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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

THE ESTOM YUMEKA MAIDU TRIBE
OF THE ENTERPRISE RANCHERIA OF
CALIFORNIA,

Plaintiff,

v.

THE STATE OF CALIFORNIA,

Defendant.

No. 2:14-cv-01939-TLN-CKD

MEMORANDUM AND ORDER

The matter is before the Court on cross motions for judgment on the pleadings by Plaintiff the Estom Yumeka Maidu Tribe (hereinafter “Plaintiff”) and Defendant the State of California (hereinafter “Defendant”). (ECF Nos. 14, 17.) The Court has carefully considered the factual and legal issues presented in the parties’ filings, and the arguments raised in the amicus brief submitted by the California legislature (ECF No. 19). For the reasons discussed below, the Court GRANTS Plaintiff’s motion for judgment on the pleadings, and DENIES Defendant’s motion.

I. Summary of the Issues

Under the federal Indian Gaming Regulatory Act (“IGRA”), an Indian tribe seeking to conduct casino-style gaming on Indian land must request that the state enter into good faith negotiations to conclude a gaming compact. 25 U.S.C. § 2710(d)(3). Under California law, the governor is tasked with negotiating a compact, and the legislature is tasked with ratifying it. Cal.

1 Const., Art. IV, § 19(f). In this case, Plaintiff negotiated and signed a compact (the “Compact”)
2 with Governor Jerry Brown in 2012. However, the legislature essentially took no further action
3 and did not hold a vote on ratification. The Compact eventually expired on its own terms in July
4 2014.

5 Plaintiff’s immediate remedy under the IGRA is to bring suit. After Plaintiff has
6 introduced evidence that the state has not negotiated toward a compact in good faith, it is the
7 state’s burden to show it has negotiated in good faith. Otherwise, the state is subject to a court
8 order compelling it to conclude a compact within 60 days, with additional remedies should the
9 state continue to reject the compact. 25 U.S.C. § 2710(d)(7)(B).

10 Defendant’s position is that the legislature’s inaction cannot form the basis for suit under
11 the IGRA, because only the governor negotiated the instant Compact. Plaintiff’s position is that
12 the IGRA’s negotiation mandate extends to activities by the legislature. Both parties have moved
13 for judgment on the pleadings on the issue of whether Defendant has negotiated the instant
14 Compact in good faith, and thus whether Plaintiff is entitled to relief under the IGRA.

15 **II. Facts and Statutory Background¹**

16 **A. Department of Interior’s trust acquisition and gaming determination**

17 Plaintiff was federally recognized as a sovereign Indian tribe in 1915. According to
18 Plaintiff, during the 20th century it exercised jurisdiction over two parcels of land, both 40 acre
19 parcels located near the former town of Enterprise in Northern California. Plaintiff still exercises
20 jurisdiction over one of those parcels which apparently is unsuitable for building. The other
21 parcel was transferred to the State of California in 1965 via Congressional Act, Public Law 88–
22

23 ¹ For convenience, the Court has cited mostly to Plaintiff’s complaint in this section. The factual background
24 recited by both parties, relative to tribal history, negotiations with the governor, and transmission of the Compact to
the legislature, appears generally undisputed. For more context regarding the legislature’s activity, the Court cites in
Section IV(c) to the amicus brief filed by the California legislature.

25 Plaintiff filed the complaint in this matter on August 20, 2014. Defendant answered on October 15, 2014.
26 (ECF No. 11.) Plaintiff moved for judgment on the pleadings on January 12, 2015, and Defendant moved for
judgment on the pleadings on February 12, 2015. (ECF Nos. 14, 17.) The California legislature (via legislative
27 counsel) filed an amicus brief in support of Defendant, on March 5, 2015. (ECF No. 19.) The parties have filed
additional reply briefs. (ECF Nos. 20, 21, 23.) Plaintiff submitted a notice of supplemental authority on December
28 18, 2015, discussed *infra*, and Defendant and Legislative Counsel have filed responses to that notice. (ECF Nos. 24,
25, 26.)

