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8  
 9 IN THE UNITED STATES DISTRICT COURT  
 10 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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12  
 13 **TUOLUMNE BAND OF ME-WUK  
 INDIANS, a federally-recognized Indian  
 14 Tribe,**

15 Plaintiff,

16 v.

17 **STATE OF CALIFORNIA; CALIFORNIA  
 18 GAMBLING CONTROL COMMISSION,  
 an agency of the State of California and  
 19 ARNOLD SCHWARZENEGGER, as  
 Governor of the State of California,**

20 Defendants.  
 21

2:09-cv-02263-JAM-KJM

**STIPULATION AND ORDER TO STAY  
 ALL PROCEEDINGS**

Judge: The Honorable John A. Mendez  
 Trial Date: March 21, 2011

Action Filed: August 14, 2009

22  
 23 For the reasons stated herein, the parties to this action, by and through their attorneys of  
 24 record, hereby stipulate to stay all proceedings in this action pending the finality of the Ninth  
 25 Circuit’s decision in *Cachil Dehe Band of Wintun Indians of the Colusa Indian Community v.*  
 26 *California*, 618 F.3d 1066 (9th Cir. 2010), on the terms stated below.  
 27  
 28

1 **REASONS FOR STAY**

2 On August 19, 2009, the district court entered judgment in favor of the Cachil Dehe Band  
3 of Wintun Indians of the Colusa Indian Community (Colusa) and the Picayune Rancheria of  
4 Chukchansi Indians (Picayune), granting precisely the relief sought by the Tuolumne Band of  
5 Me-Wuk Indians (Tuolumne) in this action. *Cachil Dehe Band of Wintun Indians of the Colusa*  
6 *Indian Community v. California*, 2009 WL 2579051. The district court’s order extended this  
7 relief not only to Colusa and Picayune, but to *all* 1999 Compact Tribes, which includes  
8 Tuolumne.

9 Defendants State of California, the California Gambling Control Commission, and  
10 Governor Arnold Schwarzenegger (collectively referred to herein as the State) timely appealed  
11 the district court judgment. The State’s motion for stay pending appeal was denied, and two  
12 Gaming Device license draws open to all 1999 Compact Tribes, including Tuolumne, have  
13 occurred since the district court’s judgment was entered. On August 20, 2010, the Ninth Circuit  
14 issued an opinion affirming the district court judgment in all respects except as to the size of the  
15 statewide Gaming Device license pool, which the court determined to be 40,201, rather than  
16 42,700 as previously found by the district court and alleged by Tuolumne in this action. *Cachil*  
17 *Dehe Band of Wintun Indians of the Colusa Indian Community v. California*, 618 F.3d 1066 (9th  
18 Cir. 2010) (*Colusa II*).

19 On September 10, 2010, the State filed a petition for panel rehearing and rehearing en banc.  
20 The Ninth Circuit ordered appellees to file responses to the State’s petition, and appellees Colusa  
21 and Picayune filed a joint response on October 26, 2010. The State’s petition for rehearing is  
22 now pending before the Ninth Circuit. At the present time, it is unknown whether the State will  
23 file a petition for certiorari if its petition for rehearing is unsuccessful.

24 This case has now reached the deposition, dispositive motion, and trial preparation stage  
25 during which the parties will incur substantial costs. The dispositive motions, which are  
26 scheduled to be filed by December 10, 2010, and heard on January 12, 2011, will impose some  
27 burden upon the Court, as each party intends to file a Motion for Summary Judgment. These  
28 costs and burdens imposed on the Court as well as the parties will be rendered unnecessary if the

1 *Colusa II* decision becomes final in its present form, e.g., if the State’s petition for rehearing is  
2 unsuccessful and the State declines to seek, or fails to obtain, a writ of certiorari. By this  
3 stipulation, the parties seek to avoid these potentially unnecessary costs, and to relieve the Court  
4 of the burden of this potentially unnecessary action.

5 For these reasons, the parties stipulate to a stay of all proceedings in this action pending the  
6 finality of the *Colusa II* decision as described above and defined herein. The terms stated below  
7 reflect the fact that it is uncertain when the *Colusa II* decision will become final, and it is  
8 uncertain what the final substance of the decision may be.

