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 SUPPLEMENTAL EXCERPTS OF RECORD

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Section 2.23 ~~Section 2.24~~ "State" means the State of California or an authorized official or agency thereof designated by this Compact or by the Governor.

Section 2.24 ~~Section 2.25~~ "State Gaming Agency" means the entities authorized to investigate, approve, regulate and license gaming pursuant to the Gambling Control Act (Chapter 5 (commencing with section 19800) of Division 8 of the Business and Professions Code), or any successor statutory scheme, and any entity or entities in which that authority may hereafter be vested.

Section 2.25 ~~Section 2.26~~ "State Designated Agency" means the state entity or entities designated or to be designated by the Governor to exercise rights and fulfill responsibilities established by this Compact.

Section 2.26 ~~Section 2.27~~ "Tribe" means the Big Lagoon Rancheria, a federally recognized Indian tribe listed in the Federal Register as the Big Lagoon Rancheria, California, or an authorized official or agency thereof.

Section 2.27 ~~Section 2.28~~ "Tribal Chairperson" means the person duly elected under the Tribe's Constitution to perform the duties attendant to that title which are specified therein, including serving as the Tribe's official representative.

Section 2.28 ~~Section 2.29~~ "Tribal Gaming Agency" means the person, agency, board, committee, commission, or council designated under tribal law, including, but not limited to, an intertribal gaming regulatory agency, approved to fulfill those functions by the NIGC, primarily responsible for carrying out the Tribe's regulatory responsibilities under IGRA and the Tribal Gaming Ordinance. No person employed in, or in connection with, the management, supervision, or conduct of any Gaming Activity may be a member or employee of the Tribal Gaming Agency.

SECTION 3.0. SCOPE OF CLASS III GAMING AUTHORIZED.

Section 3.1 Authorized and Permitted Class III Gaming.

(a) The Tribe is hereby authorized to operate only the following Gaming Activities under the terms and conditions set forth in this Compact:

(i) ~~(1)~~ Gaming Devices.

(ii) ~~(2)~~ Any banking or percentage card games.

(iii) ~~(3)~~ Any devices or games that are authorized under state law to the California State Lottery, provided that the Tribe will not offer such games through use of the Internet unless others in the State are permitted to do so under state and federal law.

EXHIBIT 5B

the winnings but shall award reimbursement of the amounts wagered by the patron which were lost as a result of any such failure. The cost and expenses of such arbitration shall be initially borne by the Tribe, but the arbitrator shall award to the prevailing party its costs and expenses (but not attorney fees). Any party dissatisfied with the award of the arbitrator may at that party's election invoke the JAMS Optional Arbitration Appeal Procedure (and if those rules no longer exist, the closest equivalent); provided that the party making such election must bear all the costs and expenses of JAMS and the arbitrators associated with the Appeal Procedure, regardless of the outcome. To effectuate its consent to the foregoing arbitration procedure, the Tribe shall, in the exercise of its sovereignty, waive its right to assert sovereign immunity in connection with the arbitrator's jurisdiction and in any state or federal court action to (i) enforce the parties' obligation to arbitrate, (ii) confirm, correct, or vacate the arbitral award rendered in the arbitration pursuant to section 1285 et seq. of the California Code of Civil Procedure, or (iii) enforce or execute a judgment based upon the award. The Tribe agrees not to assert, and will waive, any defense alleging improper venue or forum non conveniens as to the jurisdiction of any state or federal court located within seventy-five (75) mile radius of the ~~Parcel~~Site in any such action brought with respect to the arbitration award.

SECTION 11.0. OFF-RESERVATION ENVIRONMENTAL AND ECONOMIC IMPACTS.

[Additional language may be developed depending upon ~~parcel~~Site location and circumstances]

Section 11.1 [1] Tribal Environmental Impact Report.

(a) Before the commencement of any Project as defined in Section ~~2.22~~2.20 herein, the Tribe shall cause to be prepared a tribal environmental impact report, which is hereinafter referred to as a TEIR, analyzing the potentially significant off-reservation environmental impacts of the Project pursuant to the process set forth in this SECTION 11.0; provided, however, that information or data which is relevant to such a TEIR and is a matter of public record or is generally available to the public need not be repeated in its entirety in the TEIR, but may be specifically incorporated by reference or cited as the source for conclusions stated therein; and provided, further, that such information or data shall be briefly described, that its relationship to the TEIR shall be indicated, and that the source thereof shall be reasonably available for inspection at a public place or public building. If, pursuant to the National Environmental Policy Act ("NEPA"), the Tribe or the federal government conduct and issue an environmetal assessment or impact statement (together, "NEPA Studies"), the reports, studies, surveys, and other documents prepared for the NEPA Studies shall be deemed to sufficiently describe the impacts of the proposed project and the measures required to mitigate those impacts. The TEIR shall

[1] Sections 11.1 through 11.7 have been deliberately omitted.

provide detailed information about the Significant Effect(s) on the Off-Reservation Environment which the Project is likely to have, including each of the matters set forth in Exhibit A, shall list ways in which the Significant Effects on the Environment might be minimized, and shall include a detailed statement setting forth all of the following:

(1) All Significant Effects on the Environment of the proposed Project;

(2) Identification of:

(A) Any Significant Effect on the Environment that cannot be avoided if the Project is implemented;

(B) Any Significant Effect on the Environment that would be irreversible if the Project is implemented;

(3) Mitigation measures proposed to minimize Significant Effects on the Environment, including, but not limited to, measures to ~~65 Draft-November-19, 2007~~ reduce the wasteful, inefficient, and unnecessary consumption of energy;

(4) A range of reasonable alternatives to the Project; provided that the Tribe need not address alternatives that would cause it to forgo its right to engage in the Gaming Activities authorized by this Compact on its Indian lands;

(5) Whether any proposed mitigation would be feasible;

(6) Any direct growth-inducing impacts of the Project; and

(7) Whether the proposed mitigation would be effective to substantially reduce the potential Significant Effects on the Environment.

(b) In addition to the information required pursuant to subdivision (a), the TEIR shall also contain a statement briefly indicating the reasons for determining that various effects of the Project on the off-reservation environment are not significant and consequently have not been discussed in detail in the TEIR. In the TEIR, the direct and indirect Significant Effects on the Off-Reservation Environment, including each of the items on Exhibit A, shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion of mitigation measures shall describe feasible measures which could minimize significant adverse effects, and shall distinguish between the measures that are proposed by the Tribe and measures proposed by others. Where several measures are available to mitigate an effect, each shall be discussed and the basis for selecting a particular measure shall be identified. Formulation

of mitigation measures shall not be deferred until some future time. The TEIR shall also describe a range of reasonable alternatives to the Project or to the location of the Project, which would feasibly attain most of the basic objectives of the Project and which would avoid or substantially lessen any of the Significant Effects on the Environment, and evaluate the comparative merits of the alternatives; provided that the Tribe need not address alternatives that would cause it to forgo its right to engage in the Gaming Activities authorized by this Compact on its Indian lands. The TEIR must include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison. The TEIR shall also contain or incorporate by reference an index or table of contents and a summary, which shall identify each Significant Effect on the Environment with proposed mitigation measures and alternatives that would reduce or avoid that effect, and issues to be resolved, including the choice among alternatives and whether and how to mitigate the Significant Effects on the Environment. Previously approved land use documents, including, but not limited to, general plans, specific plans, and local coastal plans, may be used in cumulative impact analysis.

Section 11.2 Notice of Preparation of Draft TEIR.

(a) Upon commencing the preparation of the draft TEIR, the Tribe shall issue a Notice of Preparation to the State Clearinghouse in the State Office of Planning and Research ("State Clearinghouse"), to the City of [if applicable] ("City"), and to the County for distribution to the public. The Notice shall provide all Interested Persons with information describing the Project and its potential Significant Effects on the Environment sufficient to enable Interested Persons to make a meaningful response or comment. At a minimum, the Notice shall include all of the following information:

(1) A description of the Project;

(2) The location of the Project shown on a detailed map, preferably topographical, and on a regional map; and

(3) The probable off-reservation environmental effects of the Project.

(b) The Notice shall also inform Interested Persons, as defined in Section 2.17, of the preparation of the draft TEIR and shall inform them of the opportunity to provide comments to the Tribe within thirty (30) days of the date of the receipt of the Notice by the State Clearinghouse, the City, and the County. The Notice shall also request Interested Persons to identify in their comments the off-reservation environmental issues and reasonable mitigation measures that the Tribe should explore in the draft TEIR.

Section 11.3 Notice of Completion of the Draft TEIR.

(a) Within no less than thirty (30) days following the receipt of the Notice of Preparation by the State Clearinghouse, the City, and the County, the Tribe shall file a

copy of the draft TEIR and a Notice of Completion with the State Clearinghouse, the State Gaming Agency, the City, the County, and the California Department of Justice. The Notice of Completion shall include all of the following information:

(1) A brief description of the Project;

(2) The proposed location of the Project;

(3) An address where copies of the draft TEIR are available; and

(4) Notice of a period of forty-five (45) days during which the Tribe will receive comments on the draft TEIR.

