2010
Time: 2:00 p.m.
Place: Courtroom 2, 4th Floor

1301 Clay Street
Oakland, CA

Before The Honorable Claudia Wilken

Trial Date: Not Set
Date Action Filed: April 3, 2009

1 Plaintiff Big Lagoon Rancheria ("Big Lagoon"), by and through its attorneys, hereby
2 requests the Court to take judicial notice, pursuant to Federal Rule of Evidence 201, of the following
3 documents, in support of its Motion for Summary Judgment, as follows:

4 1. A true and correct copy of Koji F. Fukumura's Declaration in Support of Big
5 Lagoon's Motion for an Order Pursuant to 25 U.S.C. §2710(d)(7)(b)(iii), filed October 5, 2001, in
6 the related case entitled, Big Lagoon Rancheria v. State of California, United States District Court,
7 Northern District of California, Oakland Division, No. C-99-4995-CW, as well as Exhibit A to such
8 declaration; incorporated herein by reference and attached hereto as **Exhibit 1**.

9 2. A true and correct copy of the Order Denying Cross-Motions for Summary Judgment,
10 filed March 18, 2002, in the related case, entitled Big Lagoon Rancheria v. State of California,
11 United States District Court, Northern District of California, Oakland Division, Case No. C-99-
12 4995-CW, incorporated herein by reference and attached hereto as **Exhibit 2**.

13 3. A true and correct copy of the Order Staying Decision on Plaintiff's Motion for
14 Summary Judgment, filed June 11, 2003, in the related case, entitled Big Lagoon Rancheria v. State
15 of California, United States District Court, Northern District of California, Oakland Division,
16 Case No. C-99-4995-CW, incorporated herein by reference and attached hereto as **Exhibit 3**.

17 4. A true and correct copy of the Order Denying Plaintiff's Motion for Summary
18 Judgment, filed August 4, 2003, in the related case, entitled Big Lagoon Rancheria v. State of
19 California, United States District Court, Northern District of California, Oakland Division, Case No.
20 C-99-4995-CW, incorporated herein by reference and attached hereto as **Exhibit 4**.

21 5. A true and correct copy of the Declaration of Peter J. Engstrom in Support of Further
22 Motion for Summary Judgment by Plaintiff Big Lagoon Rancheria, filed on January 15, 2004, in the
23 related case, entitled Big Lagoon Rancheria v. State of California, United States District Court,
24 Northern District of California, Oakland Division, Case No. C-99-4995-CW, as well as Exhibits A,
25 C and T to such declaration, incorporated herein by reference and attached hereto as **Exhibit 5**.

26 6. A true and correct copy of the Joint Case Management Statement, filed on March 9,
27 2007, in the related case, entitled Big Lagoon Rancheria v. State of California, United States District
28

1 Court, Northern District of California, Oakland Division, Case No. C-99-4995-CW, incorporated
2 herein by reference and attached hereto as **Exhibit 6**.

3
4 The above identified documents are relevant to the issues pertaining to Big Lagoon's Motion
5 for Summary Judgment.

6 FED. R. EVID. 201 provides, in relevant part, that:

7 (b) **Kinds of facts.** A judicially noticed fact must be one not subject to
8 reasonable dispute in that it is either (1) generally known within the
9 territorial jurisdiction of the trial court or (2) capable of accurate and
10 ready determination by resort to sources whose accuracy cannot
11 reasonably be questioned.

12 (c) **When discretionary.** A court may take judicial notice, whether
13 requested or not.

14 (d) **When mandatory.** A court shall take judicial notice if requested
15 by a party and supplied with the necessary information.

16 (f) **Time of taking notice.** Judicial notice may be taken at any stage
17 of the proceeding.

18 This Court may properly take judicial notice of pleadings, documents, papers, orders, and the
19 record, filed in related proceedings, or in other courts. See, U.S. ex rel. Robinson Rancheria Citizens
20 Council v. Borneo, 971 F.2d 244, 248 (9th Cir. 1992); Bennett v. Medtronic, Inc., 285 F.3d 801, 803
21 fn.2 (9th Cir. 2002); Burbank-Glendale-Pasadena Airport Authority v. City of Burbank, 136 F.3d
22 1360, 1364 (9th Cir. 1998); MGIC Indemnity Corp. v. Weisman, 803 F.2d 500, 504 (9th Cir. 1986);
23 Federal Home Loan Bank of San Francisco v. Hall, 225 F.2d 349, 354-355 (9th Cir. 1955). This
24 Court may properly take judicial notice of matters contained in a court's own records. See, Bovic v.
25 Giurbino, 421 F. Supp. 2d 1309, 1313 (S.D. Cal. 2006).

26 This request is further based upon Federal Rule of Evidence 201(b)(2) in that the matters set
27 forth in legislative materials are capable of accurate and ready determination by resort to sources
28 whose accuracy cannot reasonably be questioned. Accordingly, the Court may also take judicial
notice of the legislative history of state statutes. Louis v. McCormick & Schmick Restaurant Corp.,
460 F. Supp. 2d 1153, 1156 n.4 (C.D. Cal. 2006).

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For the above reasons, Big Lagoon respectfully requests the Court to take judicial notice of the above facts and documents.

Dated: June 17, 2010

Respectfully submitted,

Peter J. Engstrom
Bruce H. Jackson
Irene V. Gutierrez
BAKER & McKENZIE LLP

By: /s/
Bruce H. Jackson
Attorneys for Plaintiff
BIG LAGOON RANCHERIA

EXHIBIT 2

FILED

MAR 18 2002

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

RECEIVED

MAR 20 2002

ALLISON CHANG

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE INDIAN GAMING RELATED CASES

No. C 97-04693 CW

This document relates
to:

BIG LAGOON RANCHERIA,

No. C 99-04995 CW

Plaintiff,

ORDER DENYING CROSS-
MOTIONS FOR SUMMARY
JUDGMENT

v.

STATE OF CALIFORNIA,

Defendant.

This is one of several related cases before the Court brought by Indian tribes pursuant to the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§ 2701-2721. Plaintiff Big Lagoon Rancheria (Big Lagoon, or the Tribe) moves for summary judgment and for an order declaring that Defendant State of California has been negotiating with Big Lagoon in bad faith under 25 U.S.C. § 2710(d)(7)(B)(iii). The State opposes the motion and cross-moves for summary judgment seeking to dismiss Big Lagoon's suit. The matter was heard on December 21, 2001. Having considered all of the papers filed by the parties and oral argument on the motion,

United States District Court
For the Northern District of California

1 the Court DENIES Big Lagoon's motion for summary judgment and
2 DENIES the State's cross-motion for summary judgment.

3 BACKGROUND

4 I. Legal Framework

5 In enacting IGRA in 1988, Congress created a statutory
6 framework for the operation and regulation of gaming by Indian
7 tribes. See 25 U.S.C. § 2702. IGRA provides that Indian tribes
8 may conduct certain gaming activities only if authorized pursuant
9 to a valid compact between the tribe and the State in which the
10 gaming activities are located. See id. § 2710(d)(1)(C). If an
11 Indian tribe requests that a State negotiate over gaming activities
12 that are permitted within that State, the State is required to
13 negotiate in good faith toward the formation of a compact that
14 governs the proposed gaming activities. See id. § 2710(d)(3)(A);
15 Rumsey Indian Rancheria of Wintun Indians v. Wilson, 64 F.3d 1250,
16 1256-58 (9th Cir. 1994), amended on denial of reh'g by 99 F.3d 321
17 (9th Cir. 1996). Tribes may bring suit in federal court against a
18 State that fails to negotiate in good faith, in order to compel
19 performance of that duty, see 25 U.S.C. § 2710(d)(7), but only if
20 the State consents to such suit. See Seminole Tribe v. Florida,
21 517 U.S. 44 (1996). The State of California has consented to such
22 suits. See Cal Gov't Code § 98005; Hotel Employees & Rest.
23 Employees Int'l Union v. Davis, 981 P.2d 990, 1010-11 (Cal. 1999).

24 IGRA defines three classes of gaming on Indian lands, with a
25 different regulatory scheme for each class. Class III gaming is
26 defined as "all forms of gaming that are not class I gaming or
27 class II gaming." 25 U.S.C. § 2703(8). Class III gaming includes,

28

1 among other things, slot machines, casino games, banking card
2 games, dog racing and lotteries. Class III gaming is lawful only
3 where it is (1) authorized by an appropriate tribal ordinance or
4 resolution; (2) located in a State that permits such gaming for any
5 purpose by any person, organization or entity; and (3) conducted
6 pursuant to an appropriate tribal-State compact. See id.
7 § 2710(d)(1).

8 IGRA prescribes the process by which a State and an Indian
9 tribe are to negotiate a gaming compact:

10 Any Indian tribe having jurisdiction over the Indian
11 lands upon which a class III gaming activity is being
12 conducted, or is to be conducted, shall request the State
13 in which such lands are located to enter into
14 negotiations for the purpose of entering into a
15 Tribal-State compact governing the conduct of gaming
16 activities. Upon receiving such a request, the State
17 shall negotiate with the Indian tribe in good faith to
18 enter into such a compact.

19 Id. § 2710(d)(3)(A).

20 IGRA provides that a gaming compact may include provisions
21 relating to

- 22 (i) the application of the criminal and civil laws and
23 regulations of the Indian tribe or the State that are
24 directly related to, and necessary for, the licensing and
25 regulation of such activity;
26 (ii) the allocation of criminal and civil jurisdiction
27 between the State and the Indian tribe necessary for the
28 enforcement of such laws and regulations;
29 (iii) the assessment by the State of such activities in
30 such amounts as are necessary to defray the costs of
31 regulating such activity;
32 (iv) taxation by the Indian tribe of such activity in
33 amounts comparable to amounts assessed by the State for
34 comparable activities;
35 (v) remedies for breach of contract;
36 (vi) standards for the operation of such activity and
37 maintenance of the gaming facility, including licensing;
38 and
39 (vii) any other subjects that are directly related to the
40 operation of gaming activities.

United States District Court
For the Northern District of California

1 Id. § 2710(d)(3)(C).

2 If a State fails to negotiate in good faith, the Indian tribe
3 may, after the close of the 180-day period beginning on the date on
4 which the Indian tribe asked the State to enter into negotiations,
5 initiate a cause of action in a federal district court. See id.
6 § 2710(d)(7)(A)(i). In such an action, the tribe must first show
7 that no tribal-State compact has been entered into and that the
8 State failed to respond in good faith to the tribe's request to
9 negotiate. See id. § 2710(d)(7)(B)(ii). Assuming the tribe makes
10 this prima facie showing, the burden then shifts to the State to
11 prove that it did in fact negotiate in good faith. See id.¹ If
12 the district court concludes that the State failed to negotiate in
13 good faith, it "shall order the State and Indian Tribe to conclude
14 such a compact within a 60-day period." Id. § 2710(d)(7)(B)(iii).
15 If no compact is entered into within the next sixty days, the

16 _____
17 ¹Specifically, IGRA provides:

18 (i) An Indian tribe may initiate a cause of action
19 [to compel the State to negotiate in good faith] only
20 after the close of the 180-day period beginning on the
21 date on which the Indian tribe requested the State to
22 enter into negotiations under paragraph (3)(A).

(ii) In any action [by an Indian tribe to compel the
23 State to negotiate in good faith], upon the introduction
24 of evidence by an Indian tribe that-

(I) a Tribal-State compact has not been
25 entered into under paragraph (3), and

(II) the State did not respond to the request
26 of the Indian tribe to negotiate such a compact or
27 did not respond to such request in good faith,
28 the burden of proof shall be upon the State to prove that
the State has negotiated with the Indian tribe in good
faith to conclude a Tribal-State compact governing the
conduct of gaming activities.

27 Id. § 2710(d)(7)(B).

28

1 Indian tribe and the State must then each submit to a court-
2 appointed mediator a proposed compact that represents their last
3 best offer. See id. § 2710(d)(7)(B)(iv). The mediator chooses the
4 proposed compact that "best comports with the terms of [IGRA] and
5 any other applicable Federal law and with the findings and order of
6 the court." See id. If, within the next sixty days, the State
7 does not consent to the compact selected by the mediator, the
8 mediator notifies the Secretary of the Interior, who then
9 prescribes the procedures under which class III gaming may be
10 conducted. See id. § 2710(d)(7)(B)(vii).

11 II. Factual Background

12 The State and many Indian tribes have been negotiating for
13 several years over the tribes' right to conduct gaming operations
14 in the State.

15 On March 6, 1998, the State signed a gaming compact with the
16 Pala Band of Missions Indians, intended to be a model for compacts
17 with other tribes (Model Compact). See Tagawa Ex. H (in support of
18 first motion for summary judgment).

19 On March 9, 1998, Deputy Attorney General Medeiros sent Big
20 Lagoon Tribal Chairperson Virgil Moorehead a letter informing
21 Moorehead that the State entered into the Model Compact with the
22 Pala Band and offering Big Lagoon three options: (1) Big Lagoon
23 could sign a compact identical to the Model Compact signed by the
24 Pala Band; (2) if Big Lagoon agreed not to conduct any class III
25 gaming, it could receive up to \$995,000 per year in licensing
26 revenues from gaming tribes that signed compacts identical to the

27

28

1 Pala Band compact²; (3) Big Lagoon could negotiate a different
2 compact with the State. See id. Presumably, a similar offer was
3 made to the other tribes. In September and October, 1999, the
4 State and most (about fifty-eight) of the tribes signed tribal-
5 State compacts, which were based on the Model Compact. Big Lagoon
6 did not accept any of the State's options at that time, and has not
7 yet signed a compact with the State.

8 On March 22, 2000, this Court issued a written order denying
9 Big Lagoon's first motion for summary judgment that the State had
10 failed to negotiate with Big Lagoon for a tribal-State compact.
11 The March 22, 2000 Order, addressing the negotiations between the
12 Tribe and the State from 1993 to 1998, held that the State had not
13 refused to negotiate with the Tribe, but that the question remained
14 whether the State negotiated in good faith. The present motion by
15 the Tribe seeks an order declaring that the State has negotiated in
16 bad faith from March 24, 2000 to the present.

17 On March 24, 2000, Big Lagoon (through its counsel) sent a
18 letter to Governor Gray Davis asking to enter into negotiations for
19 a tribal-State compact. See Fukumura Ex. A. The letter included a
20 proposed Addendum A, which the State had entered into with the
21 fifty-eight other tribes that had signed the Model Compact.
22 However, the Tribe's counsel requested certain modifications to
23 Addendum A believed by the Tribe to be immaterial. See id. Deputy

24
25 ²Pursuant to the Pala Band compact, gaming tribes could
26 license the right to operate more gaming devices. The non-gaming
27 tribes were the beneficiaries of this licensing scheme. Up to 199
28 gaming device licenses per non-gaming tribe could be licensed by
the Pala Band and by other tribes that signed compacts identical to
the Pala Band compact.

1 Attorney General Timothy Muscat responded on behalf of the State on
2 April 5, 2000, requesting certain information from the Tribe about
3 its trust lands, including all relevant documents relating to the
4 environmental impact of the proposed casino construction. See id.
5 Ex. B.

6 On April 14, 2000, the Tribe sent the State a Grant Deed
7 evidencing that the United States held the eleven-acre parcel (the
8 proposed casino site) in trust for the Tribe. See id. Ex. C. The
9 Tribe also sent the State a draft Environmental Assessment (EA)
10 regarding the proposed casino project prepared by the Tribe
11 pursuant to the National Environmental Policy Act (NEPA) and the
12 internal policies of the National Indian Gaming Commission (NIGC).
13 See id. Ex. D. The State requested further documentation regarding
14 the EA, most of which the Tribe provided shortly thereafter. See
15 id. Ex. E, G.

16 On April 27, 2000, the Tribe sent a letter to the State
17 objecting to the State's delay in signing a tribal-State compact
18 with Big Lagoon. See id. Ex. F. The letter stated that the
19 State's concerns about the environmental impacts of Big Lagoon's
20 proposed casino (apparently due to the proximity of the proposed
21 casino site to the coastline) were improper, asserting that the
22 State has no authority to impose its environmental laws on Indian
23 lands, and that the federal regulation conducted by the NIGC
24 adequately addresses the State's concerns. See id. The Tribe sent
25 a similar letter on May 3, 2000, stating that Big Lagoon had
26 cooperated in good faith with the State's requests for information
27 regarding the environmental impacts of its proposed casino,

28

1 notwithstanding the Tribe's position that the State has no
2 jurisdiction to enforce any State environmental law, rule or
3 regulation. See id. Ex. G. The letter stated that the only reason
4 the State had not signed a tribal-State compact with Big Lagoon is
5 that it has "nonspecific environmental concerns," and requested
6 that the State "explain why it believes an environmental review by
7 the State Resource Agency is a proper subject of negotiation under
8 IGRA." Id.

9 On May 4, 2000, the State presented an offer to Big Lagoon to
10 enter into the Model Compact entered into by fifty-eight other
11 tribes (with the same Addendum A entered into by the other tribes),
12 subject to the State's reservation of certain rights due to
13 environmental issues posed by the proposed casino. See id. Ex. H.
14 Citing the State's ongoing review of the draft EA provided by the
15 Tribe, the offer included a required "side letter agreement"
16 addressing the State's environmental concerns, which required
17 approval by the State prior to the construction of a casino by Big
18 Lagoon. See id. The side letter agreement proposed by the State
19 provides, in relevant part: "The Tribe shall not commence
20 construction of any Gaming facility or conduct any Class III gaming
21 activities on its reservation lands until it has completed all
22 environmental reviews, assessments, or reports, and received
23 approval for its construction by the State through its agencies."
24 Fukumura Ex. H.

25 On May 5, 2000, the Tribe sent a letter to the State refusing
26 to enter into the side letter agreement and informing the State
27 that the Tribe was willing to sign the Model Compact (including
28

1 Addendum A, without the modifications proposed by the Tribe
2 earlier). See id. Ex. I. On May 11, 2000, the State responded to
3 the May 5 counter-proposal, stating that Big Lagoon's compliance
4 with federal NEPA requirements was insufficient. See id. Ex. J.
5 The letter reiterated the offer made on May 4, that the State was
6 willing to enter into the Model Compact with a side letter
7 agreement. On May 25, 2000, the State withdrew its offer to enter
8 into the Model Compact with the side letter agreement. See id. Ex.
9 K.

10 On June 16, 2000, a NEPA Compliance Officer for the NIGC sent
11 a letter to the Tribe listing deficiencies in the draft EA and
12 requesting that the Tribe submit a revised EA. See Moorehead Ex.
13 A. On June 20, 2000, the State sent a letter to the Tribe's
14 counsel identifying environmental issues the State believed the
15 draft EA did not adequately address, many of which were not raised
16 in the letter from the NIGC. See Fukumura Ex. L. In response to
17 these letters, the Tribe decided to commission a new Environmental
18 Assessment to address the issues raised by both the NIGC and the
19 State. The new EA was delivered to the State on July 12, 2001.

20 The State did not respond to the new EA prior to the filing of
21 the instant motion by Big Lagoon, despite a stipulated extension of
22 the filing and hearing dates. In a letter dated October 3, 2001,
23 the Tribe's counsel complained about the failure of the State to
24 provide a response prior to the time for the Tribe's filing of its
25 motion for summary judgment. See id. Ex. O. The letter also
26 confirmed that Big Lagoon's last best offer is to sign the Model
27 Compact that the State entered into with fifty-eight other tribes.

28

1 See id. Big Lagoon has essentially now offered to accept the first
2 option offered by Deputy Attorney General Medeiros in his March 9,
3 1998 letter to the Tribe, which the Tribe chose not accept at the
4 time.

5 DISCUSSION

6 I. Legal Standard

7 Summary judgment is properly granted when no genuine and
8 disputed issues of material fact remain, and when, viewing the
9 evidence most favorably to the non-moving party, the movant is
10 clearly entitled to prevail as a matter of law. Fed. R. Civ. P.
11 56; Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986);
12 Eisenberg v. Ins. Co. of N. Am., 815 F.2d 1285, 1288-89 (9th Cir.
13 1987).

14 The moving party bears the burden of showing that there is no
15 material factual dispute. Therefore, the Court must regard as true
16 the opposing party's evidence, if supported by affidavits or other
17 evidentiary material. Celotex, 477 U.S. at 324; Eisenberg, 815
18 F.2d at 1289. The Court must draw all reasonable inferences in
19 favor of the party against whom summary judgment is sought.
20 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,
21 587 (1986); Intel Corp. v. Hartford Accident & Indem. Co., 952 F.2d
22 1551, 1558 (9th Cir. 1991).

23 Material facts which would preclude entry of summary judgment
24 are those which, under applicable substantive law, may affect the
25 outcome of the case. The substantive law will identify which facts
26 are material. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248
27 (1986).

1 II. State's Negotiation of Environmental and Land Use Issues

2 Big Lagoon requests that the Court enter an order declaring
3 that the State has not negotiated a tribal-State compact in good
4 faith under 25 U.S.C. § 2710(d)(7), based on the State's refusal to
5 sign a compact with the Tribe that does not require the Tribe to
6 comply with State environmental and land use laws, rules and
7 regulations. The Tribe claims that federally-recognized Indian
8 tribes such as Big Lagoon are not subject to State environmental
9 and land use regulations absent express Congressional authority.
10 Further, the Tribe contends that IGRA does not include
11 environmental and land use issues in its delineation of the
12 subjects that are proper compact negotiation issues. Therefore,
13 the Tribe argues, the State's attempt to include provisions
14 requiring compliance with inapplicable State environmental and land
15 use regulations as part of its negotiations for a compact with Big
16 Lagoon is in bad faith.

