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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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CACHIL DEHE BAND OF WINTUN
INDIANS OF THE COLUSA INDIAN
COMMUNITY, a federally
recognized Indian Tribe,

Plaintiff,

PICAYUNE RANCHERIA OF THE
CHUKCHANSI INDIANS, a
a federally recognized Indian
Tribe,

Plaintiff
in Intervention,

v. NO. CIV. S-04-2265 FCD KJM
(Consolidated Cases)

STATE OF CALIFORNIA;
CALIFORNIA GAMBLING CONTROL
COMMISSION, an agency of the
State of California; and
ARNOLD SCHWARZENEGGER,
Governor of the State of
California,

Defendants.

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1 This matter is before the court on plaintiff Cachil Dehe
2 Band of Wintun Indians of the Colusa Indian Community's
3 ("Colusa") and plaintiff-intervenor Picayune Rancheria of the
4 Chukchansi Indians' ("Picayune") (collectively, "plaintiffs")
5 motion for entry of final judgment on fewer than all claims,
6 pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.
7 Specifically, plaintiffs seek entry of final judgment on claims
8 relating to the size of the Gaming Device license pool and
9 Colusa's priority in the tiered drawing system. Defendants State
10 of California, California Gambling Control Commission (the
11 "Commission" or "CGCC"), and Governor Arnold Schwarzenegger's
12 (collectively, the "defendants") oppose the motion.
13 Alternatively, defendants assert that final judgment should be
14 entered as to all six of the seven claims that were resolved by
15 the court's April 22, 2009 Memorandum and Order (the "April 22
16 Order"), granting in part and denying in part the parties'
17 motions for summary judgment and motion for judgment on the
18 pleadings.¹

19 **BACKGROUND²**

20 Plaintiff Colusa is an American Indian Tribe with a
21 governing body duly recognized by the Secretary of the Interior.
22 Plaintiff-intervenor Picayune is also a federally recognized
23 Indian tribe. Colusa and Picayune entered into similar Class III
24 Gaming Compacts (the "Compacts" or "Compact") with the State of
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26 ¹ Because oral argument will not be of material
27 assistance, the court orders this matter submitted on the briefs.
E.D. Cal. Local Rule 78-230(h).

28 ² The facts of this case are set forth fully in the
court's April 22 Order. (April 22 Order [Docket # 102], filed
Apr. 22, 2009).

1 California (the "State") in 1999, which were ratified by the
2 Legislature on September 10, 1999; both Colusa and Picayune's
3 Compacts have been in effect since May 16, 2000. 55 other
4 federally recognized tribes (the "Compact Tribes") also executed
5 virtually identical compacts with the State. At their core,
6 these compacts authorize Class III gaming subject to certain
7 restrictions.

8 The Compact sets forth various provisions relating to the
9 number of Class III Gaming Devices a Compact Tribe may operate.
10 The Compact sets the limit of the amount of Gaming Devices
11 operated by each individual tribe at 2,000. The Compact also
12 sets a statewide maximum on the number of Gaming Devices that all
13 Compact Tribes may license in the aggregate. This statewide
14 maximum is determined by a formula set forth in § 4.3.2.2(a)(1)
15 of the Compact. Gaming Device licenses are distributed among all
16 the 1999 Compact Tribes pursuant to the license draw process set
17 forth in § 4.3.2.2 of the Compact; tribes are awarded licenses
18 based upon the tribe's placement in one of five priority tiers.

19 On or about March 13, 2001, then Governor Gray Davis issued
20 Executive Order D-31-01, in which he declared that the Commission
21 had exclusive control over the issue of Gaming Device licensing
22 under the Compact. Since June 2002, the Commission has assumed
23 sole responsibility for the administration of the license draw
24 system. On October 25, 2004, Colusa filed a complaint in this
25 court, alleging violations of the Compact. Colusa asserted that
26 defendants violated the Compact by: (1) excluding the Tribe from
27 participating in the third priority tier in the December 19, 2003
28 round of draws; (2) unilaterally determining the number of Gaming

1 Device licenses authorized by § 4.3.2.2(a)(1) of the Compact; (3)
2 failing to refund money paid pursuant to the non-refundable one-
3 time pre-payment fee set forth in § 4.3.2.2(e) of the Compact;
4 (4) CGCC conducting rounds of draws of Gaming Device licenses
5 without authority; and (5) failing to negotiate in good faith.