(b) The Tribe will submit ten (10) copies each of the draft TEIR and the Notice of Completion to the County, which will be asked to post public notice of the draft TEIR at the office of the County Board of Supervisors and to furnish the public notice to the public libraries serving the County. The County shall also be asked to serve in a timely manner the Notice of Completion to all Interested Persons, which Interested Persons shall be identified by the Tribe for the County, to the extent it can identify them. The Tribe also will submit ten (10) copies each of the draft TEIR and the Notice of Completion to the City. In addition, the Tribe will provide public notice by at least one of the procedures specified below:

(1) Publication at least one time by the Tribe in a newspaper of general circulation in the area affected by the Project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas; or

(2) Direct mailing by the Tribe to the owners and occupants of property adjacent to, but outside, the Indian lands on which the Project is to be located. Owners of such property shall be identified as shown on the latest equalization assessment roll.

Section 11.4 Issuance of Final TEIR.

The Tribe shall prepare, certify and make available to the County, the City, the State Clearinghouse, and the State Gaming Agency at least fifty-five (55) days before the completion of negotiations pursuant to Section 11.7 a Final TEIR, which shall consist of:

(a) The draft TEIR or a revision of the draft;

(b) Comments and recommendations received on the draft TEIR either verbatim or in summary;

(c) A list of persons, organizations, and public agencies commenting on the draft TEIR;

(d) The responses of the Tribe to significant environmental points raised in the review and consultation process; and

(e) Any other information added by the Tribe.

Section 11.5

The Tribe shall reimburse the County and the City for copying and mailing costs resulting from making the Notice of Preparation, the Notice of Completion, and the draft TEIR available to the public under this SECTION 11.0.

Section 11.6

The Tribe's failure to prepare a TEIR when required shall be deemed a material breach of this Compact and shall be grounds for issuance of an injunction or other appropriate equitable relief.

Section 11.7 Intergovernmental Agreement.

(a) Before the commencement of a Project, and no later than the issuance of the final TEIR to the City and the County, the Tribe shall offer to commence negotiations with the County and with the City, and upon the County's and City's acceptances of the Tribe's offers, shall negotiate with the County and the City and shall enter into an enforceable written agreement with the County and shall enter into a separate enforceable written agreement with the City (the "Intergovernmental Agreements") with respect to the matters set forth below:

(1) The timely mitigation of any Significant Effect on the Off-Reservation Environment (which effects may include, but are not limited to, aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, water resources, land use, mineral resources, traffic, noise, utilities and service systems, and cumulative effects), where such effect is attributable, in whole or in part, to the Project, unless the parties agree that the particular mitigation is infeasible, taking into account economic, environmental, social, technological, or other considerations.

(2) Reasonable compensation for law enforcement, fire protection, emergency medical services and any other public services to be provided by the County and its special districts and the City to the

Tribe for the purposes of the Tribe's Gaming Operation, including the Gaming Facility, as a consequence of the Project.

(3) Reasonable compensation for programs designed to address gambling addiction.

(4) Mitigation of any effect on public safety attributable to the Project, including any reasonable compensation to the County and the City as a consequence thereof.

(b) The Tribe shall not commence a Project until the Intergovernmental Agreements specified in subdivision (a) are executed by the parties or are effectuated pursuant to Section 11.8.

(c) Before the commencement of a Project, and no later than the issuance of the final TEIR to the State Gaming Agency, the Tribe shall negotiate with the State Department of Transportation or the State Designated Agency (if one is designated) and shall enter into an enforceable written agreement with the State Department of Transportation or the State Designated Agency to pay its fair share to timely mitigate the off-reservation traffic impacts of the Project on the State highway system and facilities where such impacts are attributable, in whole or in part, to the Project.

(d) Nothing in this Section 11.7 requires the Tribe to enter into any other intergovernmental agreements with a local governmental entity other than as set forth in subdivisions (a) and (c).

Section 11.8 Arbitration.

In order to foster good government-to-government relationships and to assure that the Tribe is not unreasonably prevented from commencing a Project and benefiting therefrom, if either an Intergovernmental Agreement with the County or an Intergovernmental Agreement with the City has not been entered into within fifty-five (55) days of the submission of the final TEIR, or such further time as the Tribe and the County or the Tribe and the City (for purposes of this section "the parties") may mutually agree in writing, either party that has not reached agreement may demand binding arbitration before a single arbitrator pursuant to the comprehensive arbitration rules and procedures of JAMS (or if those rules no longer exist, the closest equivalent), as set forth herein with respect to any remaining disputes arising from, connected with, or related to the negotiation:

(a) The arbitration shall be conducted as follows: ~~Each party shall exchange with each other within five (5) days of the demand for arbitration its last, best written offer made during the negotiation pursuant to Section 11.7. The arbitrator shall schedule a hearing to be heard within thirty (30) days of his or her appointment unless the parties agree to a longer period. The arbitrator shall be limited to awarding only one of the offers~~

~~submitted, without modification, based upon that proposal~~ Each party shall present evidence and argument which best provides feasible mitigation of Significant Effects on the Environment and on public safety and most reasonably compensates for public services pursuant to Section 11.7, without unduly interfering with the principal objectives of the Project, including the economic limitations thereof or of Tribal programs, employment, operations and other needs that would be impacted by the compensation being proposed, or imposing environmental mitigation measures which are different in nature or scale from the type of measures that have been required to mitigate impacts of a similar scale of other projects in the surrounding area, to the extent there are such other projects. The arbitrator shall take into consideration whether the Final TEIR provides the data and information necessary to enable the County and/or the City to determine both whether the Project may result in a Significant Effect on the Environment and whether ~~the~~ proposed mitigation measures are sufficient to mitigate any such effect. If the respondent does not participate in the arbitration, the arbitrator shall nonetheless conduct the arbitration and issue an award, and the claimant shall submit such evidence as the arbitrator may require therefor. The arbitrator shall render his or her decision within twenty (20) days following the completion of the arbitration hearing. Review of the resulting arbitration award is waived.

(b) In order to effectuate this section, and in the exercise of ~~its~~the sovereignty of each party, the Tribe ~~agrees~~and the City or County, as the case shall be, hereby agree to waive its right to assert sovereign immunity in connection with the arbitrator's jurisdiction and in any action to (i) enforce the other party's obligation to arbitrate, (ii) enforce or confirm any arbitral award rendered in the arbitration, or (iii) enforce or execute a judgment based upon the award.

(c) The arbitral award will become part of the written agreement required under Section 11.7.

Section 11.9

Unless otherwise agreed by the parties thereto, the Tribe agrees to implement the mitigation measures set forth in the Intergovernmental Agreements entered into with the City and the County, and any amendments thereto. Unless compliance with the applicable provisions has been waived by the City or the County, ~~failure~~a material breach of the Intergovernmental Agreement by the Tribe ~~to implement~~or the ~~mitigation measures~~County/City shall constitute a breach of this Compact by the Tribe or State respectively.

EXHIBIT 2

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,

Plaintiff,

v.

STATE OF CALIFORNIA,

Defendant.

No. C 99-04995 CW

ORDER DENYING CROSS-MOTIONS FOR SUMMARY JUDGMENT

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,

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

BACKGROUND

I. Legal Framework

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

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

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

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

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

Id. § 2710(d)(3)(A).

IGRA provides that a gaming compact may include provisions relating to

> (i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;
> (ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;
> (iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;
> (iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;
> (v) remedies for breach of contract;
> (vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and
> (vii) any other subjects that are directly related to the operation of gaming activities.

Id. § 2710(d)(3)(C).

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

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[1]Specifically, IGRA provides:

> (i) An Indian tribe may initiate a cause of action [to compel the State to negotiate in good faith] only after the close of the 180-day period beginning on the date on which the Indian tribe requested the State to enter into negotiations under paragraph (3)(A).
>
> (ii) In any action [by an Indian tribe to compel the State to negotiate in good faith], upon the introduction of evidence by an Indian tribe that-
>
> (I) a Tribal-State compact has not been entered into under paragraph (3), and
>
> (II) the State did not respond to the request of the Indian tribe to negotiate such a compact or did not respond to such request in good faith,
>
> 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.

Id. § 2710(d)(7)(B).

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

II. Factual Background

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

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

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

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

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

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

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[2]Pursuant to the Pala Band compact, gaming tribes could license the right to operate more gaming devices. The non-gaming tribes were the beneficiaries of this licensing scheme. Up to 199 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.

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

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

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

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

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

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

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

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

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

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

DISCUSSION

I. Legal Standard

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

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

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

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

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

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

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

A. Tribal Sovereignty and State Authority

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

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[3]The State points out that the Supreme Court qualified this rule in California v. Cabazon Band of Mission Indians, stating:

> Our cases, however, have not established an inflexible per se rule precluding state jurisdiction over tribes and tribal members in the absence of express congressional consent. "[U]nder certain circumstances a State may validly assert authority over the activities of nonmembers on a reservation, and . . . in exceptional circumstances a State may assert jurisdiction over the on-reservation activities of tribal members."

480 U.S. 202, 214-15 (1987) (quoting New Mexico v. Mescalero Apache Tribe, 462 U.S. 324, 331-32 (1983)) (distinguishing general rule stated in McClanahan) (footnote omitted). However, there are no "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

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

B. Permissible Subject Matter for Gaming Compacts Under IGRA

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

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

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

25 U.S.C. § 2710(d)(3)(C).[4]

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

The State proposes that the Court should utilize the balancing test discussed in Cabazon to determine whether State authority is preempted by the operation of federal law. However, such a balancing test is inapplicable to suits under IGRA. The Senate committee report states that IGRA "is intended to expressly preempt 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).