17 The State claims that even if States may not impose their
18 environmental regulations on federally-recognized Indian lands
19 generally, this does not mean that States are precluded from
20 negotiating mutually acceptable solutions to environmental problems
21 that may occur on such lands in relation to gaming. The State
22 contends that IGRA, read in conjunction with the NIGC's proposed
23 regulations, allows States to negotiate compacts that include
24 mechanisms to assure protection of the environment and public
25 health and safety. The State points to subsections of IGRA which
26 provide that compacts may include provisions relating to the
27 operation and maintenance of gaming activities and any other

28

1 subject directly related to such operation. The State argues that
 2 environmental and land use issues are directly related to the
 3 operation of gaming activities.

4 A. Tribal Sovereignty and State Authority

5 The State does not have authority to regulate Indian lands
 6 absent an express Congressional grant of jurisdiction. "State laws
 7 generally are not applicable to tribal Indians on an Indian
 8 reservation except where Congress has expressly provided that State
 9 laws shall apply." McClanahan v. State Tax Comm'n of Az., 411 U.S.
 10 164, 170-71 (1973). In Santa Rosa Band of Indians v. Kings County,
 11 the Ninth Circuit held that "states may not regulate or tax Indian
 12 use of the reservation absent Federal consent." 532 F.2d 655, 658
 13 n.2 (9th Cir. 1975).³ Therefore, the State may not impose its

14
 15 ³The State points out that the Supreme Court qualified this
 16 rule in California v. Cabazon Band of Mission Indians, stating:
 17 Our cases, however, have not established an inflexible
 18 per se rule precluding state jurisdiction over tribes and
 19 tribal members in the absence of express congressional
 20 consent. "[U]nder certain circumstances a State may
 21 validly assert authority over the activities of
 22 nonmembers on a reservation, and . . . in exceptional
 23 circumstances a State may assert jurisdiction over the
 24 on-reservation activities of tribal members."

25 480 U.S. 202, 214-15 (1987) (quoting New Mexico v. Mescalero Apache
 26 Tribe, 462 U.S. 324, 331-32 (1983)) (distinguishing general rule
 27 stated in McClanahan) (footnote omitted). However, there are no
 28 "exceptional circumstances" here that would warrant application of
 State regulations to the Tribe itself. The cases that have
 permitted States to regulate tribes in the absence of express
 Congressional authority are distinguishable. Cf. Washington v.
Confederated Tribes of Colville Indian Reservation, 447 U.S. 134
 (1980) (upholding State cigarette tax on Indian smokeshop proceeds
 from sales to non-Indians); Puyallup Tribe, Inc. v. Dep't of Game,
 433 U.S. 165 (1977) (upholding application of State fishing
 regulations to tribal members where treaty stated that Indians'
 fishing rights were secured "in common with all citizens of the
 Territory").

Public Law 280, codified at 18 U.S.C. § 1162 and 28 U.S.C.
 § 1360, is the only federal law that provides States with

1 environmental and land use regulations on the Tribe absent
2 authority from Congress.

3 B. Permissible Subject Matter for Gaming Compacts Under IGRA

4 While the the State does not argue that it can impose its laws
5 on the Tribe, it claims that it may negotiate provisions relating
6 to environmental and land use issues under IGRA. The State
7 recognizes that the NIGC may impose environmental standards on
8 gaming tribes, but it argues that this does not preclude States
9 from negotiating such standards as well.

10 The subsections of IGRA upon which the State relies,
11 § 2710(d)(3)(C)(vi) and (vii), provide that a tribal-State compact
12 may include provisions regarding, among other things,

13 (vi) standards for the operation of such activity and
14 maintenance of the gaming facility, including licensing; and
15 (vii) any other subjects that are directly related to the
16 operation of gaming activities.

17 25 U.S.C. § 2710(d)(3)(C).⁴

18 jurisdiction over Indian tribes, but it is very narrow. In
19 Cabazon, the Supreme Court confirmed that Public Law 280 does not
20 permit States jurisdiction to apply civil/regulatory laws. 480
21 U.S. at 207-11; see also Bryan v. Itasca County, 426 U.S. 373
22 (1976).

23 The State proposes that the Court should utilize the balancing
24 test discussed in Cabazon to determine whether State authority is
25 preempted by the operation of federal law. However, such a
26 balancing test is inapplicable to suits under IGRA. The Senate
27 committee report states that IGRA "is intended to expressly preempt
28 the field in the governance of gaming activities on Indian lands.
Consequently, Federal courts should not balance competing Federal,
State, and tribal interests to determine the extent to which
various gaming activities are allowed." S. Rep. No. 100-446, at 6,
1988 U.S.C.C.A.N. 3071, 3076. See also In re Indian Gaming Related
Cases (Coyote Valley Band of Pomo Indians), 147 F. Supp. 2d 1011,
1020 (N.D. Cal. 2001).

The State also argues that two proposed regulations of the
NIGC indicate that the agency interprets IGRA to allow tribes and
States to negotiate regarding environmental issues. The State

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1 This Court has previously stated its interpretation of
2 § 2710(d)(3)(C) as follows:

3 The Court reads § 2710(d)(3)(C), and specifically
4 § 2710(d)(3)(C)(vii), more broadly than Coyote Valley
5 does. The committee report of the Senate Select
6 Committee on Indian Affairs describes the subparts of
7 § 2710(d)(3)(C) as "broad areas." See S. Rep. No. 100-
8 446, at 14 (1988), reprinted in 1988 U.S.C.C.A.N. 3071,
9 3084. Consistent with this description, the Court
10 interprets "subjects that are directly related to the
11 operation of gaming activities" to include any subject
12 that is directly connected to the operation of gaming
13 facilities.

14 Not all such subjects are included within
15 § 2710(d)(3)(C)(vii), because that subpart is limited to
16 subjects that are "directly" related to the operation of
17 gaming activities. The committee report notes that
18 Congress did "not intend that compacts be used as a
19 subterfuge for imposing State jurisdiction on tribal
20 lands." *Id.* The Court concludes that it was this
21 concern that led Congress to limit the scope of
22 § 2710(d)(3)(C)(vii) to subjects that are "directly"
23 related to the operation of gaming activities. States
24 cannot insist that compacts include provisions addressing
25 subjects that are only indirectly related to the
26 operation of gaming facilities.

27 In re Indian Gaming Related Cases (Coyote Valley Band of Pomo
28 Indians), 147 F. Supp. 2d 1011, 1017-18 (N.D. Cal. 2001).

In Coyote Valley, this Court held that labor relations at
gaming facilities and closely related facilities "is a subject that

points out that proposed regulation § 580.88 provides that "when
standards are contained in Tribal-State Compacts those standards
can be used to comply with this part." By negative implication,
this proposed regulation suggests that tribes and States may
negotiate provisions relating to environmental requirements.
However, an inference drawn from a comment made by a federal agency
in its proposed regulations does not constitute strong evidence of
the meaning of a statutory provision.

The State also points to proposed regulation § 580.90, which
states that "Nothing in this part is intended to: (a) Reduce,
diminish, or otherwise alter the regulatory authority of any other
Federal, State, or tribal governmental entity; or (b) Amend or
require amendment(s) to any tribal-state gaming compact(s)." This
section does not support the State's position.

1 is 'directly related to the operation of gaming activities.'" Id.
2 at 1019 (quoting 25 U.S.C. § 2710(d)(3)(C)(vii)). Similarly,
3 environmental and land use issues are subjects that may be
4 "directly related to the operation of gaming activities" under
5 § 2710(d)(3)(C)(vii). The construction and operation of a gaming
6 facility has direct impacts on many environmental and land use
7 concerns. Environmental and land use laws can also be considered
8 "standards for the operation of [gaming] activity and maintenance
9 of the gaming facility" under § 2710(d)(3)(C)(vi).

10 Therefore, the Court finds that the State may negotiate for
11 provisions regarding environmental and land use issues as part of
12 the compacting process. However, the State may negotiate these
13 issues only to the degree to which they are "directly related" to
14 the Tribe's gaming activities or can be considered "standards" for
15 the operation and maintenance of the Tribe's gaming facility under
16 § 2710(d)(3)(C)(vi) and (vii). The State may not use the
17 compacting process as an excuse to regulate the Tribe's activities
18 or impose State laws outside the context of gaming.

19 As Representative Coelho, in discussing IGRA, remarked:

20 It is important to make clear that the compact
21 arrangement set forth in this legislation is intended
22 solely for the regulation of gaming activities. It is
23 not the intent of Congress to establish a precedent for
24 the use of compacts in other areas, such as water rights,
25 land use, environmental regulation or taxation. Nor is
26 it the intent of Congress that States use negotiations on
27 gaming compacts as a means to pressure Indian tribes to
28 cede rights in any other area.

1 134 Cong. Rec. H8155 (Sept. 26, 1988) (emphasis added).⁵

2 C. Good Faith Negotiations

3 Even though the State may negotiate for provisions regarding
4 environmental protection and land use as part of the compacting
5 process, this does not answer the question whether the State may
6 insist on compliance with all State laws and regulations through
7 the use of a side letter agreement which requires approval by the
8 State before the Tribe may begin construction of its gaming
9 facility. The question the Court must resolve is whether the
10 State's negotiating position is so unreasonable that it can be said
11 that the State has not negotiated in good faith.

12 IGRA does not expressly define "good faith," and the statute
13 and case law provide very little guidance about what is meant by
14 negotiating in good faith. In determining whether a State has
15 negotiated in good faith, courts "may take into account the public
16 interest, public safety, criminality, financial integrity, and
17 adverse economic impacts on existing gaming activities."

18 § 2710(d)(7)(B)(iii)(I). Commenting on this provision, the Senate
19 Select Committee on Indian Affairs stated,

20 _____
21 ⁵The Tribe argues that this and similar portions of IGRA's
22 legislative history indicate Congress' intent to prevent States
23 from negotiating and including provisions on subjects such as
24 environmental protection and land use as part of the compacting
25 process. However, a better reading of the legislative history is
26 that it warns against allowing States to regulate tribal activity
27 broadly under the guise of negotiating provisions on subjects that
28 directly relate to gaming activity and may be included in a tribal-
State compact under § 2710(d)(3)(C). In other words, the
legislative history does not state that issues such as
environmental protection and land use may never be included in a
tribal-State compact, but only that the State may not use the
compacting process as an excuse to regulate these areas more
generally.

1 The Committee recognizes that this may include issues of
2 a very general nature and, [of] course, trusts that
3 courts will interpret any ambiguities on these issues in
4 a manner that will be most favorable to tribal interests
5 consistent with the legal standard used by courts for
6 over 150 years in deciding cases involving Indian tribes.

7 S. Rep. No. 100-446 (1988), reprinted in 1988 U.S.C.C.A.N. 3071.

8 Neither party has proposed a standard by which the Court
9 should determine whether the State has negotiated in good faith.

10 This Court previously analyzed the "good faith" standard as
11 follows:

12 The Court looks for guidance to case law interpreting the
13 National Labor Relations Act (NLRA). Like IGRA, the NLRA
14 imposes a duty to bargain in good faith, but does not
15 expressly define "good faith." See 29 U.S.C. § 158(d).
16 The Supreme Court has held that this duty "requires more
17 than a willingness to enter upon a sterile discussion of"
18 the parties' differences. See NLRB v. American Nat'l
19 Ins. Co., 343 U.S. 395, 402 (1952). Instead, the parties
20 must "enter into discussions with an open and fair mind
21 and a sincere purpose to find a basis for agreement."
22 Seattle-First Nat'l Bank v. NLRB, 638 F.2d 1221, 1227 n.9
23 (9th Cir. 1981) (quoting NLRB v. Holmes Tuttle Broadway
24 Ford, Inc., 465 F.2d 717, 719 (9th Cir. 1972)). The
25 Court does not intend to import federal case law
26 interpreting the NLRA wholesale into its interpretation
27 of the IGRA. Obviously, the relationship of employers to
28 unions is not analogous to that of the States to tribes.
However, the Court considers the NLRA case law for
guidance in interpreting a standard undefined by the
IGRA.

Covote Valley, 147 F. Supp. 2d at 1020-21.

Here, the Court finds evidence of bad faith in the fact that,
although the Tribe has now offered to sign the Model Compact that
the State previously proposed, and that the State entered into with
at least fifty-eight other tribes, the State now refuses. The
State has conditioned its approval of a tribal-State compact with
Big Lagoon on the Tribe's consent to the side letter agreement
which requires that the Tribe receive approval from the State

1 before it is permitted to begin construction on its gaming facility
2 or conduct any Class III gaming. The State's requests were not
3 limited to addressing its specific concerns about the particular
4 environmental effects of Big Lagoon's proposed gaming operations
5 and facility. Rather, it has insisted that the Tribe comply with
6 all of the State's laws and regulations. And it has insisted upon
7 retaining blanket, unilateral authority to prevent the Tribe from
8 conducting Class III gaming or beginning construction of its gaming
9 facility. This authority could be exercised after the Compact has
10 been signed and the Tribe no longer has the protections of IGRA's
11 bargaining framework.

12 The State's attempt to distinguish imposition of its laws and
13 regulations from negotiations regarding application of those laws
14 and regulations is unsuccessful. The State has refused to move
15 from its position that the Tribe must comply with the State's
16 environmental and land use regulations in order to conduct class
17 III gaming in California. Given this bargaining position, the
18 State is not simply "negotiating additional mutually-acceptable
19 standards for construction, maintenance and operation of such
20 facilities in the Compact process." Def's Opp'n & Mot. Summ. J. at
21 3.

22 These facts are different from those in Coyote Valley. There
23 the Court concluded that the State had negotiated with Coyote
24 Valley in good faith regarding labor relations in large part
25 because the provisions were "the result of tribal-State and tribal-
26 union negotiations, not unilateral demands by the State." 147 F.
27 Supp. 2d at 1021. Here, the State's proposed side letter agreement
28

1 is a unilateral demand.

2 The Court finds that the State's continued insistence that the
3 Tribe agree to this broad side letter agreement would constitute
4 bad faith. The State may in good faith ask the Tribe to make
5 particular concessions that it did not require of other tribes, due
6 to Big Lagoon's proximity to the coastline or other environmental
7 concerns unique to Big Lagoon. The State could demonstrate the
8 good faith of its bargaining position by offering the Tribe
9 concessions in return for the Tribe's compliance with requests with
10 which the other tribes were not asked to comply. However, the
11 State may not in good faith insist upon a blanket provision in a
12 tribal-State compact with Big Lagoon which requires future
13 compliance with all State environmental and land use laws, or
14 provides the State with unilateral authority to grant or withhold
15 its approval of the gaming facility after the Compact is signed, as
16 it proposed in the side letter agreement.

17 While it appears that the State has not negotiated with the
18 Tribe in good faith thus far, a final determination of bad faith is
19 premature at this time due to the novelty of the questions at issue
20 regarding good faith bargaining under IGRA. Further, this Court's
21 March 22, 2000 Order gave the State reason to believe that it could
22 negotiate on environmental and land use issues. That Order stated:

23 [T]hese issues are part of the negotiations contemplated
24 by IGRA. In considering whether a State has negotiated
25 in good faith, courts "may take into account the public
26 interest, public safety, criminality, financial
27 integrity, and adverse economic impacts on existing
28 gaming activities." 25 U.S.C. § 2710(d)(7)(B)(iii)(I).
The State's concerns regarding the environment and legal
restrictions that might limit Big Lagoon's right to
conduct gaming activities at its proposed site are

1 consistent with the scope of negotiations contemplated by
2 IGRA.

3 Order at 14. While the Tribe is correct that this was dicta, and
4 the issue was not briefed by the parties at the time, this dicta
5 nevertheless provided the State with a reasonable basis for its
6 belief that it could negotiate environmental and land use issues
7 with the Tribe in good faith. The Court's ruling today provides
8 the State with guidance in further negotiations with the Tribe.

9 Accordingly, Big Lagoon's motion for summary judgment and for
10 an order pursuant to 25 U.S.C. § 2710(d)(7)(B)(iii) is DENIED
11 without prejudice.

12 The Court expects that the parties will move swiftly toward
13 negotiating and executing a tribal-State compact. If no agreement
14 is reached within ninety days from the date of this Order, the
15 Tribe may file a further motion for summary judgment and for an
16 order declaring that the State has negotiated in bad faith under
17 § 2710(d)(7)(B)(iii).

18 III. Definition of "Reservation" Under 25 U.S.C. § 2719(a)

19 The State argues in its cross-motion for summary judgment that
20 it cannot be compelled to execute a tribal-State compact which
21 violates § 2719(a) of IGRA, which limits the ability of tribes to
22 operate gaming facilities on lands acquired after October 17, 1988.

23 The State asserts that Big Lagoon's suit must be dismissed
24 because the Tribe is not authorized to build a casino on its
25 proposed site under IGRA. IGRA provides:

26 Except as provided in subsection (b) of this section,
27 gaming regulated by this chapter shall not be conducted
28 on lands acquired by the Secretary in trust for the
benefit of an Indian tribe after October 17, 1988,

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1 unless-
2 (1) such lands are located within or contiguous to the
3 boundaries of the reservation of the Indian tribe on
4 October 17, 1988.
5 25 U.S.C. § 2719(a). The Tribe acquired the land upon which the
6 proposed casino site is located after October 17, 1988. Therefore,
7 the casino site may be located on that land only if it is
8 "contiguous to the boundaries of the reservation of the Indian
9 tribe." The proposed casino site is contiguous to the Tribe's
10 rancheria. The State asserts that Big Lagoon's rancheria is not a
11 "reservation" as defined by federal and Indian law.
12 IGRA does not provide a definition of "reservation."
13 Therefore, the Court must determine the established meaning of the
14 term. See Community for Creative Non-Violence v. Reid, 490 U.S.
15 730, 739 (1989) (quoting NLRB v. Amalgamated Coal Co., 453 U.S. 322, 329
16 (1981)). "The starting point for our interpretation of a statute
17 is always its language." Id.
18 The State first proposes that, for purposes of IGRA, the
19 meaning of the term "reservation" must rest on the established
20 meaning of the term in California. The State then asserts that the
21 Act of April 8, 1864 designated only four reservations in
22 California, and no more than those four are permitted under the
23 1864 Act. See Mattz v. Arnett, 412 U.S. 481, 489, 493-94 (1973)
24 (describing 1864 Act and limitation to four reservations). Big
25 Lagoon Rancheria is not one of those four reservations.
26 The Tribe relies on the Tenth Circuit's recent decision in Sac
27 and Fox Nation of Missouri v. Norton, which held that the
28 established meaning of "reservation" for purposes of IGRA is land

1 set aside under federal protection for the occupation or residence
2 of tribal members. 240 F.3d 1250, 1266-67 (10th Cir. 2001). The
3 Tenth Circuit relied in part on a leading treatise on Indian law,
4 which states:

5 The term "Indian reservation" originally had meant any
6 land reserved from an Indian cession to the federal
7 government regardless of the form of tenure. . . .
8 During the 1850's, the modern meaning of Indian
9 reservation emerged, referring to land set aside under
10 federal protection for the residence of tribal Indians,
11 regardless of origin. By 1885 this meaning was firmly
12 established in law.

13 Id. at 1266 (quoting F. Cohen, Handbook of Federal Indian Law at
14 34-35 (1982 ed.)).

15 It is clear from IGRA's language that "reservation" cannot
16 mean all lands held in trust for a tribe by the federal government,
17 for IGRA distinguishes between lands held in trust and
18 reservations. See, e.g., 25 U.S.C. § 2719(a)(1)-(2), (b)(1)(B);
19 see also Sac & Fox, 240 F.3d at 1267. However, the narrow
20 definition proposed by the State, in which there are only four
21 reservations in the entire State of California, cannot be Congress'
22 intended definition of reservation. Such a limited definition of
23 the term would preclude gaming on many Indian tribal lands in
24 California, i.e., all tribal lands acquired after October 17, 1988
25 except for lands located within or contiguous to one of the four
26 reservations established by the Act of 1864. It would mean that
27 many of the California tribes that have already signed tribal-State
28 compacts are in violation of IGRA, and that newly federally-
recognized tribes could never participate in gaming.

The Court agrees with the analysis and conclusion of the Tenth

1 Circuit in Sac and Fox, and holds that the established meaning of
2 the term "reservation" for purposes of IGRA is land set aside under
3 federal protection for the occupation or residence of tribal
4 members. Big Lagoon's rancheria, which is contiguous to the
5 proposed casino site, meets this definition of "reservation." The
6 State's cross-motion on this basis is DENIED.

7 IV. Violation of the Coastal Zone Management Act (CZMA)

8 The State asserts that it cannot be forced to enter into a
9 tribal-State compact with Big Lagoon which violates a federal law
10 (the CZMA). The State bases this assertion on a provision of IGRA
11 which permits the Secretary of Interior to disapprove a tribal-
12 State compact if it violates any other non-gaming-related federal
13 law. See 25 U.S.C. § 2710(d)(8)(B)(ii). The State reasons that if
14 "the Secretary can disapprove a Compact because it authorizes a
15 violation of federal law, the State can legitimately request that
16 the Compact comply with that law in the first instance." Def.'s
17 Reply to Pl.'s Opp'n to Def.'s Mot. Summ. J. at 3.

