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

BIG LAGOON RANCHERIA, a Federally
Recognized Indian Tribe,

Plaintiff,

v.

STATE OF CALIFORNIA,

Defendant.

No. 09-01471 CW

ORDER GRANTING
DEFENDANT'S
MOTION FOR LEAVE
TO FILE A MOTION
FOR
RECONSIDERATION
(Docket No. 76)

_____ /

United States District Court
For the Northern District of California

On April 1, 2010, Defendant State of California filed objections to Magistrate Judge Joseph C. Spero's Order Denying Defendant's Motion for a Protective Order. These objections were deemed denied on April 13, 2010. The State now seeks leave to file a motion to reconsider the denial of its objections, asserting that Judge Spero's Order is contrary to the Ninth Circuit's decision in Rincon Band of Luiseno Mission Indians v. Schwarzenegger, 602 F.3d 1019 (9th Cir. 2010), which issued on April 20, 2010. Under Civil L.R. 7-9(b)(2), a party may ask a court to reconsider an interlocutory decision if the party can show the "emergence of . . . a change of law occurring after the time of such order."

Under the Indian Gaming Regulatory Act (IGRA), an Indian tribe may conduct class III gaming only if it has entered into a compact with its home state. Rincon, 602 F.3d at 1027. IGRA requires states to participate in negotiations for such compacts in good faith. Id. In Rincon, the State argued that it had negotiated in good faith because "it genuinely believed its revenue sharing

1 demands were authorized by [In re Indian Gaming Related Cases, 331
2 F.3d 1094 (9th Cir. 2003)], approved by the Department of the
3 Interior, and fair because other tribes had accepted them." Id. at
4 1041. The Ninth Circuit rejected this argument, stating,

5 IGRA does not provide express guidance about whether good
6 faith is to be evaluated objectively or subjectively.
7 However, we are influenced by the factors outlined in
8 § 2710(d)(7)(B)(iii), which lend themselves to objective
9 analysis and make no mention of unreasonable beliefs.
10 Further, the structure and content of § 2710(d) make
11 clear that the function of the good faith requirement and
12 judicial remedy is to permit the tribe to process gaming
arrangements on an expedited basis, not to embroil the
parties in litigation over their subjective motivations.
We therefore hold that good faith should be evaluated
objectively based on the record of negotiations, and that
a state's subjective belief in the legality of its
requests is not sufficient to rebut the inference of bad
faith created by objectively improper demands.

13 Id. The court did not address directly the scope of discovery
14 under IGRA, but noted,

15 Interestingly, on the question of the scope of discovery
16 permissible in IGRA negotiations, the State has taken the
17 position that good faith should be proved based on the
18 objective course of negotiations. See also Fort
19 Independence Indian Cmty. v. California, No. Civ.
20 S-08-432, 2009 WL 1283146, at *3 (E.D. Cal. May 7, 2009)
21 (agreeing with the State that good faith should be based
on objective factors). The State cannot have it both
ways. If the State wants to avoid discovery and limit
review of good faith to the official record of
negotiations, the State cannot defend itself on the good
faith question by claiming its objectively improper
demands were made with an innocent intent.

22 Id. at 1041 n.25.

23 In this action, the State sought a protective order to prevent
24 discovery of documents, which Big Lagoon explained "would show, or
25 lead to the discovery of admissible evidence regarding, the
26 underlying state of mind and motives of the State during this
27 attenuated history of negotiations." Docket No. 37, at 3-4. The

1 State sought a protective order to limit discovery to "1) the
2 parties' proposals; 2) 'judicially noticeable information' and
3 3) evidence related to the State's affirmative defenses." Order of
4 March 19, 2010, at 6 (quoting the State's Reply at 3). Magistrate
5 Judge Spero rejected the State's position, stating that there was
6 no binding authority to restrict discovery in the manner asserted
7 by the State. Judge Spero explained,

8 On balance, the Court is persuaded by the NRLA cases and
9 the Ninth Circuit's recognition in [In re Indian Gaming
10 Related Cases], that the good faith determination is one
11 that takes into account all of the facts and
12 circumstances, not just the bare "record" of negotiations
13 between the parties.

14 Order of March 19, 2010, at 13-14.

15 Rincon appears to be intervening legal authority that may
16 restrict the scope of what is relevant in assessing whether a state
17 has negotiated in good faith. Accordingly, the Court GRANTS the
18 State leave to file a motion for reconsideration. (Docket No. 76.)
19 The State's brief filed in support of its motion for leave is
20 deemed its motion for reconsideration. Within three days of the
21 date of this Order, Big Lagoon shall file a brief in opposition.
22 The State's reply shall be due three days thereafter. The Court
23 remands the motion to Magistrate Judge Spero to consider the impact
24 of Rincon on his prior decision. Judge Spero may set a hearing on
25 the motion or decide it on the papers.

26 IT IS SO ORDERED.

27 Dated: June 8, 2010



28 CLAUDIA WILKEN
United States District Judge