[4]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

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

> The Court reads § 2710(d)(3)(C), and specifically § 2710(d)(3)(C)(vii), more broadly than Coyote Valley does. The committee report of the Senate Select Committee on Indian Affairs describes the subparts of § 2710(d)(3)(C) as "broad areas." See S. Rep. No. 100-446, at 14 (1988), reprinted in 1988 U.S.C.C.A.N. 3071, 3084. Consistent with this description, the Court interprets "subjects that are directly related to the operation of gaming activities" to include any subject that is directly connected to the operation of gaming facilities.
>
> Not all such subjects are included within § 2710(d)(3)(C)(vii), because that subpart is limited to subjects that are "directly" related to the operation of gaming activities. The committee report notes that Congress did "not intend that compacts be used as a subterfuge for imposing State jurisdiction on tribal lands." Id. The Court concludes that it was this concern that led Congress to limit the scope of § 2710(d)(3)(C)(vii) to subjects that are "directly" related to the operation of gaming activities. States cannot insist that compacts include provisions addressing subjects that are only indirectly related to the operation of gaming facilities.

In re Indian Gaming Related Cases (Coyote Valley Band of Pomo 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

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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.

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

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

As Representative Coelho, in discussing IGRA, remarked:

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

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

C. Good Faith Negotiations

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

IGRA does not expressly define "good faith," and the statute and case law provide very little guidance about what is meant by negotiating in good faith. In determining whether a State has negotiated in good faith, courts "may take into account the public interest, public safety, criminality, financial integrity, and adverse economic impacts on existing gaming activities." § 2710(d)(7)(B)(iii)(I). Commenting on this provision, the Senate Select Committee on Indian Affairs stated,

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[5]The Tribe argues that this and similar portions of IGRA's legislative history indicate Congress' intent to prevent States from negotiating and including provisions on subjects such as environmental protection and land use as part of the compacting process. However, a better reading of the legislative history is that it warns against allowing States to regulate tribal activity broadly under the guise of negotiating provisions on subjects that 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.

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

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

Neither party has proposed a standard by which the Court should determine whether the State has negotiated in good faith. This Court previously analyzed the "good faith" standard as follows:

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

Coyote 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

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

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

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

is a unilateral demand.

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

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

> [T]hese issues are part of the negotiations contemplated by IGRA. In considering whether a State has negotiated in good faith, courts "may take into account the public interest, public safety, criminality, financial integrity, and adverse economic impacts on existing 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

consistent with the scope of negotiations contemplated by IGRA.

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

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

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

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

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

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

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

> unless-
> (1) such lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988.

25 U.S.C. § 2719(a). The Tribe acquired the land upon which the proposed casino site is located after October 17, 1988. Therefore, the casino site may be located on that land only if it is "contiguous to the boundaries of the reservation of the Indian tribe." The proposed casino site is contiguous to the Tribe's rancheria. The State asserts that Big Lagoon's rancheria is not a "reservation" as defined by federal and Indian law.

IGRA does not provide a definition of "reservation." Therefore, the Court must determine the established meaning of the term. See Community for Creative Non-Violence v. Reid, 490 U.S. 730, 739 (1989) (quoting NLRB v. Amax Coal Co., 453 U.S. 322, 329 (1981)). "The starting point for our interpretation of a statute is always its language." Id.

The State first proposes that, for purposes of IGRA, the meaning of the term "reservation" must rest on the established meaning of the term in California. The State then asserts that the Act of April 8, 1864 designated only four reservations in California, and no more than those four are permitted under the 1864 Act. See Mattz v. Arnett, 412 U.S. 481, 489, 493-94 (1973) (describing 1864 Act and limitation to four reservations). Big Lagoon Rancheria is not one of those four reservations.

The Tribe relies on the Tenth Circuit's recent decision in Sac and Fox Nation of Missouri v. Norton, which held that the established meaning of "reservation" for purposes of IGRA is land

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

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

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

It is clear from IGRA's language that "reservation" cannot mean all lands held in trust for a tribe by the federal government, for IGRA distinguishes between lands held in trust and reservations. See, e.g., 25 U.S.C. § 2719(a)(1)-(2), (b)(1)(B); see also Sac & Fox, 240 F.3d at 1267. However, the narrow definition proposed by the State, in which there are only four reservations in the entire State of California, cannot be Congress' intended definition of reservation. Such a limited definition of the term would preclude gaming on many Indian tribal lands in California, i.e., all tribal lands acquired after October 17, 1988 except for lands located within or contiguous to one of the four reservations established by the Act of 1864. It would mean that many of the California tribes that have already signed tribal-State 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

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

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

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

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

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

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

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

[6]The State relies on the following statement in the Tribe's EA for the proposition that the Tribe has refused to comply with the CZMA: "It is the position of the Tribal Council that the CZMA is not applicable since Congress expressly excluded lands held in trust by the Federal Government in its definition of the term 'coastal zone' . . . ." Verrips Ex. D at 29-30. This preliminary 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

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

United States District Court
For the Northern District of California

Exhibit V

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:

No. C 99-04995 CW

BIG LAGOON RANCHERIA,

Plaintiff,

v.

STATE OF CALIFORNIA,

Defendant.

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff Big Lagoon Rancheria (Big Lagoon, or the Tribe) has filed a fourth motion for summary judgment and for an order declaring that Defendant State of California has not been negotiating with Big Lagoon in good faith for an Indian gaming

compact under 25 U.S.C. § 2710(d)(7)(B)(iii).[1] The State opposes this motion. The matter was submitted on the papers. Having considered the papers filed by the parties, the Court DENIES the motion.

BACKGROUND

Big Lagoon bases its motion on the following events, which occurred since the Court's last summary judgment order. The facts are undisputed except where noted.

I. On-Site Gaming

On August 8,[2] the Tribe wrote to the State to re-initiate compact negotiations. Engstrom Dec. Ex. A. The Tribe suggested that the parties enter into the original Model Compact without any side agreement. Alternatively, it suggested that the parties resume negotiations toward a compact for gaming on the existing tribal land taking into account the State's environmental concerns by negotiating reciprocal concessions.

The State replied on August 15, rejecting the Tribe's suggestion that the parties enter into the original Model Compact. The State explained that the Model Compact was unacceptable because it did not include adequate environmental provisions. Id. Ex. C.

In its August 27 response, the Tribe expressed willingness to negotiate toward environmental protections, asking specifically, "What environmental protection does the State want? And what is it

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[1]The relevant law and the history of the parties' dispute is detailed in the Court's first three summary judgment orders (Docket nos. 47, 79, 138).

[2]All dates refer to 2003 unless otherwise noted.

willing to give in return for any such negotiated concessions?" Id. Ex. E.

The State's September 5 response stated that it wished to delay further negotiation until it received a response to a query it had sent to the Secretary of the Interior regarding the possibility of an off-site casino on State park property adjacent to Highway 101 (State Park Proposal). The State declared that it would not negotiate the terms of an on-site casino unless the parties had first pursued the State Park Proposal or other off-site gaming options. Id. Ex. H.

The Tribe responded, again asking the State to articulate the specific concessions it would offer in the context of on-site gaming. The State agreed to meet on September 30 to negotiate on-site gaming regardless of the status of the off-site possibility. Id. Ex. I, K. The Tribe confirmed the September 30 meeting, requested an additional meeting in October, and repeated its request for the State to articulate its proposed concessions. Id. Exs. L, O.

After the September 30 meeting, the State made clear in its October 17 letter that it viewed the on-site option only as an alternative should an off-site option be infeasible. In this letter, the State articulated its specific environmental protection demands and reciprocal concessions. Its demands included a 200 foot buffer between lagoon wetlands and casino development, wastewater limitations, a thirty foot height limit on casino development, a lighting plan, sign restrictions and preservation of existing trees and vegetation. Its proposed concessions included

State's objections for on-site facility

the right to operate additional gaming devices, changes in the timing and percentage of net win to be provided to the State and adjustment of public health and welfare provisions. Id. Ex. P. The State declined to schedule a follow-up negotiation session at that time, explaining that the intervening change in gubernatorial administration after the recall election created uncertainty in the negotiating team and policy. Id.

The Tribe's October 29 letter in response expressed that it was "dismayed by what we perceive to be significantly evolving substantive demands by the State." The Tribe rejected the 200 foot buffer, but stated its belief that "an agreement on some combination of the other proposed constraints can be reached." Id. Ex. Q. The State replied, asking why the 200 foot buffer was rejected. Id. Ex. R.

The Tribe's November 17 response expressed frustration due to its perception that the State remained unwilling to specify its demands and concessions. Id. Ex. S. On December 19, the Tribe wrote to the Governor's office asking with whom in the new administration it might commence compact negotiations. Id. Ex. V.

The Governor's office responded on December 30. Id. Ex. X. On January 7, 2004, Governor Schwarzenegger appointed his compact negotiation team. Kaufman Dec. Ex. 2. There is some evidence the Governor Davis signed compacts with other tribes after he was recalled but while still in office in October, 2003. Engstrom Reply Dec. Ex. B.