18 IGRA makes clear that it is the Secretary of the Interior, not
19 individual States, that may disapprove a compact because it
20 violates a federal law. The State has no authority to refuse to
21 enter into a tribal-State compact because the Tribe has not yet
22 complied with a federal law with which the State believes the Tribe
23 will have to comply.

24 The Tribe is not currently in violation of the CZMA, because
25 it is not yet applicable to the Tribe. The Tribe's EA contemplates
26 that the Tribe will apply for a permit from the federal government
27 relating to the construction of its gaming facility, which will

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United States District Court
For the Northern District of California

1 require compliance with the CZMA (or proof that the CZMA is
2 inapplicable). However, this has not yet occurred, and thus
3 compliance with the CZMA cannot yet be determined. Given that the
4 Tribe has not yet applied for the federal permit which requires
5 compliance with the CZMA, the question whether the Tribe violates
6 the CZMA is not yet ripe for review. Further, the State has
7 presented no evidence that any proposed compact (e.g., the Model
8 Compact) between the Tribe and the State currently violates a
9 federal law, or that the Tribe intends, by way of a tribal-State
10 compact, to violate any applicable federal law.⁶

11 The State's argument fails because the State's presumption,
12 that if "the Secretary can disapprove a Compact because it
13 authorizes a violation of federal law, the State can legitimately
14 request that the Compact comply with that law in the first
15 instance," is erroneous. The State has failed to present evidence
16 that any proposed compact between the Tribe and the State currently
17 violates a federal law. The State's cross-motion on this basis is
18 DENIED.

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22 ⁶The State relies on the following statement in the Tribe's EA
23 for the proposition that the Tribe has refused to comply with the
24 CZMA: "It is the position of the Tribal Council that the CZMA is
25 not applicable since Congress expressly excluded lands held in
26 trust by the Federal Government in its definition of the term
27 'coastal zone'" Verrips Ex. D at 29-30. This preliminary
28 statement of the Tribe's position on the applicability of a federal
law, which will ultimately be determined by federal, not State,
authorities, does not demonstrate the Tribe's refusal to comply
with the CZMA. Nor does it mean that the proposed compact between
the Tribe and the State violates a federal law.

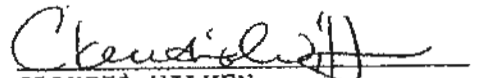
CONCLUSION

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For the foregoing reasons, the Court DENIES without prejudice Big Lagoon's motion for summary judgment and for an order compelling the State to conclude a compact with Big Lagoon within sixty days pursuant to 25 U.S.C. § 2710(d)(7)(B)(iii) (Case No. C 99-04995 CW, Docket No. 300). The Court DENIES the State's cross-motion for summary judgment (Docket No. 307). If the parties have not yet reached an agreement ninety days from the date of this Order, the Tribe may file another motion for summary judgment seeking an order pursuant to 25 U.S.C. § 2710(d)(7)(B)(iii). If no motion is filed, a case management conference will be held on July 26, 2002 at 1:30 p.m. Case management statements shall be filed one week before.

IT IS SO ORDERED.

Dated: MAR 18 2002


CLAUDIA WILKEN
United States District Judge

Copies mailed to counsel
as noted on the following page

SCC

United States District Court
for the
Northern District of California

* * CERTIFICATE OF SERVICE * *

Case Number:4:99-cv-04995

Big Lagoon Rancheria

vs

California, State of

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on _____, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Andrew B. Serwin, Esq.
Baker & McKenzie
101 West Broadway 12th Flr
Wells Fargo Plaza
San Diego, CA 92101

✓ Koji F. Fukumura, Esq.
Baker & McKenzie
101 West Broadway 12th Flr
Wells Fargo Plaza
San Diego, CA 92101

Thomas W. Ferrell, Esq.
Baker & McKenzie
101 West Broadway 12th Flr
Wells Fargo Plaza
San Diego, CA 92101

✓ Allison S.Y. Chang, Esq.
Baker & McKenzie
Two Embarcadero Center
Ste 2400
San Francisco, CA 94111

Peter J. Engstrom, Esq.
Baker & McKenzie

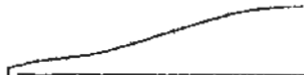
ER-658

Two Embarcadero Center
Ste 2400
San Francisco, CA 94111

✓ Timothy M. Muscat, Esq.
CA State Attorney General Office
1300 I Street, Ste. 125
P.O. Box 944255
Sacramento, CA 94244-2550

✓ Peter H. Kaufman, Esq.
State Attorney General's Office
110 West A Street, Suite 1100
P.O. Box 8266
San Diego, CA 92101

Richard W. Wieking, Clerk

BY: 
Deputy Clerk

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BIG LAGOON RANCHERIA, a Federally
Recognized Indian Tribe,

Plaintiff,

v.

STATE OF CALIFORNIA,

Defendant.

No. 09-01471 CW

ORDER DENYING
DEFENDANT'S
MOTION TO STAY
OR, IN THE
ALTERNATIVE, TO
CONTINUE
DISPOSITIVE
MOTION DATES
(Docket No. 50)

Pursuant to the Indian Gaming Regulatory Act (IGRA), Plaintiff Big Lagoon Rancheria seeks an order finding that Defendant State of California has failed to negotiate in good faith toward the formation of a tribal-State compact for class III gaming. The State moves to stay all proceedings in this action, except for discovery, pending a determination by the Bureau of Indian Affairs (BIA) as to whether Big Lagoon was under federal jurisdiction in 1934. The State contends that one of its affirmative defenses to Big Lagoon's action turns on the BIA's decision. In the alternative, the State asks the Court to continue the dispositive motion filing and hearing date by at least six months. Big Lagoon opposes the motion. Having considered the papers submitted by the

1 parties, the Court DENIES the State's Motion to Stay.

2 BACKGROUND

3 Because the Court's Order denying the State's motion for
4 judgment on the pleadings provides details on the parties' dispute,
5 they will not be repeated in full here. In sum, Big Lagoon and the
6 State have engaged in negotiations over forming a tribal-State
7 compact regarding gaming on Big Lagoon's lands. The parties have
8 not yet executed a compact. In April, 2009, Big Lagoon filed the
9 present lawsuit, claiming that the State has not negotiated in good
10 faith and seeking an order compelling the State to do so.

11 The State contends that the United States Supreme Court's
12 February, 2009 decision in Carcieri v. Salazar, 129 S. Ct. 1058
13 (2009), is relevant to this case. In Carcieri, the Court concluded
14 that the Indian Relocation Act (IRA) authorizes the Secretary of
15 the Interior to acquire land in trust for a tribe only if the tribe
16 was "under the federal jurisdiction of the United States when the
17 IRA was enacted in 1934." 129 S. Ct. at 1068. Currently, the BIA
18 is conducting a review, pursuant to Carcieri, to determine whether
19 Big Lagoon was such a tribe.¹

20 The State seeks a stay pending this determination, asserting
21 that the BIA's decision is central to its affirmative defense that:

22 Big Lagoon is not entitled to injunctive relief

23
24 ¹ The BIA initiated its review based on an October, 2009
25 decision by its Pacific Regional Director to acquire 5.01 acres of
26 land in trust for Big Lagoon. Governor Schwarzenegger and the
27 California Coastal Commission appealed the decision to the Interior
Board of Indian Appeals, asserting that the Regional Director
failed to apply Carcieri. Thereafter, the matter was remanded to
the Regional Director to determine Big Lagoon's status.

1 compelling Governor Arnold Schwarzenegger to negotiate a
2 Compact authorizing class III gaming on land taken in
3 trust for the Rancheria subsequent to October 17, 1988,
4 because Big Lagoon is not eligible to be a beneficiary of
5 a trust conveyance pursuant to 25 U.S.C. § 465 and, thus,
6 was never entitled to a beneficial interest in that land.

7 Answer at 5. Because Big Lagoon may not have been a proper
8 beneficiary, the State maintains that it was not in the public
9 interest to negotiate with Big Lagoon and, therefore, it did not
10 lack good faith. A court may consider the public interest when
11 determining whether a state negotiated in good faith. See 25
12 U.S.C. § 2710(d)(7)(B)(iii)(I). The State further argues that,
13 because it acted in good faith, it should not be compelled to
14 conclude a tribal-State compact with Big Lagoon.

15 In December, 2009, the State served subpoenas duces tecum on
16 the BIA, requesting documents that would support the above-
17 mentioned affirmative defense. Because the BIA had not yet
18 answered the subpoenas by the fact discovery cut-off date set by
19 the Court's Case Management Order, the State moved to extend the
20 fact discovery deadline. Magistrate Judge Joseph C. Spero granted
21 the State's motion and continued the deadline to May 31, 2010.
22 (Docket No. 60.)

23 Pursuant to the parties' stipulation, this Court continued the
24 hearing on case-dispositive motions to August 12, 2010 at 2:00 p.m.
25 Big Lagoon's dispositive motion is currently due June 17, 2010.
26 The State's opposition and cross-motion, if any, is due July 1,
27 2010.

28 DISCUSSION

It is well-established that "the power to stay proceedings is

1 incidental to the power inherent in every court to control the
 2 disposition of the cases on its docket with economy of time, effort
 3 for itself, for counsel, and for litigants." Landis v. North Am.
 4 Co., 299 U.S. 248, 254 (1936); see also Ethicon, Inc. v. Quigg, 849
 5 F.2d 1422, 1426-27 (Fed. Cir. 1988) ("Courts have inherent power to
 6 manage their dockets and stay proceedings.") As the Ninth Circuit
 7 instructs,

8 A trial court may, with propriety, find it is efficient
 9 for its own docket and the fairest course for the
 10 parties to enter a stay of an action before it, pending
 11 resolution of independent proceedings which bear upon
 12 the case. This rule applies whether the separate
 13 proceedings are judicial, administrative, or arbitral in
 14 character, and does not require that the issues in such
 15 proceedings are necessarily controlling of the action
 16 before the court.

17 Leyva v. Certified Grocers of Cal., Ltd., 593 F.2d 857, 863-64 (9th
 18 Cir. 1979).

19 In determining whether to grant a stay, courts generally
 20 consider the following competing interests: "the possible damage
 21 which may result from the granting of a stay, the hardship or
 22 inequity which a party may suffer in being required to go forward,
 23 and the orderly course of justice measured in terms of the
 24 simplifying or complicating of issues, proof, and questions of law
 25 which could be expected to result from a stay." Lockyer v. Mirant
 26 Corp., 398 F.3d 1098, 1110 (9th Cir. 2005) (citation omitted).

27 The State's primary argument is that this action must be
 28 stayed because its outcome could be impacted by the BIA's decision
 as to whether Big Lagoon was a tribe under federal jurisdiction in
 1934. As the State notes, the public interest is one of many
 factors that IGRA allows a court to consider in determining whether

1 a state has negotiated in good faith. See 25 U.S.C.
2 § 2710(d)(7)(B)(iii)(I). Thus, the BIA's decision, which arguably
3 implicates the public interest, does not control the outcome of
4 this case. A stay pending the BIA's decision, therefore, is not
5 required.

6 With regard to the State's alternative motion to continue the
7 dispositive motion filing and hearing dates by six months, the
8 Court does not find good cause to do so. The State asserts that
9 the BIA's failure to respond to the subpoenas constitutes good
10 cause. The State further maintains that "Carciери is a new
11 decision" and it is asserting a "a new affirmative defense" for
12 which it did not conduct prior discovery. Pl.'s Mem. of P & A in
13 Support of Mot. at 8. However, Carciери was decided February 24,
14 2009, more than a month before Big Lagoon filed its action. The
15 State did not serve the subpoenas on the BIA until December, 2009.
16 Based on these facts, it does not appear that the State was
17 reasonably diligent in seeking discovery from the BIA; this
18 undermines the State's assertion that good cause supports its
19 request. See Johnson v. Mammoth Recreations, Inc., 975 F.2d 604,
20 609-10 (9th Cir. 1992). Moreover, the BIA may respond to the
21 subpoenas in advance of July 1, the deadline for the State's
22 opposition and cross-motion.

23 CONCLUSION

24 For the foregoing reasons, the Court DENIES the State's Motion
25 to Stay Proceedings and its alternative request to continue the
26 dispositive motion filing and hearing dates for at least six
27 months. (Docket No. 50.) As noted above, Big Lagoon's dispositive

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1 motion is currently due June 17, 2010; the State's opposition and
2 any cross-motion, contained in a single brief, are due July 1,
3 2010; Big Lagoon's reply and cross-opposition, contained in a
4 single brief, are due July 15, 2010; and the State's reply on its
5 cross-motion is due July 22, 2010. A hearing on the dispositive
6 motions and a case management conference are scheduled for August
7 12, 2010 at 2:00 p.m.

8 IT IS SO ORDERED.

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10 Dated: April 16, 2010



11 CLAUDIA WILKEN
12 United States District Judge
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United States District Court
For the Northern District of California

1 EDMUND G. BROWN JR.
 Attorney General of California
 2 SARA J. DRAKE
 Supervising Deputy Attorney General
 3 PETER H. KAUFMAN
 Deputy Attorney General
 4 State Bar No. 52038
 110 West A Street, Suite 1100
 5 San Diego, CA 92101
 P.O. Box 85266
 6 San Diego, CA 92186-5266
 Telephone: (619) 645-2020
 7 Fax: (619) 645-2012
 E-mail: peter.kaufman@doj.ca.gov
 8 *Attorneys for Defendant*
State of California
 9

10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 12
 13

<p>14 BIG LAGOON RANCHERIA, a Federally Recognized Indian Tribe, 15 16 Plaintiff, 17 v. 18 STATE OF CALIFORNIA, 19 20 Defendant.</p>	<p>CV 09-1471 CW DEFENDANT STATE OF CALIFORNIA'S ANSWER TO COMPLAINT PURSUANT TO THE INDIAN GAMING REGULATORY ACT Action Filed: April 3, 2009</p>
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21
 22 Defendant State of California (State), hereby answers the Complaint Pursuant to the Indian
 23 Gaming Regulatory Act (Complaint) and admits, denies and affirmatively alleges as follows:

24 **INTRODUCTION**

25 Answering paragraph 1 of the Complaint, the State admits that the Big Lagoon Rancheria
 26 (Big Lagoon or Rancheria) is currently on a list of federally recognized tribes, that Governor
 27 Gray Davis and Governor Arnold Schwarzenegger have negotiated with the Rancheria with the
 28 intent to execute a tribal-state class III gaming compact (Compact) that would authorize Big

1 Lagoon to operate class III gaming on the Rancheria's Indian lands, that the State executed a
2 Compact with Big Lagoon for a Barstow location that was not ratified by the California
3 Legislature, that Governor Arnold Schwarzenegger subsequently resumed negotiations with the
4 Rancheria for a Compact that would authorize class III gaming on Big Lagoon's Indian lands, and
5 that the Rancheria terminated those negotiations without having achieved a new Compact when it
6 declined to respond to Governor Schwarzenegger's last offer. With the exception of those
7 admissions, the State hereby denies each and every allegation set forth in paragraph 1 of the
8 Complaint.

9 1. Answering paragraph 2 of the Complaint, the State avers that the remedies set forth in
10 the Indian Gaming Regulatory Act, 18 U.S.C. §§ 1166-1168, 25 U.S.C. §§ 2701 - 2721 (IGRA),
11 should a federal court determine that a state has negotiated a compact in bad faith, speak for
12 themselves. Otherwise answering that paragraph, the State hereby denies each and every
13 remaining allegation set forth in paragraph 2 of the Complaint.

14 JURISDICTION AND VENUE

15 2. The State admits the allegations set forth in paragraph 3 of the Complaint.

16 3. The State admits the allegations set forth in paragraph 4 of the Complaint.

17 PARTIES

18 4. Answering paragraph 5 of the Complaint, the State admits that Big Lagoon is
19 currently on a list of federally recognized tribes, that the United States considers the Rancheria to
20 be the trust beneficiary of certain lands the federal government owns in Humboldt County,
21 California, adjacent to the waters of the State's Big Lagoon Ecological Preserve. With the
22 exception of those admissions, the State hereby denies, each and every allegation set forth in
23 paragraph 5 of the Complaint.

24 5. Answering paragraph 6 of the Complaint, the State admits that Arnold
25 Schwarzenegger is now and has been the Governor of California since a date in November 2003.
26 With the exception of that admission, the State hereby denies each and every allegation in
27 paragraph 6 of the Complaint.

28

1 **FACTUAL BACKGROUND**

2 6. The State denies each and every allegation set forth in paragraph 7 of the Complaint.

3 7. Answering paragraph 8 of the Complaint, the State admits that the Rancheria filed
4 *Big Lagoon Rancheria v. Governor Pete Wilson, State of California*, CIV-S-97-0651 WBS GGH,
5 that this lawsuit was dismissed on the grounds that it was barred by the State's Eleventh
6 Amendment immunity from suit in federal court, and that prior to the effective date of
7 Proposition 29 and California Government Code section 12012.5(e), Proposition 5 and California
8 Government Code section 98005 were in effect. Further answering paragraph 8, the State avers
9 that Proposition 5 and California Government Code section 98005 speak for themselves.
10 Otherwise answering that paragraph, the State denies each and every remaining allegation of
11 paragraph 8 of the Complaint including footnote 1 and the heading "1993-1999: The Tribe's
12 Initial Attempts to Commence Compact Negotiations with the State."

13 8. Answering paragraph 9 of the Complaint, the State avers that the compact between
14 the Pala Band of Mission Indians and the State speaks for itself. Otherwise answering that
15 paragraph, the State hereby denies each and every remaining allegation set forth in paragraph 9 of
16 the Complaint including the heading "1999-2001: Commencement of IGRA Litigation Before
17 this Court and Initial Proposals for Tribal-State Compact."

18 9. Answering paragraph 10 of the Complaint, the State avers that any letter from Deputy
19 Attorney General Manuel Medeiros to Big Lagoon speaks for itself. Otherwise answering that
20 paragraph, the State hereby denies each and every remaining allegation set forth in paragraph 10
21 of the Complaint.

22 10. Answering paragraph 11 of the Complaint, the State admits that the Rancheria filed
23 *Big Lagoon Rancheria v. State of California*, Case No. C-99-4995-CW and avers that the
24 complaint in that case speaks for itself. Otherwise answering that paragraph, the State hereby
25 denies each and every remaining allegation set forth in paragraph 11 of the Complaint.

26 11. Answering paragraphs 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27,
27 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 and 44 of the Complaint, the State
28 avers that: (a) the pleadings, orders, and transcripts in this Court's files regarding *Big Lagoon*

1 *Rancheria v. State of California*, Case No. C-99-4995-CW speak for themselves; (b) a settlement
2 agreement between the Rancheria and the State speaks for itself; (c) the Compact executed
3 between Big Lagoon and the State speaks for itself; (d) any statements made by Governor Arnold
4 Schwarzenegger and by the United States Department of the Interior speak for themselves; (e) the
5 record of the California Legislature's deliberations regarding ratification of the executed Compact
6 between Big Lagoon and the State speaks for itself; and (f) the writings between the State and Big
7 Lagoon during Compact negotiations in which each sets forth its respective Compact proposals
8 and positions speak for themselves. Otherwise answering those paragraphs, the State hereby
9 denies each and every remaining allegation set forth in paragraphs 12, 13, 14, 15, 16, 17, 18, 19,
10 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 and 44
11 of the Complaint including each heading between those paragraphs.

12 12. Answering paragraphs 45, 46, 47, 48, 49, 50, 51 and 52 of the Complaint, the State
13 avers that Governor Arnold Schwarzenegger has negotiated for a Compact with Big Lagoon
14 subsequent to the expiration of the Compact previously executed between the Rancheria and the
15 State and that Governor Schwarzenegger's negotiator was Andrea Lynn Hoch, the Governor's
16 Legal Affairs Secretary. Otherwise answering those paragraphs, the State hereby denies each and
17 every remaining allegation set forth in paragraphs 45, 46, 47, 48, 49, 50, 51 and 52 of the
18 Complaint including the heading "2007-2009- The Latest Round of Compact Negotiations."

19 **CLAIM FOR RELIEF FOR BAD FAITH NEGOTIATION OF TRIBAL-STATE**
20 **GAMING COMPACT (IGRA 25 U.S.C. § 2710(D)(7))**

21 13. In answer to paragraph 53 of the Complaint, the State hereby incorporates by
22 reference as if fully set forth herein its averments, admissions and denials to paragraphs 1 through
23 52 of the Complaint.

24 14. Answering paragraphs 54, 55, 56, 57, 58 and 59 of the Complaint, the State admits
25 that it negotiated for a Compact with Big Lagoon and executed a Compact with the Rancheria
26 that was not ratified by the California Legislature, that it has negotiated with Big Lagoon for a
27 new Compact after the previously negotiated Compact was not ratified and expired, and that the
28 Rancheria terminated those negotiations when it failed to respond to the State's last offer. Further

1 answering those paragraphs, the State avers that the provisions of IGRA speak for themselves.
2 Otherwise answering those paragraphs, the State hereby denies each and every remaining
3 allegation set forth in paragraphs 54, 55, 56, 57, 58 and 59 of the Complaint.

