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

FORT INDEPENDENCE INDIAN
COMMUNITY,

Plaintiff,

No. CIV 08-432 LKK KJM

vs.

STATE OF CALIFORNIA, et al.,

Defendants.

ORDER

_____/

Plaintiff’s motion to compel and defendant’s counter-motion for protective order came on regularly for hearing February 25, 2009. Michael Robinson appeared for plaintiff. Jennifer Henderson appeared for defendants. During the hearing, counsel argued their respective positions with respect to the bounds of the record relevant to the court’s ultimate determination of the parties’ dispute; counsel focused in particular on the cases of Seattle-First National Bank v. National Labor Relations Board, 638 F.2d 1221 (9th Cir. 1981), In re Indian Gaming Related Cases, 147 F. Supp. 2d 1011 (N.D. Cal. 2001) (“Coyote I”), and In re Gaming Related Cases, 331 F. 3d 1094 (9th Cir. 2003) (“Coyote II”). Plaintiff’s counsel argued the court ultimately can look to facts outside the administrative record; defendant’s counsel argued review is limited to the “objective facts” represented by that record. Upon review of the briefing in support and opposition and the cases cited therein, upon hearing the arguments of counsel, having carefully

1 considered those arguments in light of the applicable case law, and good cause appearing
2 therefor, THE COURT FINDS AND ORDERS AS FOLLOWS:

3 1. Defendants have not met their burden of demonstrating that any material
4 sought by plaintiff is subject to the deliberative process privilege; however,

5 2. The court finds discovery in this matter is limited to the administrative record;
6 and

7 3. Accordingly, plaintiff's motion to compel is denied and defendant's motion for
8 protective order is granted.

9 DATED: March 5, 2009.

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12 U.S. MAGISTRATE JUDGE
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