II. Off-Site Gaming

In addition to the on-site options discussed above, the

Tribe's August 8 letter also suggested re-negotiation of the State's alternative State Park Proposal for off-site gaming. The Tribe stated its opinion that the parties were "at loggerheads" in their attempt to negotiate the State Park Plan, and expressed doubt that the parties could obtain third-party approval. Engstrom Dec. Ex. A.

In reply, the State declared, "The State's position is that siting the Tribe's proposed casino on the State park property adjacent to Highway 101 remains the most promising avenue for negotiation." The State believed that third party approval was not required, but that the State Park Proposal would be approved by both the Save the Redwoods League and the Department of the Interior, specifically citing its previous communication with former Deputy Assistant Secretary for Indian Affairs Wayne Smith. Id. Ex. C.

On August 15, the Tribe wrote a letter requesting the Department of the Interior's view on the State Park Proposal. On August 21, Acting Regional Director Amy Dutschke of the Pacific Regional Office of the Bureau of Indian Affairs, United States Department of the Interior, responded. Dutschke concluded that the State Park Proposal "exceeds what Congress intended for inclusion as part of gaming compacts under the Indian Gaming Regulatory Act," and that "the proposal is contrary to Federal Indian policy and the Secretary's fiduciary responsibility to protect Federal Indian Lands." Id. Ex. D.

The Tribe's next letter to the State disagreed that the State Park Proposal was a viable alternative, based on Dutschke's letter,

and reiterated its complaint that the twenty-five acre parcel was actually only twenty-one acres and that the State was not offering adequate consideration for the proposed transaction. Id. Ex. E.

On September 3, the State wrote Gale A. Norton, the Secretary of the Interior, asking whether Dutschke's August 21 letter accurately represented the Department's position on the State Park Proposal. Id. Ex. F. On September 5, the State informed the Tribe that because Dutschke's letter did not represent final Department of the Interior policy, it believed that it was premature to conclude that the Department would not approve a settlement based on the State Park Proposal. The State informed the Tribe that because it viewed the State Park Proposal as the most promising option, it wished to delay all compact negotiations until the Secretary of the Interior replied to its September 3 letter.

Nonetheless, the parties met on September 30 and negotiated on-site gaming as discussed above. At the September 30 negotiation session, the State indicated that it was investigating the possibility of a another off-site alternative to the State Park Proposal, a site owned by a private company (Simpson Proposal). Kaufman Dec. at ¶ 1; Engstrom Dec. Ex. P.

On December 19, 2003 Associate Solicitor Christopher B. Chaney, on behalf of the United States Department of the Interior, wrote to the State articulating concern that certain aspects of the Proposal may be inconsistent with certain federal regulations. However, the Department stated that "despite these concerns, the United States is not a party to the litigation and need not be involved in the settlement negotiations taking place between the

Tribe and the State." The Department offered to review any compact that the Tribe and State could reach agreement on, after such agreement was made. Kaufman Dec. Ex. 1. The State provides evidence that the Save the Redwoods League has not taken any action to approve or disapprove an off-site gaming alternative. Id. Ex. 3. On January 15, 2004, The Tribe filed this motion.

DISCUSSION

The issue on this motion, as on the Tribe's previous motions, is whether the State has negotiated in good faith as required under the IGRA. The Tribe contends that the State has demonstrated bad faith since August 4, 2003, by refusing to identify demands and concessions related to on-site gaming, using the change in administrations to delay negotiations and pursuing an untenable proposal for off-site gaming.

The Court first considers whether there is evidence that the State conducted good faith negotiation regarding on-site gaming. This Court has previously held that the State could negotiate in good faith regarding the on-site alternative by offering the Tribe specific concessions in return for requests that the Tribe comply with environmental regulations. March 18, 2002 Order at 18. There is evidence that the State complied with the Tribe's request that it articulate its concessions and demands relating to the on-site option in its October 17, 2003 letter. If the Tribe is unsatisfied with the State's proposed concessions and demands, it may explain its reasons and make a counteroffer or a request for more specific information. The Court does not discern bad faith in the State's bargaining at this point.

Next, the Tribe asserts that the State used the change in administrations as an excuse to forestall compact negotiations. The Court finds that the State was understandably delayed by the unplanned and unprecedented change in administrations due to the recall election. The Tribe's evidence that the Davis administration negotiated and executed gaming compacts with other tribes after the recall election, when considered in the totality of the circumstances, does not support an inference that either the Davis or the Schwarzenegger administrations unreasonably delayed compact negotiations with Big Lagoon. The Court cannot conclude that the delay occasioned by the recall supports a finding that the State has refused to negotiate in good faith.

Lastly, the Court examines the State's negotiation of the off-site gaming alternative. The previous order in this case held that the State was not demonstrating bad faith by continuing to negotiate towards its alternative State Park Proposal. August 4, 2003 Order at 12. There is evidence that the State has continued to do just that. The State's pursuit of the off-site option demonstrates good faith unless there is reason to believe that alternative is being pursued in vain. The Tribe had previously been amenable to this option and has not articulated the reasons for its change of heart. The letter it solicited from Acting Regional Director Dutschke and the letter from Associate Solicitor Chaney are not dispositive. Both the State Park Proposal and the Simpson Proposal may well be worth exploring. Because off-site gaming is still a viable alternative, the Court must reject the Tribe's argument that the State demonstrated bad faith by pursing

off-site gaming proposals it knew or should have known to be infeasible.

CONCLUSION

For the foregoing reasons, the Court DENIES Big Lagoon's motion for summary judgment (Docket no. 141). A Case Management Conference shall be held on June 18, 2004 at 1:30 pm. The parties shall submit a Joint Case Management Conference Statement a week before the conference.

IT IS SO ORDERED.

Dated: MAR 17 2004

CLAUDIA WILKEN
United States District Judge

Copies mailed to counsel
as noted on the following page

Informational Hearing of the
SENATE GOVERNMENTAL ORGANIZATION COMMITTEE

"Tribal-State Compact Between the State of California and the Big Lagoon Rancheria"

March 28, 2006
State Capitol
Sacramento, California

SENATOR DEAN FLOREZ: I'd like to get started. I want to thank the committee members and those in the audience for attending this afternoon—or, better yet, this evening. We have a pretty full agenda, and I think it reflects the importance of this particular compact and its ramifications to the State's gaming landscape.

I do have a number of questions that I would like to get on the record, and so, I would ask the sergeants to have plenty of tapes because we want to make sure we have a running transcript of this particular hearing.

For the members that are here, I'd like to lay out how we're going to proceed. We're going to start off with the "Legal Panel" featuring Mr. Kolkey, the Governor's lead negotiator for State gaming compacts, and Mr. Kaufman from the Attorney General's Office. Then we're going to have the "Tribal Panel" featuring Mr. Moorehead, tribal chairperson of Big Lagoon Rancheria, and other interested parties. That will be followed by elected officials from Barstow, and then we'll have the "State Agency Panel" consisting of representatives from the Department of Parks, Coastal Commission, and Fish and Game. We'll also hear from the "Environmental Panel" and representatives from the environmental community. And then we'll end with "Public Comments."

Now, as I said at the beginning of this hearing, I do have a number of questions, and I think hopefully through some of the questions that I'll ask, they will answer many of the members' questions as well. I would like the opportunity to go through these questions to get them on the record. And any panelist that

MR. BOLDREY: There will be common property shared in fee. The city had an interest in limiting the amount of land that went into trust, as did the State of California. BarWest has acquired for the tribes more than simply the land that would be put into trust. It's also acquired land adjoining the gaming facility that could be used for parking or other types of activities. That property will be transferred from BarWest to the tribes at BarWest's cost and can be used by the tribes jointly and is fully subject, of course, to State law and local taxation, et cetera, because it's fee land; it's not land in trust.

SENATOR FLOREZ: And that fee land, is that basically sharing parking lots?

MR. BOLDREY: Yes.

SENATOR FLOREZ: So, the parking lot is shared. They're two separate entities, but there's this in-fee issue which . . .

MR. BOLDREY: There would be some parking on trust land, but the adjoining fee land could be used for RV parking and other ancillary uses.

SENATOR FLOREZ: Okay. In terms of—and we talked to Mr. Kolkey as well, who is still here; thank you, Mr. Kolkey, for being here—the commercial development issue, we talked about giving that up on the current reservation. Can you tell us a little bit more about that? Are you giving up housing rights? Do you see that as a provision as some sort of infringement on sovereignty? I mean, just your perspective on that commercial development.

MR. ENGSTROM: Mr. Chairman, I'll take that one, I think. We don't see it as an infringement on sovereignty because it was freely negotiated at arm's length between two sovereigns. So, it is not an infringement upon sovereignty. It's something the tribe decided to do in fashioning this compromise.

There is a restriction on commercial development—any kind of commercial development—on the 20 acres in Humboldt County. There are also various land use and design restrictions: height limitations, setbacks, foliage, visual impacts, night sky and so forth on any future housing development on the land.

SENATOR FLOREZ: Okay, thank you. That's a very succinct answer. Housing rights then?

Agreements. That was one of a number of things where the State was more willing to move than it was in other respects.

SENATOR FLOREZ: And that was something that you negotiated through the process.

MR. ENGSTROM: Painstakingly, yes sir.

SENATOR FLOREZ: Okay, great.

Members, any other questions?

Would you like to make any closing statement?