4 **AFFIRMATIVE DEFENSES**

5 1. The Complaint is barred by the Eleventh Amendment to the United States
6 Constitution in that pursuant to the provisions of California Government Code section 12012.5(e),
7 Governor Arnold Schwarzenegger has not waived the State's immunity to this suit.

8 2. The Complaint has failed to join a required and indispensable party, Governor Arnold
9 Schwarzenegger, whom article IV, section 19(f) of the California Constitution and California
10 Government Code section 12012.5(d) designate as the only officer of the State authorized to
11 negotiate a Compact with a federally recognized tribe with Indian lands in California.

12 3. Big Lagoon is not entitled to injunctive relief compelling Governor Arnold
13 Schwarzenegger to negotiate a Compact authorizing class III gaming on land taken in trust for the
14 Rancheria subsequent to October 17, 1988, because Big Lagoon is not eligible to be a beneficiary
15 of a trust conveyance pursuant to 25 U.S.C. § 465 and, thus, was never entitled to a beneficial
16 interest in that land.

17 4. Big Lagoon is not entitled to injunctive relief and is estopped from asserting that
18 Governor Arnold Schwarzenegger is compelled to negotiate a Compact authorizing class III
19 gaming on land taken in trust for the Rancheria subsequent to October 17, 1988, because Big
20 Lagoon has unclean hands in that the Rancheria misrepresented the use to which that land would
21 be put and, thus, fraudulently induced the United States to accept the conveyance of that land in
22 trust for Big Lagoon.

23 5. Big Lagoon is not entitled to injunctive relief compelling Governor Arnold
24 Schwarzenegger to negotiate a Compact authorizing class III gaming on land taken in trust for the
25 Rancheria subsequent to October 17, 1988, because that land was not taken in trust for the
26 purpose of class III gaming.

27 6. The Complaint fails to state a claim upon which relief can be granted.
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WHEREFORE

The State respectfully requests that:

1. The Complaint be dismissed with prejudice;
2. Plaintiff Big Lagoon be awarded no relief;
3. Defendant State be awarded its reasonable costs of suit; and
4. Defendant State be awarded such other and further relief as the Court deems just and

proper.

Dated: April 23, 2009

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of California
SARA J. DRAKE
Supervising Deputy Attorney General

/s/Peter H. Kaufman
PETER H. KAUFMAN
Deputy Attorney General
Attorneys for Defendant
STATE OF CALIFORNIA

SA2009309375
80353210.doc

CERTIFICATE OF SERVICE

Case Name: **Big Lagoon Rancheria v. State of California** Case No. **CV 09-1471 JCS**
Court: **United States District Court Northern District**

I hereby certify that on April 23, 2009, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

DEFENDANT STATE OF CALIFORNIA'S ANSWER TO COMPLAINT

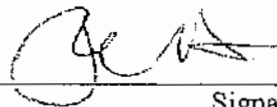
I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Peter J. Engstrom
Peter.j.engstrom@bakernet.com

Irene V. Gutierrez
Irene.v.gutierrez@bakernet.com

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 23, 2009, at San Diego, California.

Roberta L. Matson
Declarant



Signature

80353005.doc

1 Peter J. Engstrom, State Bar No. 121529
2 peter.j.engstrom@bakernet.com
3 Irene V. Gutierrez, State Bar No. 252927
4 irene.v.gutierrez@bakernet.com
5 **BAKER & MCKENZIE LLP**
6 Two Embarcadero Center, 11th Floor
7 San Francisco, CA 94111-3802
8 Telephone: +1 415 576 3000
9 Facsimile: +1 415 576 3099

10 Attorneys for Plaintiff
11 **BIG LAGOON RANCHERIA**

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

JCS

CV 09 1471

14 BIG LAGOON RANCHERIA, a Federally
15 Recognized Indian Tribe,
16 Plaintiff,
17 v.
18 STATE OF CALIFORNIA,
19 Defendant.

Case No. _____
**COMPLAINT PURSUANT TO THE
INDIAN GAMING REGULATORY
ACT, 25 U.S.C. §§ 2701 et seq.**

Baker & McKenzie LLP
Two Embarcadero Center
11th Floor
San Francisco, CA 94111
+1 415 576 3000

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Case No. _____
COMPLAINT

1 INTRODUCTION

2 1. For the past fifteen years, plaintiff Big Lagoon Rancheria, a federally recognized
3 Indian tribe ("Big Lagoon" or the "Tribe"), has been attempting to negotiate with the State of
4 California to obtain a tribal-state compact permitting the Tribe to conduct class III gaming on its
5 ancestral reservation lands, pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 et seq.
6 ("IGRA"). However, after fifteen years of attempted negotiations, including nearly a decade of
7 litigation aimed at compelling the State to negotiate a compact in good faith, and two years during
8 which a compromise tribal-state compact languished before the State Legislature without being
9 ratified, and subsequent efforts by the State to move the Tribe's proposed gaming operations off of
10 its trust lands, the State and the Tribe have yet to finalize a compact.

11 2. Owing to the State's failure to engage in good faith negotiations, as evidenced by,
12 among other things, the State's continued insistence on compact terms for Big Lagoon that are
13 unprecedented and far more onerous than anything it has demanded of other tribes, and during which
14 time the State has granted demonstrably more generous compacts and amended compact terms to
15 other more politically powerful tribes, the Tribe brings this action pursuant to the dispute resolution
16 procedures provided by IGRA. The Tribe seeks an order determining that the State has not
17 negotiated in good faith within the meaning of IGRA and compelling the State to conclude a
18 compact with the Tribe within the 60-day period prescribed by IGRA, failing which, pursuant to the
19 provisions of IGRA, the parties shall submit their last best offers to a court-appointed mediator, who
20 will then elect and implement the compact proposal which best comports with IGRA and other
21 applicable federal law.

22 JURISDICTION AND VENUE

23 3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and
24 25 U.S.C. § 2710(d)(7)(A).

25 4. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).
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PARTIES

5. Plaintiff Big Lagoon Rancheria is and at all material times has been a federally recognized Indian tribe with trust lands located near Trinidad, in Humboldt County, California. The Tribe's ancestral reservation lands consist of a 20-acre parcel of land situated near the Pacific coast, at the edge of the Big Lagoon.

6. The defendant is the State of California (the "State"). The Honorable Arnold Schwarzenegger is now and has been the Governor of the State since November 2003. Pursuant to California Government Code § 98005, the State has consented to being sued in the courts of the United States under the provisions of IGRA.

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FACTUAL BACKGROUND

1993-1999: The Tribe's Initial Attempts to Commence Compact Negotiations with the State

7. The Tribe sent the State its first request to begin compact negotiations on September 22, 1993. Over the next few years, the Tribe sent three additional requests to the State to commence compact negotiations. The State, however, failed to make any good faith response to the Tribe, and either sent non-responsive letters or flatly refused to conduct negotiations with the Tribe.

8. Accordingly, on April 18, 1997, pursuant to IGRA, the Tribe filed a lawsuit against the State in the United States District Court for the Eastern District of California, entitled Big Lagoon Rancheria v. Governor Pete Wilson, State of California, CIV-S-97-0651 WBS GGH. The purpose of the lawsuit was to compel the State to negotiate a compact in good faith, or to order the State into the dispute resolution procedures set forth in IGRA. The lawsuit was dismissed on the basis of the State's immunity under the Eleventh Amendment and the United States Supreme Court's ruling in Seminole Tribe of Florida v. Florida et al., 517 U.S. 44 (1996), prior to a change in the applicable law.¹

¹ California Government Code § 98005 (enacted by California voters in Proposition 5 on November 3, 1998), permitted the State to be sued in federal court pursuant to IGRA.

1 **1999-2001: Commencement of IGRA Litigation Before this Court and Initial Proposals for**
2 **Tribal-State Compact**

3 9. On March 6, 1998, the State signed a tribal-state gaming compact with the Pala Band
4 of Mission Indians, intended to be a model for compacts with other tribes (the "Model Compact").

5 10. On March 9, 1998, Deputy Attorney General Manuel Medeiros sent Big Lagoon
6 Tribal Chairperson Virgil Moorehead a letter (a) informing him that the State had entered into the
7 Model Compact with the Pala Band and (b) offering Big Lagoon three options: (1) the Tribe could
8 sign a compact identical to the Model Compact signed by the Pala Band; or (2) if the Tribe agreed
9 not to conduct any class III gaming, it could receive up to \$995,000 per year in licensing revenues
10 from gaming tribes that signed compacts identical to the Pala Band compact; or (3) the Tribe could
11 negotiate a different compact with the State. The Tribe did not accept any of the State's options at
12 that time. In September and October 1999, the State and most (about fifty-eight) of the recognized
13 tribes in California signed tribal-state compacts which were based on the Model Compact.

14 11. On November 18, 1999, the Tribe filed a lawsuit in the Northern District of
15 California, captioned Big Lagoon Rancheria v. State of California, Case No. C-99-4995-CW,
16 seeking to compel the State to conclude a tribal-state compact with the Tribe.

17 12. During the course of this litigation, the Tribe made various additional attempts to
18 commence compact negotiations with the State. On March 24, 2000, the Tribe transmitted its fifth
19 request to enter into a tribal-state compact to the Honorable Gray Davis, the then-Governor of
20 California. The Attorney General's Office responded on behalf of the State, requesting additional
21 information to assist in its consideration of the Tribe's request. Among the requested documents
22 were all relevant documents relating to any environmental impacts posed by the proposed casino
23 construction. While the Tribe refused to concede that environmental issues were a proper subject of
24 tribal-state compact negotiations under IGRA, in order to demonstrate its good faith and expedite
25 negotiations the Tribe agreed to forward a draft copy of its Environmental Assessment for the
26 Proposed Gaming Facility Construction ("Draft EA"), and did so.

27 13. On May 4, 2000, the State transmitted a compact offer to the Tribe. The State's offer
28 was made "subject to a reservation of certain rights due to the environmental issues posed by

1 constructing a gambling facility on an ecosystem located on the California Coast." The State
2 demanded that the Tribe sign "a side letter agreement addressing the State's issues." The side letter
3 agreement provided: "The Tribe shall not commence construction of any Gaming Facility or
4 conduct any class III gaming activities on its reservation lands until it has completed all
5 environmental reviews, assessments, or reports, and received approval for its construction by the
6 State through its agencies. The Tribe agrees to provide all environmental reviews, assessments, or
7 reports and any other supporting documents requested by the State." (Emphasis added.) In its
8 proposed side letter agreement, the State made its ability to veto unilaterally the Tribe's
9 commencement of construction a condition precedent to the signing of any tribal-state compact.

10 14. On May 5, 2000, the Tribe informed the State that it was unwilling to enter into the
11 side letter agreement, which would have reserved to the State unprecedented jurisdiction over the
12 Tribe's sovereign lands, and notified the State that it was willing to sign the Model Compact,
13 including an addendum. The State insisted on the Tribe agreeing to the side letter agreement, and on
14 May 25, 2000 withdrew its offer to enter into the Model Compact and letter agreement.

15 15. Over the course of the following year, the Tribe made various efforts to accommodate
16 the State's concerns about the potential environmental impacts of the proposed casino construction,
17 and provided the State with the additional environmental reports and related documents as requested.
18 While the Tribe was not required to address the State's environmental concerns under controlling
19 federal statutory, regulatory, or case law, the Tribe decided to commission a new environmental
20 assessment to address the issues raised by the State. The Tribe did so because it was and is
21 committed to protecting the environment and also to demonstrate that it was willing to negotiate
22 with the State as a "good sovereign neighbor."

23 **2001-2003: Fruitless Compact Negotiations with the State**

24 16. On July 12, 2001, the Tribe delivered the new environmental assessment to the State.
25 Following the submission of the new EA, the Tribe contacted the State on numerous occasions to
26 obtain its comments. When the State refused to provide any such comment, the Tribe on October 5,
27 2001, sought summary judgment under the provisions of IGRA, to compel the State to engage in
28 good faith compact negotiations. The Court denied the Tribe's motion for summary judgment, as

1 well as a cross-motion by the State, reasoning that “[w]hile it appears that the State has not
2 negotiated with the Tribe in good faith thus far, a final determination of bad faith is premature at this
3 time due to the novelty of the questions at issue regarding good faith bargaining under IGRA.”

4 17. Following the denial of the summary judgment motions, the Tribe and the State had
5 further communications and discussions aimed at addressing the State’s asserted environmental
6 concerns, during which the State continued to insist on numerous forms of regulation over the
7 Tribe’s sovereign lands. The Tribe attempted to explain why the environmental assessment and
8 planning it had already done adequately addressed the State’s concerns. However, the State did not
9 offer any reciprocal concessions to the Tribe in exchange for the regulatory concessions it demanded
10 in these “negotiations”.

11 18. During the course of these discussions, the State also placed on the table for the first
12 time the prospect of an off-reservation gaming arrangement, wherein the Tribe would agree not to
13 build a casino for gaming on its existing tribal lands, and instead subject those sovereign lands to
14 various environmental, land use, and other development conditions and regulatory oversight, while
15 purchasing additional land to deed to the State, in exchange for which the State would provide a
16 compact for land elsewhere, away from the ancestral lagoon site, for construction of a casino subject
17 to numerous State and other approvals.

18 19. Throughout the negotiations that took place over the following year and a half, the
19 State continued to insist on heightened regulatory standards – standards it had not imposed on other
20 tribes – and to strongly encourage an off-site casino location, away from the Tribe’s ancestral lands.

21 20. Owing to the lack of good faith progress in these negotiations, the Tribe filed an
22 updated motion for summary judgment on April 2, 2003. The basis for the motion was, in short, that
23 notwithstanding the Court’s previous determinations that “the State has not negotiated with the Tribe
24 in good faith thus far”, and that “[t]he State could demonstrate the good faith of its bargaining
25 position by offering the tribe concessions in return for the Tribe’s compliance with requests with
26 which the other tribes were not asked to comply”, the State had failed to follow the Court’s
27 guidance, including by refusing to offer concessions in return for the Tribe’s requested compliance
28 with environmental and land use restrictions with which other tribes had not been asked to comply.

1 Indeed, the State had outright refused to negotiate with the Tribe with respect to a compact for
2 gaming on the Tribe's historical trust lands, instead insisting that it would offer a compact only if the
3 Tribe would agree to build a casino on land elsewhere, away from its trust lands, subject to
4 numerous State and other approvals.

5 21. At the May 2003 hearing on the Tribe's summary judgment motion, the Court stated
6 during oral argument, "I think the length of time is just unworkable. I don't think we can go on any
7 longer. For the time we've gone on, thus far, we're going to have to do something, whether that is
8 [an] immediate declaration of bad faith moving into the statute procedures or moving into statutory
9 procedures with more directions such as meeting every day from 8:00 to 5:00 with someone with
10 authority for 60 days ... I'm certainly not going to just say let's go back for some indefinite period
11 of time and talk an unlimited period of time more."

12 22. After some colloquy in open court on the procedures under IGRA for appointing a
13 mediator, and the further time the State might need to decide if it could or would agree on a
14 compact, the Court said to the State's counsel, "How about if we have 20 days to come up with
15 something you're going to submit to the Governor. And if you come up with something in 30 days
16 that you're going to submit. And that's assuming you respond to everything he gives you within one
17 business day. Then we'll start the 60 days running at the end of the 30 days. If you have given
18 something to the Governor your committee recommend[s] at the end of 30 days, we'll wait for 30
19 days for a response from him before we start the 60 days. How does that sound?" When the State's
20 counsel then asked, "And the 60 days would -- is that going to be a determination by the Court that
21 the State has been in bad faith?" the Court replied, "Yes."

22 23. Thereafter, the Court issued an Order Staying Decision on Plaintiff's Motion for
23 Summary Judgment, filed June 11, 2003. In that Order, the Court wrote

24 In its March 18, 2002 order denying Plaintiff's second motion
25 for summary judgment, the Court stated: "The Court expects that the
26 parties will move swiftly toward negotiating and executing a tribal-
27 State compact." This did not occur. It has been nearly ten years since
28 compact negotiations between the Tribe and the State began. At this
juncture, the Court is inclined to grant Plaintiff's motion. However,
and although it may again not transpire, it appears that the parties may
be able to execute a final [] compact in the near future.

1 Accordingly, the Court stayed its decision on the Tribe's motion for summary judgment upon the
2 condition, among other things, that the parties finalize a draft compact on or before June 30, 2003,
3 and that the State make its final decision regarding approval or disapproval no later than 30 days
4 after the parties finalized the draft compact.

5 24. Subsequent negotiations between the parties did not result in a final draft compact,
6 and the Court issued an Order Denying Plaintiff's Motion for Summary Judgment on August 4,
7 2003. Although the Court explained in the Order that "[b]ased on the state of negotiations
8 represented in the motion papers, the Court was inclined to grant the motion," the Court denied the
9 motion because "[e]vents subsequent to the original briefing and hearing have demonstrated that
10 both parties were still actively negotiating the State's alternative proposal and have not finished
11 doing so. . . . The State is not demonstrating bad faith if it continues to negotiate towards its
12 alternative proposal." Although the Court denied the motion, it said "[t]he Tribe may file a further
13 motion for summary judgment no sooner than ninety days from the date of this order."

14 **2003-2004: Further Negotiations, and Negotiating Delays Caused by the Transition to**
15 **Governor Schwarzenegger's Administration**

16 25. Promptly following the Court's issuance of the foregoing Order, the Tribe wrote to
17 the State, on August 8, 2003, to re-initiate further negotiations for a tribal-state compact for gaming
18 by the Tribe. In that letter, the Tribe suggested (1) that the parties simply sign the Model Compact,
19 as the State had done with at least 58 other Indian tribes, or (2) that the parties resume negotiations
20 toward a compact for gaming on the Tribe's existing tribal lands, taking into account the State's
21 stated environmental and land use concerns, with the State identifying both what concessions it
22 would want in that regard and what concessions it would offer the Tribe in return, and that the
23 parties re-think the State's alternative proposal for off-site gaming.

24 26. The State responded on August 15, 2003, by, among other things, rejecting the
25 request that it execute the Model Compact, and insisting that relocating the Tribe's proposed casino
26 to an alternative site remained the most promising avenue for negotiations. What the State's
27 response did not do was specify either what concessions it wanted from the Tribe with respect to a
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1 compact for gaming on its tribal trust lands or, conversely, what concessions the State would be
2 willing to negotiate in exchange for the Tribe's concessions.

3 27. Shortly thereafter, on or about August 21, 2003, the United States Department of the
4 Interior, Bureau of Indian Affairs formally weighed in on the State's off-site proposal. Upon review
5 of the State's proposed alternative arrangement, the Department of the Interior concluded that the
6 State's "proposed agreement exceeds what Congress intended for inclusion as part of gaming
7 compacts under the Indian Gaming Regulatory Act," and that "the proposal is contrary to Federal
8 Indian policy and the Secretary's fiduciary responsibility to protect Federal Indian lands."

9 28. On August 27, 2003, the Tribe wrote to the State about the Department of the
10 Interior's conclusions. The Tribe suggested that it was not reasonable for the parties to devote the
11 Tribe's or the State's (or the Court's) time and resources to pursuing the State's proposed off-site
12 arrangement. The Tribe thus requested, again, that the State agree to enter into the Model Compact
13 for the Tribe's existing trust lands as envisioned by IGRA, without any side agreements calling for
14 exchanges of land and money, off-site gaming, etc., as conditions precedent to a compact. The Tribe
15 also sought to arrange a face-to-face meeting between Tribal and State representatives, to talk about
16 the Tribe's request for a compact for gaming on its existing tribal lands, and to hear what the State's
17 specific environmental concerns were with respect to the existing tribal site and what concessions it
18 would want from the Tribe to address those concerns, as well as what reciprocal concessions the
19 State would be willing to offer in return.

20 29. On September 30, 2003, the Tribe met with the State at the offices of the California
21 Gambling Control Commission in Sacramento. At that meeting, the State began by raising the
22 possibility as a further alternative of yet another new site, which the State did not own, which the
23 State had not contacted the owners of, and which the State had not even analyzed as the property had
24 only been suggested to it a couple of days earlier by the Save the Redwoods League. The State
25 articulated some of its environmental concerns as to the Tribe's existing tribal lands site, but did not
26 say what reciprocal concessions it would offer the Tribe.

27 30. Following the September 2003 meeting, the Tribe corresponded with the State on
28 various occasions, to try to arrange additional meetings to discuss compact provisions, and to elicit

1 what concessions the State would be willing to offer in exchange for the Tribe making concessions
2 on environmental mitigation issues. While the State acknowledged these communications, it did not
3 describe any specific compact concessions that the State would be willing to offer in exchange for
4 the development constraints to be placed on the Tribe. The State also declined participation in
5 additional negotiating sessions, on the grounds that impending changes in the gubernatorial
6 administration would likely result in changes to the negotiating team.

7 31. On November 17, 2003, Arnold Schwarzenegger was inaugurated as Governor of the
8 State of California. Governor Schwarzenegger had been elected on October 7, 2003, in a special
9 election, to replace Governor Gray Davis.

10 32. On November 17, 2003, the Tribe sent additional correspondence to the State,
11 expressing its frustration that after months of delay, numerous letters, and meetings, the State
12 remained unwilling to specify for the Tribe particular compact provisions and the reciprocal
13 concessions it would be willing to offer the Tribe. In its letter, the Tribe sent to the State a proposed
14 compact, which followed the form of the Model Compact, and expressed its willingness to sign a
15 compact in this form. The Tribe requested that the State either sign the enclosed form of compact, or
16 promptly provide its own proposed compact.