### 9 **TERMS OF STIPULATION**

10 For purposes of this stipulation, the term “finality” shall mean and refer to when the Ninth  
11 Circuit’s decision in *Colusa II*, can no longer be challenged by the State or in the event the State  
12 has notified Tuolumne in writing that it will not file for a Petition for Certiorari. In the event the  
13 State decides not to challenge the decision prior to the expiration of any time period to do so, the  
14 State will promptly provide Tuolumne with written notice of such decision and such notice shall  
15 be deemed to constitute finality for purposes of this stipulation.

16 The parties, by and through their attorneys of record, hereby stipulate as follows:

- 17 1. That all proceedings in this action be stayed immediately;
- 18 2. That the State shall provide Tuolumne with written notice of the finality of the Ninth  
19 Circuit’s decision in *Colusa II*, by no later than five (5) court days after the occurrence thereof;
- 20 3. That no later than twenty (20) calendar days after the filing of a Notice of  
21 Resumption of Action by Tuolumne, such notice to be filed subsequent to, but no later than  
22 thirty-five (35) calendar days after service is made upon Tuolumne by mail notifying Tuolumne  
23 of the finality of the Ninth Circuit’s decision in *Colusa II*, each party herein shall file a Status  
24 Conference Statement stating, without limitation, the need, if any, for the completion of  
25 discovery, or for further discovery in light of the final decision in the *Colusa* case, and this Court  
26 shall then issue an order scheduling all remaining events in the case including setting a briefing  
27 schedule for any dispositive motions that the parties intend to file upon the lifting of the stipulated  
28 Stay, and setting the matter for trial;

1           4.     That if Tuolumne does not file a Notice of Resumption of Action within thirty-five  
2 (35) calendar days after the date in which service by mail was made upon Tuolumne notifying it  
3 of the finality of the Ninth Circuit’s decision in the *Colusa* case, the State may file a request for  
4 dismissal pursuant to this stipulation, or the Court may, on its own motion, dismiss this action  
5 pursuant to this stipulation.

6           IT IS SO STIPULATED.

7     Dated: November 12, 2010

EDMUND G. BROWN JR.  
Attorney General of California  
SARA J. DRAKE  
Senior Assistant Attorney General

10                   /s/ NEIL D. HOUSTON

11                   NEIL D. HOUSTON  
12                   Deputy Attorney General  
13                   *Attorneys for State Defendants*

14  
15     Dated: November 12, 2010

ROSETTE & ASSOCIATES, PC

17                   /s/ MEAGAN J. REED (as authorized  
18                   on 11/10/10)

19                   MEAGAN J. REED  
20                   *Attorney for Plaintiffs*

1 **ORDER**

2 The Court, having reviewed and considered the above Stipulation between the Parties, and  
3 good cause appearing there for, makes the following order:

4 1. All proceedings in this matter shall be stayed effective the date hereof;

5 2. The State shall provide Tuolumne with written notice of the finality of the Ninth  
6 Circuit’s decision in *Cachil Dehe Band of Wintun Indians of the Colusa Indian Community v.*  
7 *California*, 618 F.3d 1066 (9th Cir. 2010) (*Colusa II*), by no later than five (5) court days after the  
8 occurrence thereof. For purposes of this Order, “finality” shall have the meaning defined in the  
9 Stipulation above.

10 3. No later than twenty (20) calendar days after the filing of a Notice of Resumption of  
11 Action by Tuolumne, such notice to be filed subsequent to, but no later than thirty-five (35)  
12 calendar days after service is made upon Tuolumne by mail notifying Tuolumne of the finality of  
13 the Ninth Circuit’s decision in *Colusa II*, each party herein shall file a Status Conference  
14 Statement stating, without limitation, the need, if any, for the completion of discovery, or for  
15 further discovery in light of the final decision in *Colusa II*; the Parties shall include in their  
16 respective Status Conference Statements whether they intend on filing any dispositive motions;  
17 and this Court shall then issue an order scheduling all remaining events in the case including, but  
18 not limited to, discovery cut-off deadlines and deadlines associated with filing dispositive  
19 motions, and setting the matter for trial;

20 4. If Tuolumne does not file a Notice of Resumption of Action within thirty-five (35)  
21 calendar days after the date in which service by mail was made upon Tuolumne notifying it of the  
22 finality of the Ninth Circuit’s decision in *Colusa II*, the State may file a request for dismissal  
23 pursuant to this stipulation, or the Court may, on its own motion, dismiss this action pursuant to  
24 this stipulation.

25 IT IS SO ORDERED.

26 Dated: November 12, 2010

27 /s/ John A. Mendez  
28 Honorable John A. Mendez  
U.S. DISTRICT COURT JUDGE