MR. ENGSTROM: The only thing that I would make, Mr. Chairman and members of your committee—besides thanking you all for your time—is to emphasize that this didn't happen overnight. As Mr. Kaufman said, we spent years in litigation. We went back to the court four times with summary judgment motions. I don't know who all on the dais is an attorney, but in any given case, four summary judgment motions is a lot. We ran into stiff resistance from the State, extraordinary resolve from the Resources Agency. That's why we entered into this settlement. It's a compromise.

I feel a little bit chagrined to hear Mr. Kaufman and Mr. Kolkey say what a great deal it is for the State because we don't feel quite as happy about it as they do. But that must mean that it's a good deal for the State. It is something that we entered into deliberately and consciously and based on years of experience of negotiating and litigating with the State. It's wrong to say or to suggest that this tribe and its legal counsel were duped. It's wrong to say that they didn't know what they were doing. And respectfully, it's wrong to suggest that they have not been able to look out for their own sovereign interests, because they have.

This agreement—I can't tell you how many times we were over at Mr. Kolkey's office or visiting with Mr. Kaufman down in San Diego or meeting with people here in Sacramento, but it came about as a result of a great deal of work, a great deal of energy, and at the end of the day, it's a compromise in settlement of litigation that is meant to benefit as many people as possible.

SENATOR FLOREZ: Great. That's a great summary.

Any other closing comments?

MR. MOOREHEAD: I would just like to add to that. You know, we looked at it as, based on the Section 20, we knew it's an uphill struggle. We're willing to push forward with it because of the fact that it's going to benefit the greater interests of the State of California—if it goes through the Legislature—in terms of the environmental concerns. The community of Barstow has expressed a welcoming to us and Los Coyotes.

SENATOR FLOREZ: If they have, why not go to the ballot? Why the phone poll? I mean, if there's great support, why not just go to the ballot?

MR. MOOREHEAD: I don't have the answer for that, but we'll get to it.

SENATOR FLOREZ: Mr. Kolkey said you guys pushed for that; it wasn't him. You pushed for phone polls. If you want to engage the community support, why not put it on the ballot?

MR. MOOREHEAD: Well, it might have went back to our lawsuit; that we didn't want the community to determine whether we were going to get a compact or not.

SENATOR FLOREZ: You did not want the community to determine whether you got a compact or not?

MR. MOOREHEAD: In terms of "Yes" or "No" on the compact. You know, the city had already demonstrated a strong support. And if I go back to the elected officials, they're elected by the citizenry of the City of Barstow.

SENATOR FLOREZ: Sure. So, to summarize, you don't feel comfortable with the citizens making the decision on your project.

MR. MOOREHEAD: No, I felt they already made the decision.

SENATOR FLOREZ: When was that?

MR. MOOREHEAD: By the City of Barstow—the city council supporting it.

SENATOR FLOREZ: Okay. Any other questions, members?

MR. MICHAEL YAKI: Mr. Chairman, my name is Michael Yaki. I'm also an attorney for the project.

I just wanted to follow up on two issues. One is the one you mentioned about the poll. I would just note that it was conducted by San Jose State University's Office of Research. In your packets we have provided copies of the

SENATOR FLOREZ: Would you like to make any closing?

COUNCILMAN GOMEZ: No closing. I wasn't even prepared to speak today. I just came to see what was going on.

SENATOR FLOREZ: Well, thank you for being around. Appreciate it very much.

COUNCILMAN GOMEZ: No problem.

SENATOR FLOREZ: Okay. Let's have our "State Agency Panel": Ruth Coleman, director, Department of Parks and Recreation; Sarah Christie, legislative director, California Coastal Commission; and Ryan Broddrick, director, Department of Fish and Game.

Thanks for sticking with us. We appreciate it. Why don't we go ahead and start with the Department of Parks and Rec. If you have some statements, that would be great. I have a few questions, and then we'll move on.

MS. RUTH COLEMAN: Thank you, Mr. Chairman. We appreciate the chance to explain to you the situation up in Humboldt County and try to give you a little bit more visual picture of it.

SENATOR FLOREZ: Sure.

MS. COLEMAN: You're getting some photographs handed out to you that show some maps and some images of the park itself. You'll notice from the map that the entire lagoon is publicly protected except for the one side of the casino. It's like a little peninsula. It's not in green, but that's county park. So, the entire lagoon has been protected publicly through the acquisition of Harry Merlo State Park. There's also two other State parks right nearby: Patrick's Point and Humboldt Lagoon State Park.

This park is one of the many crown jewels of California. We have 278 State parks in California. One of them is in that painting right behind you. It has extraordinary resource values. It also has archeological values, and it has recreational values. For natural resources, there's a lot of listed species: snowy clover, spotted owl, marbled merlet, steelhead, coho salmon. You'll also notice from the photographs that there are Roosevelt elk, and then there's brown pelicans, harbor seals. It's a very rich environment because it's in an estuary, and

anytime you have that kind of connection to the water, you have a very rich ecosystem.

There's extraordinary natural scenic views because it's basically a pristine lagoon, except for the one site; and so, it gives a very unique view of that area. And it also has, what we call, a dark sky landscape. There are very few of these places left where the sky actually gets very dark at night, because there are so few places that there are lights that are created.

People come to this park. We get about 63,000 visitors a year, and they come to kayak, bike, hike. It's a quiet park. It's sort of a sensitive kind of place where you can really renew your spirit. It's that sort of experience.

The cultural resources are extraordinary. There's all kinds of archeological sites. A tree fell down last year, and just in falling, it unearthed a burial site. So, it's very, very rich. It's been used by Native Americans for centuries.

So, from our perspective, the casino there on the very end would have profoundly altered the experience of the park. It would have profoundly altered the feel of the park and the view of the park and the resources of the park. My colleagues will speak more to the effects on the fish and wildlife as well as the water quality, but from our perspective, the kind of impact of the traffic that would come through—it's just like if you look at the painting behind you and imagine a casino on there. That's Point Lobos. It completely, permanently alters this park.

My charge as Parks director is to articulate for the public what effects it would have on a park, and our job as a department is to protect these places in perpetuity. Our first State park was created in 1864 by Abraham Lincoln, and the language used when he created it was: This place is set aside for ". . . recreation . . . inalienable for all time[s]." And that's been sort of the spirit that all these State parks have been created.

There've been a lot of threats to State parks in the past, and they've all been resolved through creativity. And so, we looked at this compact as a creative solution to avoiding destroying a State park that is such an extraordinary resource, so that this place is preserved in perpetuity for future generations. That's the charge that we have.

So, with that, I'd be happy to answer any questions.

SENATOR FLOREZ: Thank you. Any questions, members?

Senator Romero.

SENATOR ROMERO: Okay, 62,000 annually. Do you keep data in terms of who comes to the park—ethnic/racial data, income, socioeconomic? Is there any data that you can provide to me as to who uses this pristine park?

MS. COLEMAN: It's a day use park, so we don't have overnight reservations, because that would be the only place where we would get zip codes. We don't collect data by race, and so, I wouldn't be able to tell you what the ethnic makeup is. We receive a lot of tourists who are coming up and down the California coast. And so, this is one of the tourist destinations.

SENATOR ROMERO: It would be for kayaking. It would be for what else?

MS. COLEMAN: Hiking, mountain biking, fishing. It's a very popular fishing area. The whole lagoon that you see is managed by Fish and Game, and my colleague can speak to that. So, there's a lot of hunting in that area as well.

SENATOR CHESBRO: Mr. Chairman, along the same lines . . .

SENATOR FLOREZ: Sure. Go ahead.

SENATOR CHESBRO: Part of the answer is going to be the same because of the day use answer, but you also have a State park adjacent—Patrick's Point—that has very well-developed camping facilities. Do you keep data on where the people come from, even if it's not ethnic?

MS. COLEMAN: We haven't collected data by zip code in the past, but our reservation system, when you sign up, you're giving information to it. We've been starting to ask whether we could start checking this data for all of our parks by zip code so that we could start identifying who's coming to our parks from where, because it's a really good question. The problem is, they hold the data because it's a private company. It's something we'd have to work out with them.

SENATOR CHESBRO: The reason I ask that is because—and this is anecdotal, I admit; it's less scientific than the earlier survey. But when I tell people I'm from Humboldt County, one of the very first things they say to me is, *Oh, I've stayed at Patrick's Point State Park.* Humboldt County people don't stay at Patrick's Point State Park. They walk on the beach and go home at night. The campgrounds and the parks are occupied by people from all over California;

frankly, from all over the country because Redwood National Park is close by, and that's a national attraction. And so, there's people from everywhere. And as far as the ethnic makeup, I think that's anybody's guess.

MS. COLEMAN: Right. Every one of you has a park in your district that has got some kind of very special, sort of sanctuary sense to your constituents. And so, imagine that particular park in your district having a casino put in the middle of it. You can imagine the outcry that there would be, and that's what I'm trying to communicate here. It is far in the north, there's no question; but it has extraordinary values, and it is of statewide significance. And my charge as the Parks director is to articulate as well as I can the importance of these places not only for us, but they were entrusted to us by previous generations, and it's our responsibility to protect them for future generations.

SENATOR FLOREZ: Great.

SENATOR ROMERO: But also, as well, too, this is—at least where the casino would have gone—this is sovereign land.

MS. COLEMAN: Absolutely.