17 33. The State responded on November 26, 2003, stating that the new administration
18 needed time "to get itself informed as to the relevant issues and choices, select a negotiating team,
19 and then to continue as expeditiously as possible with the negotiation process."

20 34. Throughout December 2003, the Tribe continued to try to identify contacts within the
21 State who would be willing to negotiate with it. Some communications to that end were had
22 between counsel. The Tribe also called and wrote directly to the Legal Affairs Secretary of the
23 Office of the Governor. In part due to those efforts a further meeting was scheduled between the
24 Tribe and the State Attorney General's office.

25 35. At that meeting, on January 6, 2004, which was not attended by anyone from the
26 Governor's office, the Attorney General's office made clear that it did not have authority to
27 negotiate a compact absent direction from the Governor as the State's chief executive, that the
28 Attorney General's office did not know who the Governor's appointed compact negotiator would be

1 (although they expected to have a name by the end of the week), that the Attorney General's office
2 did not know what a compact acceptable to the Governor would look like (although they said it
3 would almost certainly not be the Model Compact), and that the Attorney General's office had no
4 opinion on the proposed form of compact that the Tribe had submitted to the State on November 17.

5 **2004-2005: Subsequent Negotiations and the Barstow Compact**

6 36. On January 7, 2004, Governor Schwarzenegger named as his lead negotiator for tribal
7 gaming compacts attorney Daniel Kolkey, and the Tribe and the State recommenced compact
8 negotiations. At the State's insistence, these negotiations focused on a new proposal from the
9 Governor to build an off-site casino, located in Barstow, California, hundreds of miles south of the
10 Tribe's ancestral lands, in partnership with another Indian tribe. During these negotiations, there
11 was little or no discussion of concluding a compact for gaming on the Tribe's ancestral lands.

12 37. On August 17, 2005, after many months of negotiations, including with the other
13 Indian tribe the State wanted Big Lagoon to partner with, the Tribe and the State entered into a
14 Settlement Agreement, pursuant to which the two parties agreed to execute a tribal-state compact
15 permitting class III gaming by the Tribe. Foremost among the consideration was that the Tribe
16 agreed not to develop its ancestral reservation lands at Big Lagoon with a proposed casino, in
17 exchange for a tribal-state compact permitting off-site gaming in Barstow and the Governor's
18 backing of the project. The agreement provided for joint development of the Barstow casino with
19 the Los Coyotes Band of Cahuilla and Cupeno Indians ("Los Coyotes"). The Barstow property
20 would have had to be purchased by the Tribe, and then conveyed in trust to the Secretary of the
21 Interior. The City of Barstow had already indicated its support for the project.

22 38. The Barstow Compact would have allowed the two Tribes to operate up to 2,250
23 class III gaming devices on the Barstow casino site. As part of the Barstow Compact, the Tribe
24 agreed to revenue sharing with the State, which would be scaled according to annual net winnings,
25 and would begin at 16% of the Tribe's annual net winnings. The Tribe also agreed to contribute to
26 the Revenue Sharing Trust Fund, to share its earnings with non-gaming tribes. The Tribe also
27 agreed to provisions mitigating off-site reservation environmental impacts in Barstow, and various
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1 concessions to organized labor, conditions that did not apply to the 58 tribes that had previously
2 entered into the Model Compact under Gray Davis' administration.

3 39. The Settlement Agreement and Barstow Compact provided that if certain conditions
4 were not met, such as the Secretary of the Interior not approving the Agreement or Compact, or the
5 Secretary declining to accept the designated Barstow property site into trust for the Tribe, or the
6 Compact not being ratified by the California Legislature by a specified date in 2007, that the parties'
7 obligations under the Agreement shall terminate and the Compact shall become null and void and
8 new compact negotiations and if necessary litigation pursuant to IGRA would follow.

9 **2006-2007: Legislative Consideration of the Barstow Compact**

10 40. Governor Schwarzenegger announced the signing of the Barstow Compact on
11 September 9, 2005, too late for consideration during the 2005 legislative session in Sacramento. In
12 the announcement, he hailed the benefits of the Compact, which included moving the Tribe's
13 gaming project away from the Big Lagoon coastal site, resolving the longstanding litigation,
14 consolidating two tribes' proposed gaming operations into one, bringing economic investment and
15 business and jobs to the challenged economy of Barstow, and generating revenues for the State.

16 41. The proposed legislation for the ratification of the Barstow Compact was introduced
17 during the 2006 legislative session. However, the Compact was not ratified before the 2006
18 legislative session ended. The Compact never made it out of legislative committee, owing to
19 opposition from politically powerful, already-gaming Southern California tribes who were opposed
20 to the potential competition of a new Indian casino in Southern California, as well as opposed to the
21 organized labor precedent the Compact would set. The committees who held hearings on the
22 Barstow Compact included legislators in whose districts the well-heeled Southern California tribes
23 and their casinos/hotels were located. The Legislature refused to ratify the Compact negotiated by
24 Governor Schwarzenegger.

25 42. In the 2007 legislative session, again, the Barstow Compact never made it out of
26 legislative committee, owing to the continued opposition of the politically influential Southern
27 California gaming tribes. While the Barstow Compact languished in Sacramento, the five wealthiest
28 tribes who opposed that Compact negotiated and had ratified by the Legislature compact

1 amendments that would grant them additional gaming devices -- from 2,000 devices to up to 7,500
2 devices, for example -- as well as the right to build second, and in one case a third, class III gaming
3 casinos.

4 43. With the expiration of the 2007 legislative session, and the Legislature's refusal,
5 again, to ratify the Compact negotiated by the Governor, the Barstow Compact expired on
6 September 17, 2007. The two years of delay suffered by the Tribe, and lost opportunity, and
7 considerable burden, both in pursuing ratification in Sacramento and embarking on the fee-to-trust
8 process in Washington, D.C. for the Barstow site, were for naught.

9 44. As envisaged by the terms of their Settlement Agreement, the Tribe and the State
10 commenced new compact negotiations, pursuant to the Tribe's written request dated September 18,
11 2007. The parties also filed a stipulation dismissing without prejudice the previous lawsuit, Case
12 No. C-99-4995-CW, on November 9, 2007. The Order dismissing the action was filed on November
13 13, 2007.

14 **2007-2009 - The Latest Round of Compact Negotiations**

15 45. Following the expiration of the Barstow Compact, on account of the State
16 Legislature's refusal to ratify the Compact, the Tribe requested the commencement of a new round
17 of compact negotiations, in accordance with the provisions of the Settlement Agreement. Governor
18 Schwarzenegger's lead tribal compact negotiator was by then his Legal Affairs Secretary, Andrea
19 Lynn Hoch.

20 46. At the outset of these further compact negotiations, and notwithstanding the Tribe's
21 express desire to negotiate a compact for gaming on its trust lands contiguous to the Big Lagoon and
22 to hear what proposed gaming compact provisions the Governor might have in mind for that site, the
23 State renewed its proposal to investigate alternative off-reservation sites, as distinct from the Tribe's
24 existing trust lands. On January 31, 2008, the State presented the Tribe with its proposal for
25 alternative casino sites. The State sought to prioritize pursuit of these off-reservation sites which,
26 while located in Humboldt County, would nonetheless have required the Tribe to go through
27 additional time-consuming and extensive bureaucratic steps, federal and local, to enable
28 development on those sites, and would have added an estimated three to five years before

1 development on the sites could commence. The State's first priority site would have required the
2 Tribe to facilitate the acquisition of a new parcel of off-reservation property, from an unknown
3 owner no less. The State's second priority would have required employee and patron parking and
4 other amenities to be located off-site, and relocation of the Tribe's existing tribal housing on the
5 reservation. The State's third priority would dictate the location of the casino project on-site in such
6 a way as to require relocation of existing tribal housing. Under the State's proposal, each of these
7 prioritized sites would have to be pursued in sequence, along with numerous federal, state, county,
8 local, and third-party approvals. And in each case, the closer the Tribe's desired casino project came
9 to being located on the Tribe's trust lands, the smaller the State insisted the project be, in terms of
10 both gaming devices (down from 500 to 250 to 175) and hotel rooms (from 100 to 50 to 50).

11 47. Following a further negotiating session on February 25, 2008, in which the Tribe
12 reiterated that it was unwilling to suffer the added delay, cost and uncertainty of off-reservation sites,
13 by letter dated March 21, 2008 the Tribe repeated its concerns about the proposed limitations placed
14 by the State on the number of gaming devices it could operate, and the cap on the number rooms in
15 the planned casino hotel. The Tribe expressed its belief that such restrictions would not allow it to
16 remain competitive with other similarly situated casinos, and proposed that the State allow a casino
17 with 350 gaming devices and a 120-room hotel, with some design restrictions.

18 48. The State replied with another proposal on May 2, 2008, emphasizing its desire to
19 explore using a site other than the Tribe's existing rancheria. That failing, the State expressed its
20 willingness to consider permitting a casino on the Tribe's rancheria site, with authorization to
21 operate only up to 99 gaming devices, and the State insisted on a limited 50-room hotel located on a
22 separate parcel of land held in trust by the Tribe. This State proposal also contained revenue sharing
23 requirements, with a minimum of 10% of the Tribe's annual net winnings as a required contribution
24 to the State, as well as a long list of development conditions.

25 49. As negotiations continued, the Tribe made numerous efforts to accommodate the
26 State's objectives: (1) it accepted various non-economic compact terms that paralleled the terms of
27 compacts recently concluded between the State and other tribes, (2) it attempted to address the
28 State's concerns about the potential environmental impacts of the casino development, and engaged

1 another architect and an environmental engineer to evaluate and modify the construction plans for
2 the casino, to develop agreeable mitigation measures, and (3) it expressed a willingness to lower the
3 number of slot machines it had requested for the casino, to 300, below which the financial viability
4 of the project was threatened.

5 50. Moreover, the Tribe made clear that it did not want the geographic "exclusivity"
6 provision offered by the State, as it believed that such provision was a meaningless concession,
7 given the lack of non-tribal gaming competitors in proximity to the proposed casino site. Not
8 desiring or needing such exclusivity, the Tribe also questioned the State's proposed revenue sharing
9 provisions, since approximately 40 other tribes in the State operate up to 350 class III gaming
10 casinos without any such conditions. The Tribe regarded the disparate treatment the State proposed
11 with regard to revenue sharing requirements as detrimental to its ability to operate a profitable
12 enterprise, because given the relatively small size of the proposed casino development, pledging
13 10% of its gross income to the State would hinder the Tribe's ability to achieve a profitable economy
14 of scale, particularly with regard to labor, equipment costs, and facility development and
15 maintenance, though the Tribe was open to compromise at some lower number.

16 51. On October 6, 2008, the Tribe made a further, final offer to the State, for terms that it
17 would be willing to accept in a compact. The Tribe requested: (1) the same gaming rights as the
18 tribes that had signed the 1999 Model Compact; (2) the ability to operate up to 350 class III gaming
19 devices, with the same future licensing terms as the Tribes that had signed the Model Compact;
20 (3) an agreement that the Big Lagoon rancheria site is the proper location for the proposed casino,
21 with a hotel of up to 100 rooms; and (4) various height restrictions, property line setbacks, etc. The
22 Tribe stated that if the parties did not conclude an agreement by November 7, 2008, it would have no
23 choice but to resume litigation, in order to remedy the impasse.

24 52. The State rejected the Tribe's offer. The parties did not conclude a compact by the
25 stated time, and have not done so since.
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1 CLAIM FOR RELIEF FOR BAD FAITH NEGOTIATION OF

2 TRIBAL-STATE GAMING COMPACT

3 (IGRA 25 U.S.C. § 2710(d)(7))

4 53. Plaintiff Big Lagoon Rancheria incorporates paragraphs 1 through 52 above in this
5 cause of action by this reference.

6 54. As described above, the Big Lagoon Tribe has been in discussions with the State for
7 the past nearly fifteen years toward the formation of a tribal-state compact to govern class III gaming
8 activities on its reservation lands under IGRA.

9 55. Yet over the years, including the past 18 months, the State has insisted on imposing
10 compact provisions that other tribes operating gaming facilities in the State have not been subjected
11 to. The State has insisted upon environmental mitigation regulations, above and beyond those
12 imposed on any tribe operating a casino in California. The State has insisted upon various revenue
13 sharing provisions, which it has not applied to the majority of other tribes conducting gaming in the
14 State, and which it has not extracted from any tribe to which it had not granted exclusivity in
15 exchange. The State at various times has also proposed relocating the Tribe's casino to an off-
16 reservation site, notwithstanding that it has no authority to require such relocation.

17 56. The Tribe has made numerous attempts to accommodate the State's concerns about
18 potential environmental impacts, to the extreme point of agreeing to a State-proposed compact
19 permitting class III gaming at an off-reservation site in Barstow. But after two full legislative
20 sessions, the State Legislature failed and refused to ratify the Barstow Compact, as a result of which
21 it expired.

22 57. Following the second year's failure of the Legislature to ratify the Barstow Compact,
23 the Tribe and State renewed compact negotiations. This last round of compact negotiations has
24 failed to yield a tribal-state compact. The State has continued to attempt to drive the Tribe away
25 from its ancestral trust lands, to off-reservation sites plagued with added delay, expense and
26 uncertainty. In the process, the State has sought to punish the Tribe by offering it more onerous and
27 less generous compact terms for gaming on its existing trust lands as compared to other off-
28 reservation sites. The State's more recent offers to the Tribe would allow fewer gaming devices and

1 impose greater restrictions than its previous offers. And the State is insisting that the Tribe accept a
2 territorial exclusivity provision as the quid pro quo for the State's revenue sharing demands, even
3 though the Tribe is not interested in and does not want such exclusivity. In sum, the State is not, and
4 has not been, negotiating in good faith within the meaning of IGRA.

5 58. IGRA provides a cause of action with respect to a tribal-state compact where the State
6 has failed "to conduct such negotiations in good faith." 25 U.S.C. § 2710(d)(7)(A)(i). An action
7 under IGRA may be initiated 180 days after the Tribe asked the State to enter into negotiations. Id.,
8 § 2710(d)(7)(B)(i). The Tribe and the State agreed to a 120-day negotiating period according to the
9 terms of their Settlement Agreement. Either way, more than the requisite time has elapsed since the
10 Tribe requested the recommencement of compact negotiations on September 18, 2007.

11 59. Well more than a decade after its first request to begin compact negotiations, the
12 Tribe today is in no better position than where it began, and remains without a compact from the
13 State authorizing class III gaming. Over the same period of time, the State has signed compacts with
14 dozens of other tribes, permitting class III gaming, without the regulatory restrictions it seeks to
15 impose upon the Big Lagoon Tribe. Despite years of attempted negotiations by the Tribe, and
16 despite the Tribe's willingness to work with the State to accommodate many of its concerns, the
17 State has refused to make any legally material concessions in exchange for those offered by the
18 Tribe.

19 **WHEREFORE**, plaintiff Big Lagoon Rancheria demands judgment against defendant State
20 of California as follows:

21 a. An order finding that the State has not negotiated in good faith, within the
22 meaning of IGRA, with the Tribe toward the formation of a tribal-state compact for class III gaming
23 on its lands;

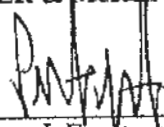
24 b. An order mandating that the State and Tribe conclude a compact within the
25 60-day period prescribed by 25 U.S.C. § 2710(d)(7), failing which the parties shall submit their best
26 and final compact proposals to a court-appointed mediator, who will then elect and implement the
27 proposal which best comports with the provisions of IGRA and other applicable federal law, and as
28 otherwise contemplated by IGRA; and

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c. For such other and further relief as the Court deems equitable, just and proper.

Dated: April 3, 2009

Peter J. Engstrom
Irene V. Gutierrez
BAKER & MCKENZIE LLP

By: 

Peter J. Engstrom
Attorneys for Plaintiff
BIG LAGOON RANCHERIA

ADRMOP,APPEAL,CLOSED,E-Filing,PRVADR,REFDIS,RELATE

**U.S. District Court
California Northern District (Oakland)
CIVIL DOCKET FOR CASE #: 4:09-cv-01471-CW**

Big Lagoon Rancheria v. State of California
Assigned to: Hon. Claudia Wilken
Referred to: Magistrate Judge Joseph C. Spero
Relate Case Case: 4:99-cv-04995-CW
Case in other court: Ninth Circuit Court of Appeals, 10-17803
Ninth Circuit Court of Appeals, 10-17878
Cause: 28:1331 Fed. Question

Date Filed: 04/03/2009
Date Terminated: 02/01/2012
Jury Demand: None
Nature of Suit: 890 Other Statutory
Actions
Jurisdiction: Federal Question

Plaintiff

Big Lagoon Rancheria
a Federally Recognized Indian Tribe

represented by **Irene V. Gutierrez**
Baker & McKenzie LLP
Two Embarcadero Center
11th Floor
San Francisco, CA 94111
415 576 3000
Fax: 415 576 3099
Email:
irene.gutierrez@bakermckenzie.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Peter J. Engstrom
Baker & McKenzie
Two Embarcadero Center
11th Floor
San Francisco, CA 94111-3909
415/576-3000
Fax: 415-576-3099
Email: peter.j.engstrom@bakernet.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Bruce H. Jackson
Baker & McKenzie
Two Embarcadero Center
11th Floor
San Francisco, CA 94111-3909
415-576-3000
Fax: 415-576-3099
Email:

bruce.jackson@bakermckenzie.com
 ATTORNEY TO BE NOTICED

V.

Defendant

State of California

represented by **Randall Anthony Pinal**
 Office of the Attorney General
 110 W A Street, Suite 1100
 San Diego, CA 92101
 (619) 645-3075
 Fax: (619) 645-2012
 Email: randy.pinal@doj.ca.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Peter Hart Kaufman
 State Attorney General's Office
 110 West A Street, Suite 1100
 P.O. Box 8266
 San Diego, CA 92101
 (619) 645-2020
 Fax: (619) 645-2012
 Email: peter.kaufman@doj.ca.gov
TERMINATED: 11/12/2009
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
04/03/2009	<u>1</u>	COMPLAINT Pursuant to the Indian Gaming Regulatory Act against State of California (Filing fee \$ 350.00, receipt number 34611030700). Filed by Big Lagoon Rancheria. (gba, COURT STAFF) (Filed on 4/3/2009) (gba, COURT STAFF). (Additional attachment(s) added on 4/6/2009: # 1 Civil Cover Sheet) (gba, COURT STAFF). (Entered: 04/03/2009)
04/03/2009	<u>2</u>	Certificate of Interested Entities or Persons by Big Lagoon Rancheria (gba, COURT STAFF) (Filed on 4/3/2009) (gba, COURT STAFF). (Entered: 04/03/2009)
04/03/2009	<u>3</u>	ADR SCHEDULING ORDER: Case Management Statement due by 7/24/2009. Case Management Conference set for 7/31/2009 01:30 PM. (gba, COURT STAFF) (Filed on 4/3/2009) (Entered: 04/03/2009)
04/03/2009	<u>4</u>	Summons Issued as to State of California. (gba, COURT STAFF) (Filed on 4/3/2009) (Entered: 04/03/2009)
04/03/2009		CASE DESIGNATED for Electronic Filing. (gba, COURT STAFF) (Filed on 4/3/2009) (Entered: 04/03/2009)
04/16/2009	<u>5</u>	ORDER RELATING CASE. Case reassigned to Judge Hon. Claudia Wilken for all further proceedings. Judge Magistrate Judge Joseph C. Spero no longer

		assigned to the case. Case Management Conference set for 8/4/2009 02:00 PM.. Signed by Judge Claudia Wilken on 4/16/09. (cp, COURT STAFF) (Filed on 4/16/2009) (Entered: 04/17/2009)
04/20/2009	<u>6</u>	SUMMONS Returned Executed by Big Lagoon Rancheria. State of California served on 4/3/2009, answer due 4/23/2009. (Engstrom, Peter) (Filed on 4/20/2009) (Entered: 04/20/2009)
04/20/2009	<u>7</u>	CERTIFICATE OF SERVICE by Big Lagoon Rancheria re <u>5</u> Order Relating Case, Create Case Relationship, Set Hearings, Case Assigned/Reassigned,,,, and Judge Wilken's Standing Orders (Engstrom, Peter) (Filed on 4/20/2009) (Entered: 04/20/2009)
04/23/2009	<u>8</u>	ANSWER to Complaint Pursuant to the Indian Gaming Regulatory Act by State of California. (Kaufman, Peter) (Filed on 4/23/2009) (Entered: 04/23/2009)
05/12/2009	<u>9</u>	MOTION for Judgment on the Pleadings filed by State of California. Motion Hearing set for 6/18/2009 02:00 PM in Courtroom 2, 4th Floor, Oakland. (Kaufman, Peter) (Filed on 5/12/2009) (Entered: 05/12/2009)
05/12/2009	<u>10</u>	Request for Judicial Notice re <u>9</u> MOTION for Judgment on the Pleadings filed by State of California. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit C-2, # <u>5</u> Exhibit D, # <u>6</u> Exhibit E, # <u>7</u> Exhibit F) (Related document(s) <u>9</u>) (Kaufman, Peter) (Filed on 5/12/2009) (Entered: 05/12/2009)
05/22/2009	<u>11</u>	STIPULATION Continuing Hearing Date From June 18, 2009 to June 25, 2009 re <u>9</u> MOTION for Judgment on the Pleadings - by Big Lagoon Rancheria. (Attachments: # <u>1</u> Proposed Order)(Engstrom, Peter) (Filed on 5/22/2009) Modified on 5/27/2009 (cp, COURT STAFF). (Entered: 05/22/2009)
05/28/2009	<u>12</u>	Memorandum in Opposition re <u>9</u> MOTION for Judgment on the Pleadings filed by Big Lagoon Rancheria. (Gutierrez, Irene) (Filed on 5/28/2009) (Entered: 05/28/2009)
05/28/2009	<u>13</u>	Request for Judicial Notice re <u>12</u> Memorandum in Opposition to Defendant's Motion for Judgment on the Pleadings, filed by Big Lagoon Rancheria. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10, # <u>11</u> Exhibit 11)(Related document(s) <u>12</u>) (Gutierrez, Irene) (Filed on 5/28/2009) (Entered: 05/28/2009)
05/28/2009	<u>14</u>	Proposed Order re <u>9</u> MOTION for Judgment on the Pleadings, Denying Defendant's Motion for Judgment on the Pleadings, by Big Lagoon Rancheria. (Gutierrez, Irene) (Filed on 5/28/2009) (Entered: 05/28/2009)
05/29/2009	<u>15</u>	ORDER granting re <u>11</u> Stipulation Continuing Hearing Date on Defendant's Motion for Judgment on the Pleadings, filed by State of California, Big Lagoon Rancheria Motion Hearing set for 6/25/2009 02:00 PM in Courtroom 2, 4th Floor, Oakland.. Signed by Judge Claudia Wilken on 5/29/09. (cc, COURT STAFF) (Filed on 5/29/2009) (Entered: 05/29/2009)