6 On March 28, 2006, defendants filed a motion for judgment on the
7 pleadings, seeking to dismiss plaintiff's first, second, third,
8 and fourth claims for relief for failure to join necessary and
9 indispensable parties and plaintiff's fifth claim for relief for
10 failure to exhaust non-judicial remedies. By order dated May 16,
11 2006 (the "May 16 order"), the court granted defendants' motion.

12 Colusa appealed the court's May 16 order.³ The Ninth
13 Circuit reversed the court's ruling that Colusa's first four
14 claims required joinder pursuant to Rule 19 and remanded for
15 further proceedings consistent with its opinion. Cachil Dehe
16 Band of Wintun Indians of the Colusa Indian Cmty. ("Colusa") v.
17 California, 547 F.3d 962 (9th Cir. 2008). The Ninth Circuit's
18 mandate was filed in this court on November 14, 2008.

19 In the interim, on June 5, 2007, Colusa filed a second
20 action in this court, alleging that defendants violated the
21 Compact by (1) refusing to schedule and conduct a round of draws;
22 and (2) counting multi-station games as equal to the number of
23 terminals. (First Am. Compl. in Case No. 2:07-cv-1065 [Docket
24 #22], filed Feb. 8, 2008). Colusa also alleged that defendants

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26 ³ The Ninth Circuit noted that while Colusa listed its
27 fifth cause of action - failure to negotiate in good faith -
28 among its grounds for appeal, it did not advance any argument in
support of reversing the court's order; thus, the Ninth Circuit
deemed the claim abandoned. Cachil Dehe Band of Wintun Indians
of the Colusa Indian Cmty. v. California ("Colusa"), 547 F.3d
962, 968 n.3 (9th Cir. 2008).

1 failed to negotiate in good faith in violation of both the
2 Compact and the Indian Gaming Regulatory Act, 25 U.S.C. § 2710.

3 On December 10, 2008, the court consolidated the two actions
4 on defendants' motion and set a revised schedule for dispositive
5 motions. On January 2, plaintiff-intervenor Picayune filed a
6 motion to intervene in the action, alleging that the Commission
7 breached its Gaming Compact with the State of California by
8 miscalculating the total number of licenses in the gaming device
9 license pool. (Compl. in Intervention). The court granted
10 Picayune's motion, but maintained the existing schedule for the
11 parties' dispositive motions. (Order [Docket #63], filed Jan.
12 22, 2009).

13 The court heard oral argument on the parties' dispositive
14 motions on February 20, 2009. By Stipulation and Order, filed
15 March 2, 2009, the court allowed plaintiff Colusa and defendants
16 to file additional cross-motions on summary judgment regarding
17 Colusa's claim for Failure to Negotiate in Good Faith. The court
18 also allowed the parties to submit supplemental briefing
19 regarding the size of the statewide license pool under the 1999
20 Compact, the last of which was filed on April 8, 2009.

21 On April 22, 2009 the court issued its Memorandum and Order.
22 The court granted Colusa's motion for summary judgment with
23 respect to its claims regarding (1) Colusa's priority in the draw
24 process; and (2) the number of gaming devices authorized by the
25 Compact. The court also granted Picayune's motion for summary
26 judgment in its sole claim regarding the number of gaming devices
27 authorized by the Compact. The court granted defendants' motions
28 regarding (1) defendants' retention of license fees; (2) the

1 Commission's authority to administer the draw process; (3)
2 defendants' refusal to schedule and conduct a round of draws; and
3 (4) defendants' counting of multi-station games as equal to the
4 number of their terminals.⁴

5 On May 12, 2009 and May 20, 2009, plaintiffs filed motions
6 for entry of final judgment. The San Pasqual Band of Mission
7 Indians, a federally recognized Indian tribe that has brought
8 very similar claims against defendants in the Southern District
9 of California, requested leave to file an *amicus* brief in support
10 of entry of final judgment. The court granted the motion and
11 allowed defendants to file a response in opposition.