SENATOR ROMERO: There's a recognition of that as well. Is there any concern—and we heard from earlier testimony that they believe that they could have developed this site, preserving the pristine conditions, and still have adopted environmental mitigation. Do you believe that they would have been incapable to have done so?

MS. COLEMAN: We don't believe you could mitigate the impacts of a casino on that State park experience. And I would defer to my colleagues for the water quality impacts.

If you'll notice from this image, in the second image, the water doesn't circulate in that lagoon. So, there's enormous water quality implications. And that was one of the reasons why they've also testified that they hit such a wall when they were negotiating with the State, because we kept pushing back because this is such a very sensitive environment.

SENATOR FLOREZ: Okay. Any other questions? And in terms of, *Everyone has one in their district*, you haven't been to Bakersfield.

MS. COLEMAN: Not everybody has a State park, but there is some open space, special area that I think everybody in their district has. It might even be the local soccer field. But it's a place where the public goes and they love and they treasure it.

SENATOR FLOREZ: I gotcha.

MS. COLEMAN: And that's what I'm trying to communicate, because I realize—you know, you're from the Central Valley. You've got the San Joaquin River Parkway area near you, and if you put a casino in the middle of that, you'd probably hear from some of your constituents.

SENATOR FLOREZ: Sure. Exactly. Especially if it was moved there or near there. Absolutely. That's probably upcoming.

Is there any other comments by the members? Okay, let's go on. Thank you.

MS. SARAH CHRISTIE: Good evening, Senator Florez and members of the committee. Sarah Christie with the California Coastal Commission.

I'd like to start by saying that it's the Commission's strong feeling that development of a casino at this site would be seriously nothing short of tragic. We're very concerned about the unmitigatable impacts that Ms. Coleman spoke about. The idea of putting a casino on that site is so totally out of character with the remainder of the area, there's nothing that you could do to mitigate the impacts in terms of the noise, the traffic, the ancillary disturbance. It simply can't be mitigated on a global sense.

On a very specific sense, that site is a small site. It's only twenty acres in size. While it is a sovereign nation, that area of Humboldt County is governed by the Humboldt County Local Coastal Program, and there are some very specific wetland setback requirements, building height requirements, lighting, and offsite sign and other regulatory requirements that apply in that area through the Coastal Commission's certified LCP. It would be extremely difficult to meet the requirements of the LCP on that site. And that goes to Senator Romero's question about: Could the environmental impacts be addressed?

The Commission is the agency that analyzed the EA that was prepared by the tribe that concluded that the environmental impacts would be met, and our

analysis of that came to the conclusion that they could not in fact be met. There were several statements made with no supporting data. There were conclusions drawn with no supporting analysis. And so, we are not at all confident that the environmental concerns of that site could be addressed in any realistic way.

Ms. Coleman mentioned the water quality impacts. The Coastal Commission does have within its jurisdiction the requirement to protect coastal marine waters. The likelihood of a sewage spill in addition to the nonpoint source runoff from all of the hardscape associated with the development there essentially increases the risk of significant water quality impairment to the lagoon that is just unacceptable. You've heard in earlier testimony today that this is one of the last naturally functioning lagoons left in the State, and we believe it's of primary, primary importance to protect it.

It's designated as Environmentally Sensitive Habitat Area under the Coastal Act, which is some of the most highly protected habitat designation in the State. That being said, we're very concerned that if the compact were not to be ratified and development were to go ahead, that it would be very difficult for us to protect those resources in the way that the California voters expected that they would be protected when they voted for Proposition 20 back in 1972. So, the concerns that somehow these environmental issues can be addressed and that it's just the agencies who are proposing that they can't—well, we're proposing that they can't because we have very specific analysis that shows why they can't be met.

Just also to Senator Romero's concern about agencies don't necessarily represent the Legislature—the Coastal Commission does have four members appointed by the Pro Tem. So, we do, in essence, reflect the interests of the Legislature and specifically the Senate.

With that, I'm just going to reiterate that the Coastal Commission strongly, strongly supports the concept of moving the development potential of this casino offsite. Barstow seems like a logical place to put it, and if we can put this issue to rest, settle the longstanding litigation that's been going on, and have some assurance that this site will be protected in the manner in which it so richly deserves to be, we think that would be a terrific accomplishment for this Legislature on behalf of the people of California and all of the millions of voters

who come to enjoy the coast and the serenity of a coastal experience that the Coastal Act has protected for all to enjoy into the future.

SENATOR ROMERO: Mr. Chair, can I ask? Again, too, this statement—*Barstow is a logical place to put it . . .*

SENATOR FLOREZ: Right. Why is that?

SENATOR ROMERO: Why is that? And does the desert deserve any less protections than coast?

MS. CHRISTIE: Absolutely not, Senator, and I'm glad you asked for that clarification because that's certainly not what I meant to imply.

SENATOR ROMERO: Then explain the thing—*Barstow is the logical place to put it.*

MS. CHRISTIE: Barstow seems like a reasonable place to put it, given the fact that the city has expressed an interest in having the casino put there.

SENATOR ROMERO: So, if Blythe tomorrow or Los Angeles tomorrow or Monterey Park tomorrow—if any city says, *I want revenue for my city*—my god, ship them out.

MS. CHRISTIE: My understanding of the baseline environmental situation of the Barstow site compared to the baseline environmental situation at Big Lagoon, it seems like a reasonable tradeoff from an environmental standpoint.

SENATOR ROMERO: I find that answer to be dissatisfactory. It just seems like I find no reason behind it except, basically . . .

MS. CHRISTIE: Well, there's no endangered species on the site in Barstow, to my understanding. There's not the same degree of scenic and visual protections that exist in the LCP.

SENATOR ROMERO: Anybody who appreciates the desert as I do, I take offense to that comment. The desert is beautiful. I hope that one day you can get out there and take a look at it.

MS. CHRISTIE: And I would agree with you. It's my understanding of this particular site, where this casino is proposed to go, that the environmental concerns are certainly less than they are at the Big Lagoon site. If we're going to have a casino at one place or the other, it's the Coastal Commission's position, as the agency that's protecting our coast . . .

SENATOR ROMERO: [Inaudible.]

MS. CHRISTIE: If this hearing sparks that effort, I think it would probably be a proud day for California.

SENATOR ROMERO: [Inaudible.]

SENATOR FLOREZ: Any other? So, there's really no rationale, in other words, other than the environmental baseline—that it's less in the desert than the other.

MS. CHRISTIE: And the existing land use protections that specifically apply to this section of the coast—that would all be violated, basically.

SENATOR CHESBRO: With all due respect to Barstow—Barstow or a pristine, undeveloped lagoon? You know, I would say that any site ought to have an environmental assessment, and it ought to be looked at from the standpoint of its environmental impact, but I think we're talking about within the generally urban developed area of Barstow. We're not talking about putting it out in the middle of the desert where there's endangered species that I know of, and nobody has charged that. The environmental groups, I think—that I hope are still here and haven't been worn down by this procedure at this hearing—certainly would be concerned if it were being proposed to be put in a place that was of significant environmental sensitivity. I would be, too, but I haven't heard that.

So, simply to throw it out and say it might be as environmentally important as Fish and Game, State Parks, and the Coastal Commission thinks Big Lagoon is, really does not weigh on an equal basis. If what you say, Senator, is correct, that it is an environmentally sensitive site, then yes. But nobody's presented any evidence that I've seen or heard to that effect, other than just a general statement that the desert is important. I agree with you—the desert's important. If this were in downtown Eureka where the reservation was located and there's a tradeoff between one urban area and another, then I think it would be a pretty fair comparison.

SENATOR VINCENT: Mr. Chairman? I doubt very seriously if Barstow would like to have that casino if they didn't have slots.

SENATOR FLOREZ: That's one other feature of the environment.

SENATOR VINCENT: That's it—the slots.

SENATOR CHESBRO: And by the way, with regards to understanding the Legislature, I hope it doesn't cause any trouble with her current employer, but Ruth Coleman worked for the Senate Democrats—for how long?

MS. COLEMAN: Ten years.

SENATOR CHESBRO: Ten years. Thank you.

SENATOR ROMERO: That's a Davis appointment. It's a good thing you've only come before us right now, though.

SENATOR FLOREZ: Great. Thank you. Go ahead—if you want to go ahead and proceed.

MR. L. RYAN BRODDRICK: Mr. Chairman, members of the committee, thank you for the opportunity to address you this evening. I'm Ryan Broddrick, the director of the Department of Fish and Game. I appreciate the late hour, and I will try not to duplicate.

SENATOR FLOREZ: Oh, it's not that late. It's 8:30. I mean, let's put it in perspective. I'm sorry if people are having to sit through, but if this had been a ten o'clock hearing in the morning and we were proceeding on it, it'd probably be just fine. So, go ahead. We're moving on.

MR. BRODDRICK: Thank you, sir.

I'd like to focus on kind of a unique ecological function that the Big Lagoon provides. We have the 1,600 acres we're responsible for, for the management of the surface area, the mean high-tide issue, and lagoons along the Pacific Coast and across the California coast; 1,100 miles of our beautiful coast and the entire Pacific Coast that provide a unique ecological function. And there are functions, frankly, that have been in peril not just in California but across the western United States.