06/04/2009	<u>16</u>	Reply to Opposition re <u>9</u> MOTION for Judgment on the Pleadings filed by State of California. (Kaufman, Peter) (Filed on 6/4/2009) (Entered: 06/04/2009)
06/04/2009	<u>17</u>	Proposed Order re <u>9</u> MOTION for Judgment on the Pleadings by State of California. (Kaufman, Peter) (Filed on 6/4/2009) (Entered: 06/04/2009)
06/25/2009	<u>18</u>	CLERKS NOTICE RE CHANGE IN COURTROOM (scc, COURT STAFF) (Filed on 6/25/2009) (Entered: 06/25/2009)
06/25/2009	<u>19</u>	Minute Entry: Motion Hearing held on 6/25/2009 before Claudia Wilken (Date Filed: 6/25/2009) re <u>9</u> MOTION for Judgment on the Pleadings. (Court Reporter Diane Skillman.) (scc, COURT STAFF) (Date Filed: 6/25/2009) (Entered: 06/25/2009)
06/26/2009	<u>20</u>	Further Briefing Requested by Court's Order of June 25, 2009 filed by State of California. (Attachments: # <u>1</u> Exhibit A, Part 1, # <u>2</u> Exhibit A, Part 2) (Kaufman, Peter) (Filed on 6/26/2009) Modified on 6/29/2009 (cp, COURT STAFF). (Entered: 06/26/2009)
06/29/2009	<u>21</u>	ORDER by Judge Claudia Wilken denying <u>9</u> Motion for Judgment on the Pleadings (scc, COURT STAFF) (Filed on 6/29/2009) (Entered: 06/29/2009)
07/09/2009	<u>22</u>	STIPULATION Continuing Case Management Conference by State of California. (Attachments: # <u>1</u> Proposed Order Continuing Hearing Date for Case Management Conference)(Kaufman, Peter) (Filed on 7/9/2009) (Entered: 07/09/2009)
07/14/2009	<u>23</u>	ORDER re <u>22</u> GRANTING STIPULATION Continuing Case Management Conference. Initial Case Management Conference set for 8/11/2009 02:00 PM.. Signed by Judge CLAUDIA WILKEN on 7/14/09. (scc, COURT STAFF) (Filed on 7/14/2009) (Entered: 07/14/2009)
07/22/2009	<u>24</u>	ADR Clerks Notice re: Non-Compliance with Court Order. (tjs, COURT STAFF) (Filed on 7/22/2009) (Entered: 07/22/2009)
07/24/2009	<u>25</u>	NOTICE of need for ADR Phone Conference (ADR L.R. 3-5 d) (Engstrom, Peter) (Filed on 7/24/2009) (Entered: 07/24/2009)
07/28/2009	<u>26</u>	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options filed by Plaintiff Big Lagoon (Engstrom, Peter) (Filed on 7/28/2009) (Entered: 07/28/2009)
07/28/2009	<u>27</u>	ADR Clerks Notice Setting ADR Phone Conference on 8/5/09 at 11:30 a.m. Please take note that plaintiff's counsel initiates the call to all parties. (sgd, COURT STAFF) (Filed on 7/28/2009) (Entered: 07/28/2009)
08/04/2009	<u>28</u>	JOINT CASE MANAGEMENT STATEMENT filed by Big Lagoon Rancheria, State of California. (Gutierrez, Irene) (Filed on 8/4/2009) Modified on 8/5/2009 (cp, COURT STAFF). (Entered: 08/04/2009)
08/04/2009	<u>29</u>	REPORT of Rule 26(f) Planning Meeting Joint Report re Discovery Plan and Other Matters. (Gutierrez, Irene) (Filed on 8/4/2009) (Entered: 08/04/2009)
08/05/2009		ADR Remark: ADR Phone Conference held by RWS on 8/5/09. A further

		ADR Phone Conference has been scheduled for 12/15/09 at 11:30 a.m. (sgd, COURT STAFF) (Filed on 8/5/2009) (Entered: 08/05/2009)
08/19/2009	<u>30</u>	MINUTE ORDER AND CASE MANAGEMENT ORDER: Further Case Management Conference set for 6/3/2010 02:00 PM. Motion Hearing set for 6/3/2010 02:00 PM.. Signed by Judge Claudia Wilken on 8/19/09. (scc, COURT STAFF) (Filed on 8/19/2009) (Entered: 08/19/2009)
11/12/2009	<u>31</u>	NOTICE of Change In Counsel by Randall Anthony Pinal (Attachments: # <u>1</u> Certificate of Service)(Pinal, Randall) (Filed on 11/12/2009) (Entered: 11/12/2009)
11/16/2009		ADR Remark: The ADR Phone Conference scheduled for 12/15/09 has been changed to 12/16/09 at 10:00 a.m. (sgd, COURT STAFF) (Filed on 11/16/2009) (Entered: 11/16/2009)
12/08/2009	<u>32</u>	STIPULATION AND [PROPOSED] ORDER CONTINUING FACT DISCOVERY COMPLETION DEADLINE by Big Lagoon Rancheria, State of California. (Engstrom, Peter) (Filed on 12/8/2009) Modified on 12/9/2009 (cp, COURT STAFF). (Entered: 12/08/2009)
12/16/2009	<u>33</u>	MOTION for Protective Order <i>Against Plaintiff's Request for Production of Documents and Any Further Discovery Related to Plaintiff's Claim for Bad Faith Negotiation of a Tribal-State Gaming Compact</i> filed by State of California. Motion Hearing set for 2/18/2010 02:00 PM in Courtroom 2, 4th Floor, Oakland. (Attachments: # <u>1</u> Memorandum of Points and Authorities, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Exhibit C, # <u>5</u> Certificate of Service)(Pinal, Randall) (Filed on 12/16/2009) (Entered: 12/16/2009)
12/16/2009		ADR Remark: ADR Phone Conference held by RWS on 12/16/09. (sgd, COURT STAFF) (Filed on 12/16/2009) (Entered: 12/16/2009)
12/21/2009	<u>34</u>	ORDER REFERRING CASE to Magistrate Judge for Discovery purposes. Signed by Judge Claudia Wilken on 12/21/09. (scc, COURT STAFF) (Filed on 12/21/2009) (Entered: 12/21/2009)
12/21/2009		CASE REFERRED to Magistrate Judge Magistrate Judge Joseph C. Spero for Discovery (wh, COURT STAFF) (Filed on 12/21/2009) (Entered: 12/21/2009)
12/21/2009	<u>35</u>	ORDER re <u>32</u> granting STIPULATION CONTINUING FACT DISCOVERY COMPLETION DEADLINE. Signed by Judge Claudia Wilken on 12/21/09. (scc, COURT STAFF) (Filed on 12/21/2009) (Entered: 12/21/2009)
12/21/2009		MOTIONS <u>33</u> MOTION for Protective Order <i>Against Plaintiff's Request for Production of Documents and Any Further Discovery Related to Plaintiff's Claim for Bad Faith Negotiation of a Tribal-State Gaming Compact</i> REFERRED to Judge Magistrate Judge Joseph C. Spero. (cp, COURT STAFF) (Filed on 12/21/2009) (Entered: 12/22/2009)
01/06/2010	<u>36</u>	NOTICE OF REFERENCE, TIME AND PLACE OF HEARING AND ORDER Setting Hearing on <u>33</u> MOTION for Protective Order <i>Against Plaintiff's Request for Production of Documents and Any Further Discovery Related to Plaintiff's Claim for Bad Faith Negotiation of a Tribal-State</i>

		<i>Gaming Compact</i> : Motion Hearing set for 2/26/2010 at 09:30 AM in Courtroom A, 15th Floor, San Francisco. Opposition due by 1/29/10 and reply due by 2/5/10. Signed by Judge Joseph C. Spero on 1/5/10. (klh, COURT STAFF) (Filed on 1/6/2010) (Entered: 01/06/2010)
01/29/2010	<u>37</u>	Memorandum in Opposition re <u>33</u> MOTION for Protective Order <i>Against Plaintiff's Request for Production of Documents and Any Further Discovery Related to Plaintiff's Claim for Bad Faith Negotiation of a Tribal-State Gaming Compact</i> filed by Big Lagoon Rancheria. (Jackson, Bruce) (Filed on 1/29/2010) (Entered: 01/29/2010)
01/29/2010	<u>38</u>	DECLARATION of Bruce H. Jackson in support of re <u>37</u> Memorandum in Opposition re <u>33</u> MOTION for Protective Order Against Plaintiff's Request for Production of Documents filed by Big Lagoon Rancheria. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Related document(s) <u>37</u>) (Jackson, Bruce) (Filed on 1/29/2010) Modified on 2/1/2010 (cp, COURT STAFF). (Entered: 01/29/2010)
01/29/2010	<u>39</u>	Request for Judicial Notice re <u>37</u> Memorandum in Opposition, <i>to Defendant's Motion for Protective Order</i> filed by Big Lagoon Rancheria. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4)(Related document(s) <u>37</u>) (Jackson, Bruce) (Filed on 1/29/2010) (Entered: 01/29/2010)
01/29/2010	<u>40</u>	(Con't) EXHIBITS 5-6 re <u>39</u> Request for Judicial Notice filed by Big Lagoon Rancheria. (Attachments: # <u>1</u> Exhibit 5, # <u>2</u> Exhibit 6)(Related document(s) <u>39</u>) (Jackson, Bruce) (Filed on 1/29/2010) Modified on 2/1/2010 (cp, COURT STAFF). (Entered: 01/29/2010)
01/29/2010	<u>41</u>	(Con't) EXHIBIT 7 (part 1) re <u>39</u> Request for Judicial Notice Request for Judicial Notice filed by Big Lagoon Rancheria. (Attachments: # <u>1</u> Exhibit 7 Part 1)(Related document(s) <u>37</u>) (Jackson, Bruce) (Filed on 1/29/2010) Modified on 2/1/2010 (cp, COURT STAFF). (Entered: 01/29/2010)
01/29/2010	<u>42</u>	(Con't) EXHIBITS 7 (part 2) re <u>39</u> Request for Judicial filed by Big Lagoon Rancheria. (Attachments: # <u>1</u> Exhibit 7 Part 2)(Related document(s) <u>39</u>) (Jackson, Bruce) (Filed on 1/29/2010) Modified on 2/1/2010 (cp, COURT STAFF). (Entered: 01/29/2010)
01/29/2010	<u>43</u>	Proposed Order <i>Denying</i> re <u>33</u> <i>Motion for Protective Order</i> by Big Lagoon Rancheria. (Jackson, Bruce) (Filed on 1/29/2010) Modified on 2/1/2010 (cp, COURT STAFF). (Entered: 01/29/2010)
02/05/2010	<u>44</u>	Reply to Opposition <i>to Defendant's Motion for a Protective Order Against Plaintiff's Request for Production of Documents</i> filed by State of California. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Certificate of Service)(Pinal, Randall) (Filed on 2/5/2010) (Entered: 02/05/2010)
02/08/2010	<u>45</u>	Letter from Peter J. Engstrom <i>requesting permission to appear telephonically for hearing on 2/26/2010 at 9:30 a.m.</i> . (Engstrom, Peter) (Filed on 2/8/2010) (Entered: 02/08/2010)
02/09/2010	<u>46</u>	ORDER GRANTING re <u>45</u> Letter filed by Big Lagoon Rancheria for Peter Engstrom to appear telephonically at the motion hearing on 2/26/10. Signed

		by Judge Joseph C. Spero on 2/9/10. (klh, COURT STAFF) (Filed on 2/9/2010) (Entered: 02/09/2010)
02/23/2010	<u>47</u>	CLERKS NOTICE Continuing Motion Hearing on Dft's Motion for Protective Order Against Pla's Request for Production of Document and any Further Discovery Related to Plaintiff's Claim for Bad Faith Negotiation of a Trial State Gaming Compact. Motion Hearing prev. set for 2/26/10 at 9:30 AM has been continued to 3/5/2010 at 09:30 AM in Courtroom A, 15th Floor, San Francisco. (klh, COURT STAFF) (Filed on 2/23/2010) (Entered: 02/23/2010)
02/26/2010	<u>48</u>	MOTION to Continue <i>Fact Discovery Completion Date</i> filed by State of California. Motion Hearing set for 4/8/2010 02:00 PM in Courtroom 2, 4th Floor, Oakland. (Attachments: # <u>1</u> Memorandum of Points and Authorities, # <u>2</u> Declaration of Randall A. Pinal, # <u>3</u> Exhibit A, # <u>4</u> Exhibit B, # <u>5</u> Exhibit C, # <u>6</u> Exhibit D, # <u>7</u> Exhibit E, # <u>8</u> Exhibit F, # <u>9</u> Exhibit G, # <u>10</u> Exhibit H, # <u>11</u> Exhibit I, # <u>12</u> Exhibit J, # <u>13</u> Proposed Order, # <u>14</u> Certificate of Service) (Pinal, Randall) (Filed on 2/26/2010) (Entered: 02/26/2010)
03/02/2010	<u>49</u>	ORDER REFERRING MOTION: <u>48</u> MOTION to Continue <i>Fact Discovery Completion Date</i> filed by State of California. Signed by Judge Claudia Wilken on 3/2/10. (scc, COURT STAFF) (Filed on 3/2/2010) (Entered: 03/02/2010)
03/02/2010		***Deadlines terminated. (scc, COURT STAFF) (Filed on 3/2/2010) (Entered: 03/02/2010)
03/03/2010	<u>50</u>	MOTION to Stay <i>Proceedings and, Alternatively, to Continue Dispositive Motion Filing and Hearing Dates</i> filed by State of California. Motion Hearing set for 4/8/2010 02:00 PM in Courtroom 2, 4th Floor, Oakland. (Attachments: # <u>1</u> Memorandum of Points and Authorities in Support of Motion, # <u>2</u> Declaration of Randall A. Pinal in Support of Motion, # <u>3</u> Proposed Order)(Pinal, Randall) (Filed on 3/3/2010) (Entered: 03/03/2010)
03/04/2010	<u>51</u>	STIPULATION to Hear on Shortened Time Defendant's Motion to Continue <i>Fact Discovery Completion Date</i> by State of California, Big Lagoon Rancheria. (Attachments: # <u>1</u> Proposed Order, # <u>2</u> Certificate of Service) (Pinal, Randall) (Filed on 3/4/2010) Modified on 3/5/2010 (cp, COURT STAFF). (Entered: 03/04/2010)
03/04/2010	<u>52</u>	STIPULATION to Continue <i>Dispositive Motion Filing and Hearing Dates</i> by State of California, Big-Lagoon Rancheria. (Attachments: # <u>1</u> Proposed Order, # <u>2</u> Certificate of Service)(Pinal, Randall) (Filed on 3/4/2010) Modified on 3/5/2010 (cp, COURT STAFF). (Entered: 03/04/2010)
03/05/2010	<u>53</u>	ORDER GRANTING re <u>51</u> Stipulation filed by State of California to hear Dft's Motion to Continue Fact Discovery Completion Date. Signed, as modified, by Judge Joseph C. Spero on 03/04/10. (klh, COURT STAFF) (Filed on 3/5/2010) (Entered: 03/05/2010)
03/05/2010	<u>54</u>	Minute Entry: Motion Hearing held on 3/5/2010 before Joseph C. Spero re <u>33</u> MOTION for Protective Order Against Plaintiff's Request for Production of Documents and Any Further Discovery Related to Plaintiff's Claim for Bad

		<i>Faith Negotiation of a Tribal-State Gaming Compact</i> filed by State of California. Motion Denied. Court to prepare Order. (Court Reporter Lydia Zinn.) (klh, COURT STAFF) (Date Filed: 3/5/2010) (Entered: 03/05/2010)
03/05/2010	<u>55</u>	Memorandum in Opposition re <u>48</u> MOTION to Continue <i>Fact Discovery Completion Date</i> filed by Big Lagoon Rancheria. (Attachments: # <u>1</u> Proposed Order Denying Defendant's Motion to Continue Fact Discovery Completion Date)(Jackson, Bruce) (Filed on 3/5/2010) (Entered: 03/05/2010)
03/08/2010	<u>56</u>	NOTICE OF REFERENCE, TIME AND PLACE OF HEARING, ORDER Setting Hearing on <u>48</u> MOTION to Continue <i>Fact Discovery Completion Date</i> : Motion Hearing specially set for 3/17/2010 at 09:30 AM in Courtroom A, 15th Floor, San Francisco. Signed by Judge Joseph C. Spero on 03/08/10. (klh, COURT STAFF) (Filed on 3/8/2010) (Entered: 03/08/2010)
03/09/2010	<u>57</u>	STIPULATION to Continue Dispositive Motion Filing and Hearing Dates by State of California, Big Lagoon Rancheria. (Attachments: # <u>1</u> Proposed Order, # <u>2</u> Certificate of Service)(Pinal, Randall) (Filed on 3/9/2010) Modified on 3/10/2010 (cp, COURT STAFF). (Entered: 03/09/2010)
03/10/2010	<u>58</u>	Reply to Opposition to Defendant's Motion to Continue <i>Fact Discovery Completion Date</i> filed by State of California. (Attachments: # <u>1</u> Declaration of Randall A. Pinal in Support of Defendant's Motion to Continue Fact Discovery Completion Date, # <u>2</u> Exhibit K, # <u>3</u> Exhibit L, # <u>4</u> Exhibit M, # <u>5</u> Exhibit N, # <u>6</u> Certificate of Service)(Pinal, Randall) (Filed on 3/10/2010) (Entered: 03/10/2010)
03/15/2010	<u>59</u>	Transcript of Proceedings held on 03/05/2010, before Judge Joseph C. Spero. Court Reporter/Transcriber Lydia Zinn, Telephone number (415) 531-6587. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerks Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. Release of Transcript Restriction set for 6/14/2010. (Zinn, Lydia) (Filed on 3/15/2010) (Entered: 03/15/2010)
03/17/2010	<u>60</u>	Minute Entry: Motion Hearing held on 3/17/2010 before Joseph C. Spero re <u>48</u> MOTION to Continue <i>Fact Discovery Completion Date</i> filed by State of California. Motion Hearing set for 8/19/2010 at 02:00 PM in Courtroom 2, 4th Floor, Oakland before Judge Wilken.(Court Reporter Lydia Zinn.) (klh, COURT STAFF) (Date Filed: 3/17/2010) (Entered: 03/17/2010)
03/18/2010	<u>61</u>	Memorandum in Opposition re <u>50</u> MOTION to Stay <i>Proceedings and, Alternatively, to Continue Dispositive Motion Filing and Hearing Dates</i> filed by Big Lagoon Rancheria. (Attachments: # <u>1</u> Proposed Order Denying Defendant's Motion to Stay Proceedings)(Gutierrez, Irene) (Filed on 3/18/2010) (Entered: 03/18/2010)
03/18/2010	<u>62</u>	Declaration of Bruce H. Jackson in Support of <u>61</u> Memorandum in Opposition, to Defendant's Motion to Stay <i>Proceedings</i> filed by Big Lagoon Rancheria. (Attachments: # <u>1</u> Exhibit 1)(Related document(s) <u>61</u>) (Gutierrez, Irene) (Filed on 3/18/2010) (Entered: 03/18/2010)