1 453. (Compl. ¶¶ 25–28.)

2 In 2002, Plaintiff submitted a fee-to-trust application to the Secretary of the Interior (the
3 “Secretary”), seeking to have an additional 40 acres of land in Yuba County taken into trust on its
4 behalf. *See* 25 U.S.C. § 465 (“The Secretary of the Interior is authorized, in his discretion, to
5 acquire ... any interest in lands ... for the purpose of providing land for Indians”). In 2006,
6 Plaintiff supplemented its application with a request that the Secretary also find the parcel
7 gaming-eligible. *See* 25 U.S.C. § 2719(b)(1)(A) (providing that the Secretary may find a gaming
8 establishment to be “in the best interest of the Indian tribe and its members, and would not be
9 detrimental to the surrounding community, but only if the Governor of the State in which the
10 gaming activity is to be conducted concurs in the Secretary’s determination”). (Compl. ¶¶ 31–
11 32.)

12 On September 1, 2011, the Secretary determined the parcel to be gaming-eligible, and on
13 August 30, 2012, Governor Jerry Brown concurred. On May 15, 2013, the Department of the
14 Interior took the parcel into trust on behalf of Plaintiff for the purpose of gaming. (Compl. ¶¶ 34–
15 36.)

16 **B. Class III gaming compacts**

17 While proceedings relative to trust acquisition and gaming-eligibility were ongoing,
18 Plaintiff also sought to negotiate a gaming compact with California regarding a class III gaming
19 facility. Class III gaming includes casino-style gaming such as card games played against the
20 house and slot machines.² 25 U.S.C. § 2703(6)–(8); *N. Cty. Cmty. All., Inc. v. Salazar*, 573 F.3d
21 738, 741 (9th Cir. 2009).

22 Class III gaming on Indian lands may occur if permitted by state law and if conducted in
23 in accordance with a tribal-state gaming compact. 25 U.S.C. § 2710(d)(1)(B) and (C). A tribe
24 intending to conduct class III gaming shall request that the state “enter into negotiations for the
25 purpose of entering into a Tribal-State compact governing the conduct of gaming activities. Upon

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27 ² Class I gaming consists of “social games solely for prizes of minimal value or traditional forms of Indian
28 gaming ... in connection with tribal ceremonies or celebrations.” Class II gaming includes bingo and card games that
are explicitly authorized or not explicitly prohibited by the State. Class III gaming is defined as all gaming that is not
class I or II. 25 U.S.C. § 2703(6)–(8).

1 receiving such a request, the State shall negotiate with the Indian tribe in good faith to enter into
2 such a compact.” 25 U.S.C. § 2710 (d)(3)(A).

3 In March 2000, California voters ratified Proposition 1A, which permitted certain class III
4 gaming only on Indian lands. See *In re Indian Gaming Related Cases*, 331 F.3d 1094, 1103,
5 1107 (9th Cir. 2003); *Rincon Band of Luiseno Mission Indians of Rincon Reservation v.*
6 *Schwarzenegger*, 602 F.3d 1019, 1023 (9th Cir. 2010) (“Not only did Proposition 1A permit
7 tribes to conduct class III gaming lawfully, it effectively gave tribes a state constitutional
8 monopoly over casino gaming in California”). The same referendum also established a two-part
9 procedure for negotiating and ratifying gaming compacts. Under this procedure, “the Governor is
10 authorized to negotiate and conclude compacts, subject to ratification by the Legislature.” Cal.
11 Const., Art. IV, § 19(f).³

12 This procedure is also codified in Cal. Gov. Code § 12012.25(c) and (d), which provides
13 that compacts “shall be ratified by a statute approved by each house of the Legislature,” while
14 “the Governor is the designated state officer responsible for negotiating and executing, on behalf
15 of the state, tribal-state gaming compacts”

16 C. Compact negotiations

17 According to Plaintiff, in June 2000, it sent California a request to begin compact
18 negotiations. Plaintiff sent an additional request in 2004. California initially rejected these
19 requests, although Plaintiff continued to meet to discuss a proposed gaming facility with the
20 legislative staff of Governor Schwarzenegger and, beginning in 2011, a senior advisor to
21 Governor Jerry Brown. (Compl. ¶ 40.)