To give you some semblance of why we care about the uniqueness of the Big Lagoon, in addition to the species identified by Director Ruth Coleman—I won't duplicate those—but October-February timeframe, it's a critical area. Over 642,000 shorebirds, migratory birds, use this lagoon. Now, why do they use that lagoon? Because of the dynamic of that lagoon: It's barred from ocean influence for a portion of the year. It does breach periodically. It creates one of these really unique ecosystems that, frankly, we don't see much in California anymore, but

which we have spent an immense amount of time and public interest and public support through various bonds in restoring.

As an example—not to leave any of them out—but to give you an idea of Bolsa Chica, I was down there two weekends ago, and the wetlands restoration there has been twenty, twenty-five years in the making—_____ expense of the acquisition of the uplands and the tidal restoration of about $200 million when all's said and done. The benefits there to marine species, the nursery area for a variety of important economic and recreational fishes, the aesthetic beauty of the area, it's very much similar to the Big Lagoon, but it's not surrounded by Huntington Beach. And yet, the functions of that particular lagoon provide benefits for a broad range of species, both marine, terrestrial, and certainly the aesthetic and humankind; which is, we can't forget, people need to be able to touch and taste and feel these natural resources to continue to support and have an appreciation for them.

Importantly on the coastal communities that you've been watching in the news recently is the declines of salmon populations out of the Klamath. The role of inner-tidal lagoons and lagoons such as this property is important for nurseries. It provides a function. We have been resolute in the department, I think, in a fair fashion of being concerned that because lagoons and natural lagoons—lagoons that breach on their own without intervention of the Corps of Engineers to open up the breaches that we've had to do in some other areas—are fairly unique and they are one of the critical environmental rocks or ecological rocks—community rocks—that we've built the restoration of anadromous fish on—steelhead, coastal cutthroat, chinook, coho salmon—we have put millions of dollars—you have put hundreds of millions of dollars—the Legislature has directed the department to put hundreds of millions of dollars into the restoration of coastal streams.

We did not do this. We recognize that this property is sovereign nation. We respect and work both in restoration projects and in regulatory processes with sovereign nations as an equal. When we went to the Attorney General—and this is from the Wilson Administration through the Davis Administration, through the Schwarzenegger Administration, and I have served on all of them—we have been consistent in the message: We respect the sovereign land issues, but from a

broad, statewide policy issue, this particular lagoon is a precious commodity. The Klamath alone influences the recreation and commercial and aesthetic use of salmon on 700 miles of California's coast.

So, it was with those intents—and not to make judgments—but to do our best, as a public trustee agency representing the diversity of habitats that are there, to encourage and to provide technical support and alternatives to the Attorney General. We are a client of the Attorney General. The interests we're trying to serve there, we believe, is in the interest of continuing the legacy that you have all participated in with respect to anadromous fish restoration, with respect to diversity of habitats. With all due respect to the development issues, lagoons are one of the few habitats that really are kind of a one-tragedy threshold. We have watched coastal lagoons that have developed invasive species that were in fact toxic. We've had spills where a functional lagoon is in fact terribly deteriorated.

And so, it's with an abundance of caution that we did this, but with great respect to the Indian tribe.

SENATOR FLOREZ: Great. Thank you all. Any questions?

Let me ask you, if I could, just Fish and Game—you might have been here earlier when I mentioned. . . . you mentioned that Fish and Game is trying to be consistent through this process, particularly when it comes to sovereignty. Let me ask you about Yurok and the Klamath. Is that any less important?

MR. BRODDRICK: No, it's not. In fact . . .

SENATOR FLOREZ: Where were you guys during that compact negotiation? Should the committee say "No" to that because there's some environmental concerns there?

MR. BRODDRICK: I'm not familiar with the particulars of the compact issue specifically. We have been working with the Yurok—the Hoopa and the Yurok—on the restoration on the Klamath, the _____ through Shasta, the Trinity, but I have not worked in the context of the compacts.

SENATOR FLOREZ: Okay. But I guess inequity—as you mentioned, consistency—what makes the lagoon so much more precious than the Klamath? I

know everybody's got something in their district they like more, but I'm just trying to . . .

SENATOR CHESBRO: There's a town at the mouth of the Klamath. It's called Klamath.

SENATOR FLOREZ: Thank you, Senator Chesbro. I didn't know that.

SENATOR CHESBRO: Well, I'm from the area. I live there.

SENATOR FLOREZ: Yeah, I know. I used to chair the Water Committee as well in the Assembly.

In terms of looking at the Klamath and looking at that Yurok—particularly the Yurok—compact, environmental issues there as well? No?

MR. BRODDRICK: I'd have to go to that specific date and time and pull it up. I briefed for this, and I was familiar with these issues.

SENATOR FLOREZ: Okay, I got it. I'm just wondering, as we're making comparisons—deserts/Klamath; you know, Barstow—they're all pristine areas that some people think are pristine and some people don't. It's just a question of what levels. This is important because it's in front of us, no doubt, and that's the issue. But I'm just wondering, as the compacts come through, are we vetting them through the same, if you will, process as we are this compact? And this compact is the highlight because we're moving it because of the environmental sensitive nature of everything you've just mentioned. But I'm just kind of wondering where on the pecking order folks are on other parts of the State. As Senator Romero said, there isn't a _____ issue, obviously, in Barstow, but on the Klamath, there are significant issues, obviously. Water issues particularly. And I'm just kind of wondering if that vetting process takes place for all compacts going through, if you will, the process with you folks. And it's a real policy question; a question the committee needs to understand a little better.

Does every compact go through this vetting process with you?

MS. COLEMAN: I can only speak for State parks. This is the only one that's surrounded completely by a State park, and so, our views of it have been very strong. If they were proposing a casino right in the middle of, say, Anza-Borrego State Park's desert—you're absolutely right, the desert is an extraordinary resource and incredibly fragile. And so, we look to our properties. As the State

Parks director, I'm charged to look out for the State parks, so I don't go beyond that.

SENATOR FLOREZ: Okay. Appreciate that.

MS. CHRISTIE: And just from the Coastal Commission's perspective, it's my understanding that this is the first tribal casino that we've ever attempted to assert federal consistency jurisdiction on. So, I think this is our first experience with the compact.

SENATOR FLOREZ: And the casino above, we just mentioned earlier?

MS. CHRISTIE: Again, I can certainly check on that if the committee's interested, but it's my understanding that this is the first time that the Commission has exerted our federal—or attempted to exert our federal consistency review authority over the building of an Indian gaming casino.

SENATOR FLOREZ: Sure. And to the question I asked earlier—if the tribe now wanted to build its own hotel/resort and no gaming on it at all—what position would that put all of you in?

MS. CHRISTIE: We would have all the same concerns again.

SENATOR FLOREZ: You would.

MS. CHRISTIE: Yes, we absolutely would. To what extent we would be able to exert our authority over the project to affect the outcome is anybody's guess.

SENATOR FLOREZ: The only reason we're exerting power in this case is those slots that Senator Vincent's talking about. In other words, if you want the slots, you've got to . . .

MS. CHRISTIE: Well, our authority is triggered by a federal action, or a federally approved action, and I'm certainly not an expert on how the Indian gaming gets approved. But in this case, because there was a federal action being taken by the Bureau of Indian Affairs, that opened the window for the Coastal Commission to exert federal consistency review.

SENATOR FLOREZ: Gotcha. Senator Soto, then Senator Romero.

SENATOR SOTO: I was just curious. I wonder how much good it would do—I think it would be horrible to do this—but how much information there is on the generation of traffic on all the things that would be a negative towards having the casino in this location; what would be the effects and what would be the

SENATOR VINCENT: Personally, I think it's nice. I think this proposed casino on the beautiful beaches is something that they should talk about. As a matter of fact, I think it's a good idea not to build there. No question about it.

But I also would like to say that Mr. Virgil Moorehead, tribal chairperson of Big Lagoon—I would like to tell him, even though they don't have a casino here, they're going to do very well in Barstow. Very well. So, everybody should be happy on this deal. Everybody should be very happy on it. I want to play some slots there myself. [Laughter.]

SENATOR FLOREZ: Got your first customer.

Thank you all. We appreciate it. Thank you for sticking around. I appreciate it.

SENATOR CHESBRO: Mr. Chairman? As they're leaving, just let me say—fortunately, I think the respect level increased, but other comments were made about environmental agencies and their connection to the Legislature. I just want to express my utmost respect for all three agencies in their roles in protecting the natural resources of this State and each of you for your leadership in those agencies. I called each agency up and raised hell when I disagreed with you, but I think on the whole you play a very, very important role.

SENATOR FLOREZ: Thank you.

Okay. Let's have our "Environmental Panel" come up. This is our last panel of the evening. Thank you, members. Thanks for joining us.

Let's go ahead and begin. Any order. Just introduce yourself, and then we'll go from there.

MR. RUSKIN HARTLEY: Mr. Chairman and members of the committee, thank you for inviting Save the Redwoods League to testify on this compact. My name is Ruskin Hartley, and I'm Save the Redwoods' conservation director. I have a four-minute version, and I have a one-minute version, so I'll give you the choice as to which . . .

SENATOR FLOREZ: Your choice. We're not going anywhere. Go ahead.

MR. HARTLEY: I'll do the three- or four-minute version.

SENATOR FLOREZ: You got it.