03/18/2010	<u>63</u>	Request for Judicial Notice re <u>61</u> Memorandum in Opposition, to <i>Defendant's Motion to Stay Proceedings</i> filed by Big Lagoon Rancheria. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2)(Related document(s) <u>61</u>) (Gutierrez, Irene) (Filed on 3/18/2010) (Entered: 03/18/2010)
03/19/2010	<u>64</u>	ORDER by Judge Joseph C. Spero Denying <u>33</u> Motion for Protective Order (jcslc2, COURT STAFF) (Filed on 3/19/2010) (Entered: 03/19/2010)
03/22/2010	<u>65</u>	STIPULATION to <i>Continue Dispositive Motion Filing and Hearing Dates</i> by State of California, Big Lagoon Rancheria. (Attachments: # <u>1</u> Proposed Order, # <u>2</u> Certificate of Service)(Pinal, Randall) (Filed on 3/22/2010) Modified on 3/23/2010 (cp, COURT STAFF). (Entered: 03/22/2010)
03/23/2010	<u>66</u>	STIPULATION AND ORDER TO CONTINUE DISPOSITIVE MOTION FILING AND HEARING DATES. Set/Reset Deadlines: Big Lagoon's dispositive motion filed by 6/17/10; State's Opposition and any cross-motion due by 7/1/2010. Big Lagoon's Replies/cross opposition due by 7/15/2010. State's surreply due by 7/22/10. Motion Hearing set for 8/12/2010 at 02:00 PM before Judge Claudia Wilken. Signed by Judge Joseph C. Spero on 03/23/10. (klh, COURT STAFF) (Filed on 3/23/2010) (Entered: 03/23/2010)
03/25/2010	<u>67</u>	ORDER re <u>65</u> granting STIPULATION to Continue Dispositive Motion Filing and Hearing Dates.Motion and Further Case Management Conference set for 8/12/2010 02:00 PM. Signed by Judge Claudia Wilken on 03/25/2010. (scc, COURT STAFF) (Filed on 3/25/2010) (Entered: 03/25/2010)
03/25/2010		***Deadlines terminated. (scc, COURT STAFF) (Filed on 3/25/2010) (Entered: 03/25/2010)
03/25/2010	<u>68</u>	Reply to Opposition to <i>Defendant's Motion to Stay Proceedings and, Alternatively, to Continue Dispositive Motion Filing and Hearing Dates</i> filed by State of California. (Attachments: # <u>1</u> Request for Judicial Notice, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Exhibit C, # <u>5</u> Declaration of Randall A. Pinal, # <u>6</u> Exhibit A to Declaration of Randall A. Pinal, # <u>7</u> Certificate of Service) (Pinal, Randall) (Filed on 3/25/2010) (Entered: 03/25/2010)
03/25/2010	<u>69</u>	Transcript of Proceedings held on 03/17/2010, before Judge Joseph C. Spero. Court Reporter/Transcriber Lydia Zinn, Telephone number (415) 531-6587. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerks Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction.After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. Release of Transcript Restriction set for 6/23/2010. (Zinn, Lydia) (Filed on 3/25/2010) (Entered: 03/25/2010)
03/29/2010	<u>70</u>	OBJECTIONS to re <u>64</u> Order on Motion for Protective Order by State of California. (Attachments: # <u>1</u> Proof of Service)(Pinal, Randall) (Filed on 3/29/2010) (Entered: 03/29/2010)
04/01/2010	<u>71</u>	OBJECTIONS to <i>Magistrate Judge's Order Granting in Part and Denying in Part Defendant's Motion to Continue Fact Discovery Completion Date</i> by State of California. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Certificate of Service)

		(Pinal, Randall) (Filed on 4/1/2010) (Entered: 04/01/2010)
04/05/2010	<u>72</u>	CLERKS NOTICE TAKING MOTION UNDER SUBMISSION (scc, COURT STAFF) (Filed on 4/5/2010) (Entered: 04/05/2010)
04/13/2010	<u>73</u>	CLERKS NOTICE DEEMING OBJECTION DENIED (scc, COURT STAFF) (Filed on 4/13/2010) (Entered: 04/13/2010)
04/16/2010	<u>74</u>	ORDER by Judge Claudia Wilken DENYING <u>50</u> Defendant's Motion to Stay and Alternative Motion to Continue Dispositive Motion Dates (cwl2, COURT STAFF) (Filed on 4/16/2010) (Entered: 04/16/2010)
04/16/2010	<u>75</u>	CLERKS NOTICE DEEMING OBJECTION DENIED (scc, COURT STAFF) (Filed on 4/16/2010) (Entered: 04/16/2010)
05/12/2010	<u>76</u>	MOTION for Leave to File <i>Motion for Reconsideration</i> filed by State of California. Motion Hearing set for 6/17/2010 02:00 PM in Courtroom 2, 4th Floor, Oakland. (Pinal, Randall) (Filed on 5/12/2010) Modified on 7/12/2010 (ewn, COURT STAFF). (Entered: 05/12/2010)
06/07/2010		***Deadlines terminated. <u>76</u> MOTION for Leave to File <i>Motion for Reconsideration</i> filed by State of California. (ndr, COURT STAFF) (Filed on 6/7/2010) (Entered: 06/07/2010)
06/08/2010	<u>77</u>	ORDER by Judge Claudia Wilken GRANTING <u>76</u> Defendant's Motion for Leave to File a Motion for Reconsideration (cwl2, COURT STAFF) (Filed on 6/8/2010) (Entered: 06/08/2010)
06/11/2010	<u>78</u>	Memorandum in Opposition to <i>Defendant State of California's Motion for Reconsideration</i> filed by Big Lagoon Rancheria. (Attachments: # <u>1</u> Proposed Order)(Jackson, Bruce) (Filed on 6/11/2010) (Entered: 06/11/2010)
06/14/2010		***Deadlines terminated re Release of Transcript Restriction as to <u>97</u> Transcript, <u>59</u> Transcript, and Motion, Cross Motion, Reponse Deadline, Transcript <u>66</u> Stipulation and Order. (jlm, COURT STAFF) (Filed on 6/14/2010) (Entered: 12/10/2010)
06/16/2010	<u>79</u>	Reply to Opposition to <i>Motion for Reconsideration</i> filed by State of California. (Attachments: # <u>1</u> Certificate of Service)(Pinal, Randall) (Filed on 6/16/2010) (Entered: 06/16/2010)
06/17/2010	<u>80</u>	MOTION for Summary Judgment <i>and Notice of Motion and Motion</i> filed by Big Lagoon Rancheria. Motion Hearing set for 8/12/2010 02:00 PM in Courtroom 2, 4th Floor, Oakland. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Proposed Order)(Jackson, Bruce) (Filed on 6/17/2010) Modified on 6/18/2010 (cp, COURT STAFF). (Entered: 06/17/2010)
06/17/2010	<u>81</u>	Declaration of Peter J. Engstrom in Support of <u>80</u> MOTION for Summary Judgment filed by Big Lagoon Rancheria. (Attachments: # <u>1</u> Exhibit 1A, # <u>2</u> Exhibit 1B, # <u>3</u> Exhibit 2)(Related document(s) <u>80</u>) (Jackson, Bruce) (Filed on 6/17/2010) Modified on 6/18/2010 (cp, COURT STAFF). (Entered: 06/17/2010)
06/17/2010	<u>82</u>	EXHIBITS re <u>81</u> Declaration in Support, of <i>Motion for Summary Judgment</i>

		(<i>P. Engstrom Declaration</i>) filed by Big Lagoon Rancheria. (Attachments: # <u>1</u> Exhibit 3A, # <u>2</u> Exhibit 3B, # <u>3</u> Exhibit 4)(Related document(s) <u>81</u>) (Jackson, Bruce) (Filed on 6/17/2010) (Entered: 06/17/2010)
06/17/2010	<u>83</u>	EXHIBITS re <u>81</u> Declaration in Support, of <i>Motion for Summary Judgment (P. Engstrom Declaration)</i> filed by Big Lagoon Rancheria. (Attachments: # <u>1</u> Exhibit 5A, # <u>2</u> Exhibit 5B, # <u>3</u> Exhibit 6, # <u>4</u> Exhibit 7, # <u>5</u> Exhibit 8) (Related document(s) <u>81</u>) (Jackson, Bruce) (Filed on 6/17/2010) (Entered: 06/17/2010)
06/17/2010	<u>84</u>	EXHIBITS re <u>81</u> Declaration in Support, of <i>Motion for Summary Judgment (P. Engstrom Declaration)</i> filed by Big Lagoon Rancheria. (Attachments: # <u>1</u> Exhibit 9A, # <u>2</u> Exhibit 9B, # <u>3</u> Exhibit 9C, # <u>4</u> Exhibit 9D)(Related document(s) <u>81</u>) (Jackson, Bruce) (Filed on 6/17/2010) (Entered: 06/17/2010)
06/17/2010	<u>85</u>	Request for Judicial Notice re <u>80</u> MOTION for Summary Judgment filed by Big Lagoon Rancheria. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6)(Related document(s) <u>80</u>) (Jackson, Bruce) (Filed on 6/17/2010) Modified on 6/18/2010 (cp, COURT STAFF). (Entered: 06/17/2010)
06/30/2010	<u>86</u>	CLERKS NOTICE SETTING HEARING for 7/9/2010 09:30 AM in Courtroom A, 15th Floor, San Francisco. (ahy, COURT STAFF) (Filed on 6/30/2010) (Entered: 06/30/2010)
07/01/2010	<u>87</u>	Ex Parte MOTION for Leave to File Excess Pages filed by State of California. (Attachments: # <u>1</u> Proposed Order, # <u>2</u> Certificate of Service) (Pinal, Randall) (Filed on 7/1/2010) (Entered: 07/01/2010)
07/01/2010	<u>88</u>	Memorandum in Opposition to <i>Plaintiff Big Lagoon Rancheria's Motion for Summary Judgment; Notice of Cross-Motion and Cross-Motion for Summary Judgment; and Memorandum of Points and Authorities in Support Thereof</i> filed by State of California. (Attachments: # <u>1</u> Request for Judicial Notice, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B-1, # <u>4</u> Exhibit B-2, # <u>5</u> Exhibit C, # <u>6</u> Exhibit D, # <u>7</u> Exhibit E, # <u>8</u> Exhibit F, # <u>9</u> Exhibit G, # <u>10</u> Exhibit H, # <u>11</u> Exhibit I, # <u>12</u> Exhibit J, # <u>13</u> Exhibit K, # <u>14</u> Exhibit L, # <u>15</u> Exhibit M, # <u>16</u> Exhibit N, # <u>17</u> Exhibit O, # <u>18</u> Exhibit P, # <u>19</u> Exhibit Q, # <u>20</u> Exhibit R, # <u>21</u> Exhibit S, # <u>22</u> Exhibit T, # <u>23</u> Exhibit U, # <u>24</u> Exhibit V, # <u>25</u> Exhibit W, # <u>26</u> Exhibit X, # <u>27</u> Exhibit Y, # <u>28</u> Exhibit Z, # <u>29</u> Exhibit AA, # <u>30</u> Exhibit BB, # <u>31</u> Declaration of Randall A. Pinal, # <u>32</u> Exhibit A, # <u>33</u> Exhibit B, # <u>34</u> Exhibit C, # <u>35</u> Exhibit D, # <u>36</u> Exhibit E, # <u>37</u> Exhibit F, # <u>38</u> Exhibit G, # <u>39</u> Exhibit H, # <u>40</u> Exhibit I, # <u>41</u> Exhibit J, # <u>42</u> Exhibit K, # <u>43</u> Exhibit L, # <u>44</u> Exhibit M, # <u>45</u> Exhibit N, # <u>46</u> Exhibit O, # <u>47</u> Exhibit P, # <u>48</u> Exhibit Q, # <u>49</u> Exhibit R, # <u>50</u> Exhibit S, # <u>51</u> Exhibit T, # <u>52</u> Exhibit U, # <u>53</u> Exhibit V, # <u>54</u> Exhibit W, # <u>55</u> Exhibit X, # <u>56</u> Exhibit Y, # <u>57</u> Exhibit Z, # <u>58</u> Exhibit AA, # <u>59</u> Exhibit BB, # <u>60</u> Exhibit CC, # <u>61</u> Exhibit DD, # <u>62</u> Exhibit EE, # <u>63</u> Exhibit FF, # <u>64</u> Exhibit GG, # <u>65</u> Exhibit HH, # <u>66</u> Exhibit II, # <u>67</u> Exhibit JJ, # <u>68</u> Exhibit KK, # <u>69</u> Exhibit KKA, # <u>70</u> Exhibit KKB, # <u>71</u> Exhibit KKC, # <u>72</u> Exhibit KKD, # <u>73</u> Exhibit KKE, # <u>74</u> Exhibit KKF, # <u>75</u> Exhibit KKG, # <u>76</u> Exhibit KKH, # <u>77</u> Exhibit KKI, # <u>78</u> Exhibit KKJ, # <u>79</u> Exhibit LL, # <u>80</u> Exhibit LLK, # <u>81</u> Exhibit LLL, # <u>82</u> Exhibit LLM, # <u>83</u>

		Exhibit LLN, # <u>84</u> Exhibit MM, # <u>85</u> Exhibit NN, # <u>86</u> Exhibit OO, # <u>87</u> Exhibit PP, # <u>88</u> Exhibit QQ, # <u>89</u> Exhibit RR, # <u>90</u> Exhibit SS, # <u>91</u> Exhibit TT, # <u>92</u> Exhibit UU, # <u>93</u> Exhibit VV, # <u>94</u> Exhibit WW, # <u>95</u> Declaration of Linda Thorpe, # <u>96</u> Declaration of Patty Brandt-Part 1, # <u>97</u> Declaration of Patty Brandt-Part 2, # <u>98</u> Proposed Order, # <u>99</u> Certificate of Service)(Pinal, Randall) (Filed on 7/1/2010) (Entered: 07/01/2010)
07/02/2010	<u>89</u>	Memorandum in Opposition re <u>87</u> Ex Parte MOTION for Leave to File Excess Pages filed by Big Lagoon Rancheria. (Attachments: # <u>1</u> Proposed Order Denying Defendant's Ex Parte Motion for Excess Pages)(Jackson, Bruce) (Filed on 7/2/2010) (Entered: 07/02/2010)
07/09/2010	<u>90</u>	Minute Entry: Defendant's Motion for Reconsideration Hearing held on 7/9/2010 before Magistrate Judge Joseph C. Spero (Date Filed: 7/9/2010). (Court Reporter: Jim Yeomans) (ahy, COURT STAFF) (Date Filed: 7/9/2010) (Entered: 07/09/2010)
07/12/2010	<u>91</u>	ORDER by Judge Joseph C. Spero Granting in part <u>76</u> Motion for Reconsideration (jcskc2, COURT STAFF) (Filed on 7/12/2010) (Entered: 07/12/2010)
07/14/2010	<u>92</u>	ORDER by Judge Claudia Wilken DENYING <u>87</u> Motion for Leave to File Excess Pages (cwlc2, COURT STAFF) (Filed on 7/14/2010) (Entered: 07/14/2010)
07/15/2010	<u>93</u>	AMENDED OPPOSITION to plaintiff's Motion for Summary Judgment; CROSS-MOTION for Summary Judgment filed by State of California. Motion Hearing set for 8/12/2010 02:00 PM in Courtroom 2, 4th Floor, Oakland. (Attachments: # <u>1</u> Exhibit A)(Pinal, Randall) (Filed on 7/15/2010) Modified on 7/16/2010 (cp, COURT STAFF). (Entered: 07/15/2010)
07/15/2010	<u>94</u>	Memorandum in Opposition re <u>93</u> <i>Cross-Motion for Summary Judgment, and in Reply to the State's Opposition to Big Lagoon's Motion for Summary Judgment</i> filed by Big Lagoon Rancheria. (Jackson, Bruce) (Filed on 7/15/2010) Modified on 7/16/2010 (cp, COURT STAFF). (Entered: 07/15/2010)
07/22/2010	<u>95</u>	OBJECTIONS to Magistrate Judge's Order Granting in Part Defendant's Motion for Reconsideration by State of California. (Attachments: # <u>1</u> Certificate of Service)(Pinal, Randall) (Filed on 7/22/2010) (Entered: 07/22/2010)
07/22/2010	<u>96</u>	<i>Surreply to Plaintiff Big Lagoon Rancheria's Opposition to Cross-Motion for Summary Judgment</i> by State of California (Attachments: # <u>1</u> Certificate of Service)(Pinal, Randall) (Filed on 7/22/2010) Modified on 7/23/2010 (cp, COURT STAFF). (Entered: 07/22/2010)
07/27/2010	<u>97</u>	Transcript of Proceedings held on 07/09/10, before Judge Joseph C. Spero. Court Reporter/Transcriber James Yeomans, Telephone number (415) 863-5179. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerks Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through

		PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. Release of Transcript Restriction set for 10/25/2010. (jy, COURT STAFF) (Filed on 7/27/2010) (Entered: 07/27/2010)
08/05/2010	<u>98</u>	JOINT CASE MANAGEMENT STATEMENT filed by Big Lagoon Rancheria, State of California. (Gutierrez, Irene) (Filed on 8/5/2010) Modified on 8/6/2010 (vlk, COURT STAFF). (Entered: 08/05/2010)
08/06/2010	<u>99</u>	CLERKS NOTICE DEEMING OBJECTION DENIED. (ndr, COURT STAFF) (Filed on 8/6/2010) (Entered: 08/06/2010)
08/12/2010	<u>100</u>	Minute Entry: Motion Hearing held on 8/12/2010 before Claudia Wilken (Date Filed: 8/12/2010). (Court Reporter Diane Skillman.) (ndr, COURT STAFF) (Date Filed: 8/12/2010) (Entered: 09/01/2010)
11/22/2010	<u>101</u>	ORDER GRANTING PLAINTIFFS <u>80</u> MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANTS <u>93</u> CROSS-MOTION FOR SUMMARY JUDGMENT (Docket Nos. 80 and 93) Further Case Management Conference set for 3/8/2011 02:00 PM. Signed by Judge Claudia Wilken on 11/22/2010. (ndr, COURT STAFF) (Filed on 11/22/2010) (Entered: 11/22/2010)
12/09/2010	<u>102</u>	MOTION to Stay <i>the Court's November 22, 2010 Order Pending Appeal; Memorandum of Points and Authorities in Support Thereof</i> filed by State of California. Motion Hearing set for 01/13/11 at 2:00 PM (Attachments: # <u>1</u> Proposed Order)(Pinal, Randall) (Filed on 12/9/2010) Modified on 12/10/2010 (jlm, COURT STAFF). Modified on 12/23/2010 (cp, COURT STAFF). (Entered: 12/09/2010)
12/09/2010	<u>103</u>	Declaration of Randall A. Pinal in Support of <u>102</u> MOTION to Stay <i>the Court's November 22, 2010 Order Pending Appeal; Memorandum of Points and Authorities in Support Thereof</i> filed by State of California. (Attachments: # <u>1</u> Exhibit Part 1, # <u>2</u> Exhibit Part 2, # <u>3</u> Exhibit Part 3, # <u>4</u> Exhibit Part 4) (Related document(s) <u>102</u>) (Pinal, Randall) (Filed on 12/9/2010) (Entered: 12/09/2010)
12/09/2010		Set/Reset Deadlines as to <u>102</u> Motion to Stay. Motion Hearing set for 1/13/2011 02:00 PM in Courtroom 2, 4th Floor, Oakland. (jlm, COURT STAFF) (Filed on 12/9/2010) (Entered: 12/10/2010)
12/09/2010	<u>105</u>	NOTICE OF APPEAL as to <u>101</u> Order by State of California. Filing fee \$ 455.00, receipt #34611053805. (cp, COURT STAFF) (Filed on 12/9/2010) (Entered: 12/13/2010)
12/09/2010	<u>106</u>	REPRESENTATION STATEMENT re <u>105</u> Notice of Appeal : (cp, COURT STAFF) (Filed on 12/9/2010) (Entered: 12/13/2010)
12/09/2010	<u>107</u>	RECEIVED: Civil Appeals Docketing Statement forwarded to 9th Circuit US Court of Appeals by State of California re <u>105</u> Notice of Appeal (cp, COURT STAFF) (Filed on 12/9/2010) (Entered: 12/13/2010)
12/10/2010	<u>104</u>	STIPULATED <i>Request for Order Changing Time; Declaration of Randall A. Pinal in Support Thereof</i> by State of California. (Attachments: # <u>1</u> Proposed