12 ANALYSIS

13 A. Entry of Final Judgment

14 Plaintiffs request that the court enter final judgment on
15 their claims regarding the size of the statewide license pool
16 established by the formula in § 4.3.2.2(a)(1) of the Compact and
17 Colusa's claim regarding its priority in the tier drawing system
18 set forth in § 4.3.2.2 of the Compact. Defendants oppose entry
19 of final judgment, or, in the alternative, seek entry of all six
20 claims adjudicated in the court's April 22 Order.

21 Rule 54(b) of the Federal Rules of Civil Procedure provides
22 that "[w]hen an action presents more than one claim for relief .
23 . . the court may direct entry of final judgment as to one or
24 more, but fewer than all, claims or parties only if the court
25 expressly determines that there is no just reason for delay." In
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27 ⁴ On June 19, 2009, defendants filed a motion for
28 reconsideration of the court's ruling on the size of the
statewide gaming device license pool. The court denied the
motion on August 11, 2009.

1 determining whether there is no "just reason" for such delay,
2 courts must consider (1) "judicial administrative interests . . .
3 [such as] whether the claims under review were separable from the
4 others remaining to be adjudicated, and whether the nature of the
5 claims already determined was such that no appellate court would
6 have to decide the same issues more than once even if there were
7 subsequent appeals," and (2) the equities involved in the case.
8 See Curtiss-Wright Corp. v. General Electric Co., 446 U.S. 1, 8
9 (1980).

10 In this case, Colusa's claim regarding its priority
11 placement in the tier system and Colusa and Picayune's claims
12 regarding the size of the statewide license pool are not easily
13 separable from the other claims the court adjudicated in the
14 April 22 Order. Indeed, in granting defendants' motion to
15 consolidate cases in December 2009, the court acknowledged the
16 similarity and overlap between the claims brought in the two
17 separate suits and held that consolidation was appropriate in
18 order to avoid judicial inefficiencies, advisory opinions, and
19 potentially inconsistent rulings within the same court. As such,
20 the Ninth Circuit would be subject to the same potential problems
21 if the court entered final judgment as to only the two claims
22 suggested by plaintiffs.

23 However, all of the claims the court has adjudicated are
24 separable from the sole remaining good faith claim brought by
25 Colusa. The six claims that the court ruled upon in its April 22
26 Order revolved around interpretation of the Compact. In
27 contrast, the good faith claim, as previously argued to the court
28 in the parties' briefing, focuses primarily upon the conduct of

1 Colusa and defendants. As such, even if the parties subsequently
2 appeal this remaining claim, the Ninth Circuit would not have to
3 decide the same issues more than once.

4 Furthermore, the equities in this case weigh in favor of
5 entering final judgment. This litigation has been pending either
6 before this court or the Ninth Circuit for almost five years.
7 During that time, plaintiffs have been unable to realize the
8 benefits of revenue that is likely to be generated by the award
9 of additional licenses the court determined were available under
10 the Compact; there is no avenue for plaintiffs to obtain money
11 damages for these lost opportunities. While the court
12 acknowledges the broad policy considerations implicated by this
13 litigation, the parties have had ample opportunity to argue their
14 respective positions regarding how or if such policy implications
15 should affect the interpretation of the Compact or the relief
16 afforded by the court. To the extent other district courts
17 disagree with the court's interpretations in similar cases that
18 are currently pending, the Ninth Circuit has stated that such
19 inconsistencies could be resolved on appeal. As such, the court
20 finds that judicial economy and fairness militates in favor of
21 entry of final judgment as to all claims it has adjudicated.

22 **B. Relief**

23 Plaintiffs request that the court order a round of draws for
24 all 1999 Compact tribes be conducted by the Commission for the
25 10,549 additional licenses the court held was available under §
26 4.3.2.2(a)(1). Defendants contend that plaintiffs' requested
27 relief is overbroad because it would confer a benefit on Compact
28 Tribes that were not parties to this action.