MR. HARTLEY: Let me tell you a bit about Save the Redwoods and why we are involved in the effort to protect Big Lagoon.

Save the Redwoods League was founded in 1918 and has been instrumental in acquiring more than six of every ten acres in California's State redwood parks. Save the Redwoods also works to protect fragile nonforest ecosystems and unique coastal habitats associated with the redwood forest and also to ensure the public can continue to experience these special wild places. Big Lagoon is exactly such a place, as I think you've heard this evening.

We're involved in this compact for three reasons. First, the Big Lagoon Rancheria is a sovereign nation that has both development rights at Big Lagoon and under State and federal laws is entitled to develop a casino at Big Lagoon. It is our assessment—and I think the assessment that you've heard from the agencies—that the development of such a casino would do irreversible harm to truly unique, rare, and irreplaceable natural habitat in California. Second, the compact is an enforceable agreement between the State of California and the tribe that will preserve this valuable and scenic place. And third, if this compact is not ratified, it's clear we can all clearly anticipate the development of a casino on one of the last places a casino should be sited, as I hear some of the committee members echoing.

Every year people travel to the Northern California coast to experience its ancient redwoods and wild coastlines. Most travel along the Redwood Highway where Big Lagoon—the southernmost of a string of three beautiful lagoons greet some at the gateway to greater(?) national and State parks—itself is an International Biosphere Reserve and World Heritage Site. I think Director Coleman noted about 62,000 visitors to this place, but I think we need to put it in context of what's happening north and the investments that are being made there. In the fading light of day with the sea mist hanging low over the lagoon, it is a refuge of undeveloped calm, far from the lights, noise, and bustle of urban life.

Our interest in Big Lagoon dates back to the 1920s; actually, the genesis of the State park system. In 1928, the renowned landscape architect Frederick Law Olmsted, Jr., identified this stretch of coast that included Big Lagoon as, and I quote, "a most impressively beautiful coastal scenery to be seen from any

improved State highway in the whole length of California." And again, I believe you got a picture of Point Lobos behind you, and that was one of the other points that he had identified in those surveys.

Guided by that survey, Save the Redwoods began its work in the Big Lagoon area with the acquisition of 390 acres in 1930, and it became the introduction to Save the Redwoods' larger projects on Prairie Creek just north of Orick. Since that time, we have purchased more than 2,500 acres from willing sellers to protect the critical scenic landscape and habitats of Big Lagoon. I think Director Coleman passed a map around to you, and you'll note on that that today, almost the entire shores of Big Lagoon are protected in either Humboldt Lagoon State Park or Harry Merlo State Recreation Area. In addition to its scenic values, Big Lagoon is one of California's few remaining undeveloped coastal lagoons. And I won't go into that because the director of Fish and Game spoke to that very well.

But I would like to just conclude to note the executive director of Save the Redwoods League, Katherine Anderson, has been actively involved in searching for all potential options to relocate the tribe's right to establish a casino. Save the Redwoods has invested significant time and energy in this project. After exhaustive efforts by many, both inside and outside the government, it is clear that this compact is the last best solution to preserve Big Lagoon, thereby protecting more than 75 years of painstaking work to protect this beautiful stretch of California's coastline.

So, thank you for your attention this late in the evening, and I'd be happy to answer any questions.

SENATOR FLOREZ: Thank you.

Okay.

MS. TRACI VERARDO: Thank you, Mr. Chair and members. Traci Verardo, legislative and policy director for the California State Parks Foundation. And I appreciate the chance to speak. We're a membership and advocacy organization of 75,000 Californians who support our State parks and want to see them open and accessible.

And let me just say, although we may be relatively new to this issue compared to others, like Save the Redwoods League, our organization throughout

the State is involved in protecting our State parks from threats. At Anza-Borrego Desert State Park, we're working to try to prevent electricity transmission lines through the park. At San Onofre State Beach, we're trying to protect a toll road from going through the park. We've identified throughout our 278 State park system, there are 115 current threats—and they evolve on a day-to-day basis—current threats to over 73 of our State parks. Certainly, some are more egregious and damaging than others, and we think a casino in the middle of three State parks is certainly an example and meets the qualifications of an egregious development proposal affecting our State parks.

Director Coleman mentioned the visitors to Harry Merlo. Of the three parks in the area—Harry Merlo State Recreation Area, Humboldt Lagoon State Park, and Patrick's Point State Park—there're actually annually over 365,000 people—Californians and out-of-state tourists—who go to these three parks to take advantage of the recreation opportunities. In these three parks, we know that there is camping, hiking, kayaking, wind surfing, boating, whale watching from the bluffs at certain times of the year, picnicking, and a variety of other low-cost recreational activities offered in these areas.

You've heard already some of the environmental impacts that would happen with the development of a casino, and without judgment—it's just a matter of history—we know that development at the edge of a waterway is likely to produce—well, almost certain to produce—nonpoint source pollution as well as increased phosphates and nitrates from water treatment and sewage treatment systems that would be required of a casino. So, again, without judgment, we do believe that is, of course, of history and it's something that we should all be working to prevent.

We support the compact, again, because it preserves these three State parks from the kind of development that would really damage not only the ecology of the area, but the visitor experience of the 365,000 people who come to these State parks every year. We believe this is a situation unlike many others—that we continue to fight on a daily/weekly/monthly/yearly basis of our State parks—where there is an agreement that has been negotiated that preserves both the protection of these sensitive lands and the right of an organization and a tribe to

have economic self-sufficiency and sovereignty, which I know from previously in this conversation was a concern—is a concern—of this committee. We think this is one of the few examples where a negotiated settlement can balance, and in the Legislature's view can balance, the competing interests of protecting and preserving our natural resources and infrastructure for the future—which is part of the charge of our State government—and allowing sovereign nations to have some ability to provide for economic self-sufficiency in a way that doesn't damage the rest of the State.

For these reasons, we urge the committee to support the compact, and we'd be happy to answer any questions.

SENATOR FLOREZ: Any questions, members?

Pete.

MR. PETE PRICE: Thank you, Mr. Chairman. I'm Pete Price with the California League of Conservation Voters. I'm as happy as everyone else is, I'm sure, that I'm the last speaker of the night.

SENATOR FLOREZ: We still have public comment.

MR. PRICE: I'll be very brief. I want to first say that CLCV, and I think environmental organizations in general, appreciates the work over the years that the Davis Administration did, the Schwarzenegger Administration has done, and the Big Lagoon Rancheria has done to come up with, as Ruth Coleman called it, simply a creative solution. Just dealing with the facts on the table; one of which includes this Big Lagoon, which is a unique site, and trying to solve it as best we can with all the different factors, particularly given that we are dealing with another sovereign nation and dealing with them on that basis.

You have not seen, certainly, the California League of Conservation Voters casually asserting that this site or that site where a casino might be sited ought to be protected. It's not because we're unaware of those sites or not concerned about them. I think it's for two reasons. Number one, because these sites are on tribal lands, and we recognize the sovereignty of that, it's really not in our place to engage in that to a great degree, I think. Although there are other stakeholders here who would like environmentalists to always step up and say, *Oh, that's a pristine site; save that,* we're not doing that. You haven't heard us speak up about

the other three or four casino sites in Humboldt County or any others; not because they're not valuable lands one way or another. But Big Lagoon really is kind of a cut above. It may not be the only site in the State that meets that test, but it is one on the table today that is unique and pristine, and it's for that reason that we've taken a stand to protect the Big Lagoon. A lot of environmental groups have been concerned about Big Lagoon for a long time, so we've seen this as a rational and, all things considered, good solution, certainly, to protect Big Lagoon.

I'll just say in closing, Mr. Chair, that I've sat here through the entire hearing. I've been very impressed with the vigor and the agility you've used to pursue your line of questioning tonight. We hope and expect that you'll use the same vigor and agility to come up with a solution that protects Big Lagoon.

SENATOR FLOREZ: Good point. Thank you, Pete. Any questions from members? Thank you.

Okay. We've now reached that time. Is there anyone from the public that would like to make a two-minute statement?

MR. JACK GRIBBON: Mr. Chair and members, my name is Jack Gribbon. I'm the California political director for the Hotel Employees and Restaurant Employees International Union, now called UNITE HERE.

We are very, very much in support of this particular project for a whole number of reasons. But the most important one, the one that we can speak to, is that this tribe, in its wisdom, has made a decision to be a positive for the community of Barstow and also a positive for the larger industry, I believe, in California by agreeing to certain standards of worker's rights that are beginning to create an emerging standard in this industry, where no longer is the healthcare for the tribal gaming industry in California on the backs of the taxpayers. No longer are workers in the tribal gaming industry unable to have the respected voice on the job. This tribe, along with a number of other tribes in this State, has agreed to that approach. We think it's extraordinary. We think it's wonderful. We think it's something that you should support. And we think it's something that will work to the benefit of the City of Barstow long term by having good jobs; jobs that provide good benefits, jobs where people can feed their children, put roofs over their heads, and live a life with dignity.

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **State of California v. Big Lagoon Rancheria**
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I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

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by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Bruce H. Jackson, Esq.
Peter J. Engstrom, Esq.
Irene V. Gutierrez, Esq.
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Two Embarcadero Center, 11th Floor
San Francisco, CA 94111

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 26, 2012**, at San Diego, California.

Roberta Matson
Declarant

Signature

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