		Order)(Pinal, Randall) (Filed on 12/10/2010) Modified on 12/13/2010 (cp, COURT STAFF). (Entered: 12/10/2010)
12/14/2010	<u>108</u>	USCA Case Number 10-17803 Ninth Circuit Court of Appeals for <u>105</u> Notice of Appeal filed by State of California. (kk, COURT STAFF) (Filed on 12/14/2010) (Entered: 12/14/2010)
12/15/2010	<u>109</u>	ORDER Granting <u>104</u> Stipulation Changing Time for Defendant to file Reply. Signed by Judge Claudia Wilken on 12/15/2010. (ndr, COURT STAFF) (Filed on 12/15/2010) (Entered: 12/15/2010)
12/21/2010	<u>110</u>	NOTICE OF CROSS APPEAL as to <u>101</u> Order filed by Big Lagoon Rancheria. Filing fee \$ 455, Receipt #44611006175. (Attachments: # <u>1</u> Representation Statement)(cp, COURT STAFF) (Filed on 12/21/2010) (Entered: 12/22/2010)
12/21/2010	<u>111</u>	RECEIVED: Civil Appeals Docketing Statement forwarded to 9th Circuit US Court of Appeals by Big Lagoon Rancheria re <u>110</u> Notice of Cross Appeal (cp, COURT STAFF) (Filed on 12/21/2010) (Entered: 12/22/2010)
12/22/2010	<u>112</u>	Memorandum in Opposition re <u>102</u> MOTION to Stay <i>the Court's November 22, 2010 Order Pending Appeal</i> filed by Big Lagoon Rancheria. (Attachments: # <u>1</u> Proposed Order Denying Defendant's Motion to Stay) (Jackson, Bruce) (Filed on 12/22/2010) Modified on 12/23/2010 (cp, COURT STAFF). (Entered: 12/22/2010)
12/22/2010	<u>113</u>	DECLARATION of VIRGIL MOOREHEAD in support of <u>112</u> Opposition to <u>102</u> MOTION to Stay <i>the Court's November 22, 2010 Order Pending Appeal</i> filed by Big Lagoon Rancheria. (Attachments: # <u>1</u> Exhibit A to Moorehead Declaration)(Related document(s) <u>112</u>) (Jackson, Bruce) (Filed on 12/22/2010) Modified on 12/23/2010 (cp, COURT STAFF). (Entered: 12/22/2010)
12/22/2010	<u>114</u>	*** FILED IN ERROR. REFER TO DOCUMENT <u>116</u> . *** DECLARATION of PETER J. ENGSTROM in Opposition to <u>102</u> MOTION to Stay <i>the Court's November 22, 2010 Order Pending Appeal</i> ; <i>Memorandum of Points and Authorities in Support Thereof</i> filed by Big Lagoon Rancheria. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D) (Related document(s) <u>102</u>) (Jackson, Bruce) (Filed on 12/22/2010) Modified on 12/22/2010 (feriab, COURT STAFF). (Entered: 12/22/2010)
12/22/2010	<u>115</u>	Request for Judicial Notice in support of re <u>112</u> Opposition to MOTION to Stay <i>the Court's November 22, 2010 Order Pending Appeal</i> filed by Big Lagoon Rancheria. (Attachments: # <u>1</u> Exhibit 1)(Related document(s) <u>112</u>) (Jackson, Bruce) (Filed on 12/22/2010) Modified on 12/23/2010 (cp, COURT STAFF). (Entered: 12/22/2010)
12/22/2010	<u>116</u>	DECLARATION of PETER J. ENGSTROM in support of re <u>112</u> Opposition to <u>102</u> MOTION to Stay <i>the Court's November 22, 2010 Order Pending Appeal</i> filed by Big Lagoon Rancheria. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D)(Related document(s) <u>112</u>) (Engstrom, Peter) (Filed on 12/22/2010) Modified on 12/23/2010 (cp, COURT STAFF). (Entered: 12/22/2010)

12/22/2010	<u>117</u>	USCA Case Number 10-17878 Ninth Circuit Court of Appeals for <u>110</u> Notice of Cross Appeal filed by Big Lagoon Rancheria. (kk, COURT STAFF) (Filed on 12/22/2010) (Entered: 12/22/2010)
12/27/2010	<u>118</u>	Transcript of Proceedings held on August 12, 2010, before Judge Claudia Wilken. Court Reporter Diane E. Skillman, Telephone number (510)451-2930. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerks Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. Redaction Request due 1/18/2011. Redacted Transcript Deadline set for 1/27/2011. Release of Transcript Restriction set for 3/28/2011. (Skillman, Diane) (Filed on 12/27/2010) (Entered: 12/27/2010)
01/07/2011	<u>119</u>	Reply to Opposition to Motion for Stay Pending Appeal filed by State of California. (Pinal, Randall) (Filed on 1/7/2011) (Entered: 01/07/2011)
01/07/2011	<u>120</u>	Request for Judicial Notice in Support of Motion to Stay the Court's November 22, 2010 Order Pending Appeal filed by State of California. (Pinal, Randall) (Filed on 1/7/2011) (Entered: 01/07/2011)
01/10/2011	<u>121</u>	Transcript Designation and Ordering Form for proceedings held on 3/5/10, 3/17/10, 7/9/10, 8/12/10 before Judge Hon. Claudia Wilken (8/12/10) and Hon. Joseph Spero (3/5/10, 3/17/10, 7/9/10), (Attachments: # <u>1</u> Certificate of Service)(Jackson, Bruce) (Filed on 1/10/2011) (Entered: 01/10/2011)
01/12/2011	<u>122</u>	Transcript Designation and Ordering Form for proceedings held on 3/5/10, 3/17/10, 7/9/10, 8/12/10 (Pinal, Randall) (Filed on 1/12/2011) Modified on 1/13/2011 (cp, COURT STAFF). (Entered: 01/12/2011)
01/27/2011	<u>123</u>	ORDER DENYING DEFENDANTS <u>102</u> MOTION TO STAY COURTS NOVEMBER 22, 2010 ORDER PENDING APPEAL. Case Management Statement due by 5/3/2011. Case Management Conference set for 5/10/2011 02:00 PM. Signed by Judge Claudia Wilken on 1/27/2011. (ndr, COURT STAFF) (Filed on 1/27/2011) (Entered: 01/27/2011)
02/23/2011	<u>124</u>	ORDER of USCA: Denying Appellant State of CA's emergency motion to stay further proceeding in the district court pending disposition of these appeals as to <u>110</u> Notice of Cross Appeal filed by Big Lagoon Rancheria, <u>105</u> Notice of Appeal filed by State of California (cpS, COURT STAFF) (Filed on 2/23/2011) (Entered: 02/23/2011)
04/27/2011	<u>125</u>	<p>***FILED IN ERROR, DISREGARD, DOCUMENT GIVEN TO CHAMBERS***</p> <p>Letter from Randall A. Pinal re Mediator Proposal and Last Best Offer for a Tribal-State Class III Gaming Compact. (cp, COURT STAFF) (Filed on 4/27/2011) Modified on 4/29/2011 (cp, COURT STAFF). (Entered: 04/28/2011)</p>

04/28/2011	<u>126</u>	CLERKS NOTICE re: Failure to E-File (document #125) (cp, COURT STAFF) (Filed on 4/28/2011) (Entered: 04/28/2011)
05/03/2011	<u>127</u>	FURTHER JOINT CASE MANAGEMENT STATEMENT filed by Big Lagoon Rancheria, State of California. (Engstrom, Peter) (Filed on 5/3/2011) Modified on 5/4/2011 (cp, COURT STAFF). (Entered: 05/03/2011)
05/04/2011	<u>128</u>	ORDER APPOINTING MEDIATOR AND VACATING CASE MANAGEMENT CONFERENCE. Honorable Eugene F. Lynch (Ret.) of JAMS is appointed as mediator. Case Management Statement due by 7/26/2011. Case Management Conference set for 8/2/2011 02:00 PM. Signed by Judge Claudia Wilken on 5/4/2011. (ndr, COURT STAFF) (Filed on 5/4/2011) (Entered: 05/04/2011)
05/05/2011	<u>129</u>	NOTICE by Big Lagoon Rancheria of Plaintiff Big Lagoon Rancheria's Last Best Offer for a Tribal-State Gaming Compact (Attachments: # <u>1</u> Exhibit A (Part 1 of 4), # <u>2</u> Exhibit A (Part 2 of 4), # <u>3</u> Exhibit A (Part 3 of 4), # <u>4</u> Exhibit A (Part 4 of 4))(Engstrom, Peter) (Filed on 5/5/2011) (Entered: 05/05/2011)
05/06/2011	<u>130</u>	NOTICE by State of California Defendant State of California's Last Best Offer for a Tribal-State Class III Gaming Compact (Attachments: # <u>1</u> Exhibit A (Part 1 of 3), # <u>2</u> Exhibit A (Part 2 of 3), # <u>3</u> Exhibit A (Part 3 of 3))(Pinal, Randall) (Filed on 5/6/2011) (Entered: 05/06/2011)
07/21/2011	<u>131</u>	CLERKS NOTICE CONTINUING CASE MANAGEMENT CONFERENCE. Case Management Statement due by 8/2/2011. Case Management Conference set for 8/9/2011 02:00 PM. (ndr, COURT STAFF) (Filed on 7/21/2011) Modified on 7/22/2011 (kc, COURT STAFF). (Entered: 07/21/2011)
07/28/2011	<u>132</u>	CLERKS NOTICE CONTINUING CASE MANAGEMENT CONFERENCE. Case Management Statement due by 9/13/2011. Case Management Conference set for 9/20/2011 02:00 PM. (ndr, COURT STAFF) (Filed on 7/28/2011) (Entered: 07/28/2011)
09/13/2011	<u>133</u>	JOINT CASE MANAGEMENT STATEMENT filed by Big Lagoon Rancheria. (Engstrom, Peter) (Filed on 9/13/2011) (Entered: 09/13/2011)
09/14/2011		CLERKS NOTICE. Notice is hereby given that the Case Management Conference, previously set for Tuesday, September 20, 2011, is continued to Tuesday, October 25, 2011, in Courtroom 2, 4th Floor, 1301 Clay Street, Oakland, CA 94612. Case Management Statement due by October 18, 2011. (This is a text only docket entry, there is no document associated with this notice.) (ndr, COURT STAFF) (Filed on 9/14/2011) (Entered: 09/14/2011)
09/19/2011	<u>134</u>	STIPULATION and [Proposed] Order Continuing Case Management Conference by Big Lagoon Rancheria, State of California. (Engstrom, Peter) (Filed on 9/19/2011) Modified on 9/20/2011 (cp, COURT STAFF). (Entered: 09/19/2011)

09/20/2011	<u>135</u>	ORDER Granting <u>134</u> Stipulation Continuing Case Management Conference. Case Management Statement due by 11/8/2011. Case Management Conference set for 11/15/2011 02:00 PM. Signed by Judge Claudia Wilken on 9/20/2011. (ndr, COURT STAFF) (Filed on 9/20/2011) (Entered: 09/20/2011)
09/27/2011	<u>136</u>	ORDER Regarding Mediator's Selections of Appropriate Compact. Signed by Judge Eugene F. Lynch (Ret.) on 9/22/2011. (cpS, COURT STAFF) (Filed on 9/27/2011) (Entered: 09/28/2011)
11/08/2011	<u>137</u>	FURTHER JOINT CASE MANAGEMENT STATEMENT filed by Big Lagoon Rancheria, State of California. (Jackson, Bruce) (Filed on 11/8/2011) Modified on 11/9/2011 (cp, COURT STAFF). (Entered: 11/08/2011)
11/14/2011	<u>138</u>	ORDER CONTINUING CASE MANAGEMENT CONFERENCE AND SETTING BRIEFING AND HEARING SCHEDULE. Case Management Statement due by 12/29/2011. Case Management Conference set for 1/5/2012 02:00 PM. Motion Hearing set for 1/5/2012 02:00 PM before Hon. Claudia Wilken. Signed by Judge Claudia Wilken on 11/14/2011. (ndr, COURT STAFF) (Filed on 11/14/2011) (Entered: 11/14/2011)
11/23/2011	<u>139</u>	MOTION for Leave to File <i>Motion to Vacate Order re Mediator's Selection of Appropriate Compact</i> filed by State of California. (Attachments: # <u>1</u> PDF 2 of 4, # <u>2</u> PDF 3 of 4, # <u>3</u> PDF 4 of 4, # <u>4</u> Proposed Order, # <u>5</u> Certificate/Proof of Service)(Pinal, Randall) (Filed on 11/23/2011) (Entered: 11/23/2011)
11/23/2011	<u>140</u>	MOTION to Stay <i>Pending Appeal</i> filed by State of California. Motion Hearing set for 1/5/2012 02:00 PM in Courtroom 2, 4th Floor, Oakland before Hon. Claudia Wilken. Responses due by 12/7/2011. Replies due by 12/14/2011. (Attachments: # <u>1</u> Declaration of Randall A. Pinal, # <u>2</u> Proposed Order, # <u>3</u> Certificate/Proof of Service)(Pinal, Randall) (Filed on 11/23/2011) (Entered: 11/23/2011)
11/28/2011		Re <u>139</u> Motion Hearing set for 1/5/2012 02:00 PM before Hon. Claudia Wilken. Responses due by 12/7/2011. Replies due by 12/14/2011 (cp, COURT STAFF) (Filed on 11/28/2011) (Entered: 11/28/2011)
12/07/2011	<u>141</u>	RESPONSE (re <u>139</u> MOTION for Leave to File <i>Motion to Vacate Order re Mediator's Selection of Appropriate Compact</i>) filed by Big Lagoon Rancheria. (Engstrom, Peter) (Filed on 12/7/2011) (Entered: 12/07/2011)
12/07/2011	<u>142</u>	DECLARATION of PETER J. ENGSTROM in support of <u>141</u> Opposition to MOTION for Leave to File <i>Motion to Vacate Order re Mediator's Selection of Appropriate Compact</i> filed by Big Lagoon Rancheria. (Attachments: # <u>1</u> Exhibit A to Engstrom Decl., # <u>2</u> Exhibit B to Engstrom Decl., # <u>3</u> Exhibit C to Engstrom Decl., # <u>4</u> Exhibit D to Engstrom Decl., # <u>5</u> Exhibit E to Engstrom Decl., # <u>6</u> Exhibit F to Engstrom Decl., # <u>7</u> Exhibit G to Engstrom Decl., # <u>8</u> Exhibit H to Engstrom Decl., # <u>9</u> Exhibit I to Engstrom Decl., # <u>10</u> Exhibit J to Engstrom Decl., # <u>11</u> Exhibit K to Engstrom Decl., # <u>12</u> Exhibit L to Engstrom Decl.)(Related document(s) <u>139</u>) (Engstrom, Peter) (Filed on 12/7/2011) Modified on 12/8/2011 (cp, COURT STAFF). (Entered: 12/07/2011)

12/07/2011	<u>143</u>	EXHIBITS re <u>142</u> Declaration of <i>Peter J. Engstrom</i> filed by Big Lagoon Rancheria. (Attachments: # <u>1</u> Exhibit M - 1 of 7 to Engstrom Decl., # <u>2</u> Exhibit M - 2 of 7 to Engstrom Decl., # <u>3</u> Exhibit M - 3 of 7 to Engstrom Decl., # <u>4</u> Exhibit M - 4 of 7 to Engstrom Decl., # <u>5</u> Exhibit M - 5 of 7 to Engstrom Decl., # <u>6</u> Exhibit M - 6 of 7 to Engstrom Decl., # <u>7</u> Exhibit M - 7 of 7 to Engstrom Decl.)(Related document(s) <u>142</u>) (Engstrom, Peter) (Filed on 12/7/2011) Modified on 12/8/2011 (cp, COURT STAFF). (Entered: 12/07/2011)
12/07/2011	<u>144</u>	EXHIBITS re <u>142</u> Declaration of <i>Peter Engstrom</i> filed by Big Lagoon Rancheria. (Attachments: # <u>1</u> Exhibit N - 1 of 14 to Engstrom Decl., # <u>2</u> Exhibit N - 2 of 14 to Engstrom Decl., # <u>3</u> Exhibit N - 3 of 14 to Engstrom Decl., # <u>4</u> Exhibit N - 4 of 14 to Engstrom Decl., # <u>5</u> Exhibit N - 5 of 14 to Engstrom Decl., # <u>6</u> Exhibit N - 6 of 14 to Engstrom Decl., # <u>7</u> Exhibit N - 7 of 14 to Engstrom Decl., # <u>8</u> Exhibit N - 8 of 14 to Engstrom Decl., # <u>9</u> Exhibit N - 9 of 14 to Engstrom Decl., # <u>10</u> Exhibit N - 10 of 14 to Engstrom Decl., # <u>11</u> Exhibit N - 11 of 14 to Engstrom Decl., # <u>12</u> Exhibit N - 12 of 14 to Engstrom Decl., # <u>13</u> Exhibit N - 13 of 14 to Engstrom Decl., # <u>14</u> Exhibit N - 14 of 14 to Engstrom Decl.)(Related document(s) <u>142</u>) (Engstrom, Peter) (Filed on 12/7/2011) Modified on 12/8/2011 (cp, COURT STAFF). (Entered: 12/07/2011)
12/07/2011	<u>145</u>	EXHIBITS re <u>142</u> Declaration of <i>Peter J. Engstrom</i> filed by Big Lagoon Rancheria. (Attachments: # <u>1</u> Exhibit O to Engstrom Decl., # <u>2</u> Exhibit P - 1 of 5 to Engstrom Decl., # <u>3</u> Exhibit P - 2 of 5 to Engstrom Decl., # <u>4</u> Exhibit P - 3 of 5 to Engstrom Decl., # <u>5</u> Exhibit P - 4 of 5 to Engstrom Decl., # <u>6</u> Exhibit P - 5 of 5 to Engstrom Decl., # <u>7</u> Exhibit Q to Engstrom Decl., # <u>8</u> Exhibit R - 1 of 4 to Engstrom Decl., # <u>9</u> Exhibit R - 2 of 4 to Engstrom Decl., # <u>10</u> Exhibit R - 3 of 4 to Engstrom Decl., # <u>11</u> Exhibit R - 4 of 4 to Engstrom Decl.)(Related document(s) <u>142</u>) (Engstrom, Peter) (Filed on 12/7/2011) Modified on 12/8/2011 (cp, COURT STAFF). (Entered: 12/07/2011)
12/07/2011	<u>146</u>	EXHIBITS re <u>142</u> Declaration of <i>Peter J. Engstrom</i> filed by Big Lagoon Rancheria. (Attachments: # <u>1</u> Exhibit S to Engstrom Decl., # <u>2</u> Exhibit T to Engstrom Decl., # <u>3</u> Exhibit U to Engstrom Decl., # <u>4</u> Exhibit V to Engstrom Decl., # <u>5</u> Exhibit W to Engstrom Decl., # <u>6</u> Exhibit X to Engstrom Decl., # <u>7</u> Exhibit Y to Engstrom Decl., # <u>8</u> Exhibit Z to Engstrom Decl., # <u>9</u> Exhibit AA to Engstrom Decl., # <u>10</u> Exhibit BB to Engstrom Decl.)(Related document(s) <u>142</u>) (Engstrom, Peter) (Filed on 12/7/2011) Modified on 12/8/2011 (cp, COURT STAFF). (Entered: 12/07/2011)
12/07/2011	<u>147</u>	Proposed Order <i>DENYING re 139 MOTION FOR LEAVE TO FILE MOTION TO VACATE AND GRANTING PLAINTIFF ITS ATTORNEYS' FEES AND COSTS</i>] by Big Lagoon Rancheria. (Engstrom, Peter) (Filed on 12/7/2011) Modified on 12/8/2011 (cp, COURT STAFF). (Entered: 12/07/2011)
12/07/2011	<u>148</u>	RESPONSE (re <u>140</u> MOTION to Stay <i>Pending Appeal</i>) filed by Big Lagoon Rancheria. (Attachments: # <u>1</u> Proposed Order Denying State's Renewed Motion to Stay and Granting Plaintiff Its Attorneys' Fees and Costs)(Jackson, Bruce) (Filed on 12/7/2011) (Entered: 12/07/2011)

12/14/2011	<u>149</u>	REPLY (re <u>139</u> MOTION for Leave to File <i>Motion to Vacate Order re Mediator's Selection of Appropriate Compact</i>) filed by State of California. (Attachments: # <u>1</u> Certificate/Proof of Service)(Pinal, Randall) (Filed on 12/14/2011) (Entered: 12/14/2011)
12/14/2011	<u>150</u>	REPLY (re <u>140</u> MOTION to Stay <i>Pending Appeal</i>) filed by State of California. (Attachments: # <u>1</u> Certificate/Proof of Service)(Pinal, Randall) (Filed on 12/14/2011) (Entered: 12/14/2011)
12/29/2011	<u>151</u>	FURTHER JOINT CASE MANAGEMENT STATEMENT filed by Big Lagoon Rancheria, State of California. (Attachments: # <u>1</u> Supplement 11/8/2011 Jt. CMC Stmt)(Jackson, Bruce) (Filed on 12/29/2011) Modified on 12/30/2011 (kc, COURT STAFF). (Entered: 12/29/2011)
01/04/2012		CLERKS NOTICE. Notice is hereby given that the Court, on its own motion, shall take the motion for leave, and the motion to stay under submission on the papers. The hearings previously scheduled for Thursday, January 5, 2012, is vacated. The case management conference previously scheduled for Thursday, January 5, 2012, is also vacated. (This is a text only docket entry, there is no document associated with this notice.) (ndr, COURT STAFF) (Filed on 1/4/2012) (Entered: 01/04/2012)
02/01/2012	<u>152</u>	ORDER DENYING DEFENDANTS <u>139</u> MOTION FOR LEAVE TO FILE A MOTION TO VACATE THE MEDIATORS ORDER SELECTING A COMPACT, DIRECTING ENTRY OF JUDGMENT AND GRANTING DEFENDANTS <u>140</u> MOTION TO STAY PENDING APPEAL. Signed by Judge Claudia Wilken on 2/1/2012. (ndr, COURT STAFF) (Filed on 2/1/2012) (Entered: 02/01/2012)
02/01/2012	<u>153</u>	JUDGMENT. Signed by Judge Claudia Wilken on 2/1/2012. (ndr, COURT STAFF) (Filed on 2/1/2012) (Entered: 02/01/2012)

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