1 While the Ninth Circuit clearly stated that the merits of
2 the litigation centered on the specific claims between the named
3 plaintiff and defendants, the Colusa court also recognized that
4 the relief awarded in this action would have an incidental effect
5 on other 1999 Compact tribes. Id. at 972. While other tribes
6 could have litigated claims that would have served their own
7 particular interests, either by limiting or increasing the
8 license pool, the merits portion of the litigation in this case
9 centered upon the claims between Colusa and the State and
10 Picayune and the State and the relevant factual considerations
11 specific to those two tribes. Compact Tribes that failed to
12 bring suit took a gamble; under the interpretation of the Compact
13 provided in the court's April 22 Order, those that wanted an
14 increase in the license pool won, while those that wanted to
15 maintain stricter limits did not.⁵ However, the Ninth Circuit's
16 ruling makes clear that it contemplated that a ruling as to the
17 specific Compacts between individual tribes and defendants would
18 likely have an effect on administration of the license system as
19 a whole.

20 The court finds that the Ninth Circuit's Order implicitly
21 contemplated the relief requested by plaintiffs. See Colusa, 547
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23 ⁵ In denying Tuolumne Band of Me-Wuk Indians', a
24 federally recognized Indian Tribe, ("Tuolumne") motion to
25 intervene as untimely, the court noted that Tuolumne's decisions
26 not to file suit or seek intervention earlier in the litigation
27 were made at its own peril. Tuolumne sought a declaration that
28 the Gaming Compact authorized the issuance of 55,951 licenses.
To the extend Tuolumne sought more licenses than the 42,700 the
court held the Compact authorized under the facts presented in
this case, Tuolumne's gamble was not fully successful. However,
since the court's finding resulted in an increased size of the
Gaming Device license pool. Tuolumne's gamble was partially
successful.

1 F.3d at 971-72. Specifically, the court reads the Ninth
2 Circuit's opinion as contemplating an increase in the overall
3 size of the license pool created by the 1999 Compacts as an
4 "incidental" effect. The Colusa court noted that those tribes
5 "who intend to expand their gaming tribes will gladly accept an
6 increase in the size of the license pool created by the 1999
7 Compacts." Id. at 971. Further, the Colusa court recognized
8 that "the outcome of Colusa's litigation may have some financial
9 consequences for the non-party tribes" Id. Finally, the
10 Colusa court recognized that the state could be subject to
11 "inconsistent obligations" should district courts reach
12 inconsistent conclusions with respect to the size of the license
13 pool created under the 1999 Compacts; indeed, it advised that any
14 such inconsistencies could be resolved on appeal to the Ninth
15 Circuit. Id. at 972 n.12. Accordingly, the court concludes that
16 plaintiffs' are entitled to the relief requested.

17 **CONCLUSION**

18 For the foregoing reasons, IT IS HEREBY ORDERED pursuant to
19 Federal Rule of Civil Procedure 54(b) that the Clerk enter final
20 judgment on Colusa's claims regarding (1) its priority in the
21 draw process (2) the number of gaming devices authorized by the
22 Compact; (3) defendants' retention of license fees; (4) the
23 Commission's authority to administer the draw process; (5)
24 defendants' refusal to schedule and conduct a round of draws; and
25 (6) defendants' counting of multi-station games as equal to the
26 number of their terminals in accordance with the court's April 22
27 Order. It is also HEREBY ORDERED pursuant to Federal Rule of
28 Civil Procedure 54(b) that the Clerk enter final judgment on

1 Picayune's sole claim regarding the number of gaming devices
2 authorized by the Compact.

3 Within forty five (45) days of the entry of judgment
4 pursuant to this Order,⁶ defendants shall schedule and conduct a
5 draw of all available gaming device licenses, in accordance with
6 the court's April 22 Order, and in which all eligible Compact
7 Tribes may participate.

8 IT IS SO ORDERED.

9 DATED: August 19, 2009.



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11 FRANK C. DAMRELL, JR.
12 UNITED STATES DISTRICT JUDGE
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26 ⁶ The court notes defendants' request that the Court stay
27 the effect of this order for thirty days to permit the State to
28 appeal and/or file a motion to stay with this court or the Ninth
Circuit. The court DENIES defendants' request. However, nothing
in this order prevents defendants from filing an appeal or a
properly filed motion with the court or the Ninth Circuit.