22 In August 2012, compact negotiations “began in earnest,” relative to the Secretary’s
23 September 1, 2011, determination that the parcel to be taken into trust was gaming eligible under

24 ³ Cal. Const., Art. IV, § 19(f) states:

25 [T]he Governor is authorized to negotiate and conclude compacts, subject to
26 ratification by the Legislature, for the operation of slot machines and for the
27 conduct of lottery games and banking and percentage card games by federally
28 recognized Indian tribes on Indian lands in California in accordance with federal
law. Accordingly, slot machines, lottery games, and banking and percentage card
games are hereby permitted to be conducted and operated on tribal lands subject
to those compacts.

1 25 U.S.C. § 2719(b)(1)(A). (Compl. ¶ 41.) Plaintiff submits that “the Governor indicated that he
2 was giving serious consideration to concurring in the Secretary’s [] determination, but only if the
3 Tribe would first agree to negotiate and enter into a tribal-state compact that provided the State
4 and its residents with the same or similar protections as other compacts in California.” (Compl. ¶
5 41.)

6 After further negotiation, including acceptance by Plaintiff of provisions found in other
7 compacts which the legislature had ratified, Plaintiff and the governor signed the instant Compact
8 on August 30, 2012.⁴ On the same date, the governor concurred in the Secretary’s determination
9 that the Yuba parcel was gaming eligible under § 2719(b)(1)(A). (Compl. ¶¶ 42, 48.)

10 Shortly after the Compact was signed it was transmitted from the governor’s office to the
11 California legislature. After the parcel of land was taken into trust in May, 2013, Plaintiff
12 informed the governor’s office and members of the legislature, and requested that the Compact be
13 ratified. The legislature took no activity to ratify the Compact during the 2013 session. (Compl.
14 ¶ 50.)

15 Throughout the first half of 2014, Plaintiff engaged in a “concerted effort” with the
16 governor’s office to secure ratification in the legislature. (Compl. ¶ 51.) In May, 2014,
17 Assemblyman Adam Gray introduced AB 1098, to ratify the Compact but according to Plaintiff,
18 the legislature “held neither an information hearing nor a vote” on that bill, and the Compact was
19 not ratified. (Compl. ¶ 51.) The Compact expired by its own terms on July 1, 2014. (Compl. ¶
20 53.) The parties appear to agree, with some qualifications noted *infra*, that the legislature has
21 taken no action on the Compact.⁵

22 ⁴ According to Plaintiff, those provisions included “procedures for the reporting and auditing of revenues
23 from class III gaming devices; licensing of the gaming facility, employees, resource suppliers, and financial sources;
24 approval and testing of gaming devices; inspection and access to the gaming facility; operation and management of
25 the gaming operation; resolution and arbitration of patron disputes, tort claims, and employee discrimination claims;
environmental review and off-reservation mitigation of defined project activities; and resolution of compact
disputes.” (Compl. ¶ 42.)

26 ⁵ See Answer, ECF No. 11 ¶ 61 (“[T]he State admits that no further negotiation of the terms of the Enterprise
27 Compact has occurred since the Enterprise Compact was transmitted to the California State Legislature”); Def.’s
28 MJP, ECF No. 17-1 at 5, 9 (“Although the Governor timely submitted the Enterprise Compact to the California
legislature for ratification, the Legislature did not act on his request and the compact eventually expired by its own
terms”; “In order for Plaintiff to prevail in this case, the Court would have to find that the Legislature’s failure to take
any action to ratify the Enterprise Compact constituted bad faith negotiations under the IGRA”). A fuller account of

1 D. Remedy under the IGRA

2 Based on the legislature's inaction, Plaintiff seeks redress under 25 U.S.C. § 2710(d)(7).
3 Under this scheme, 180 days after a tribe requests the opening of compact negotiations with the
4 state, the tribe may bring suit arising from the state's failure to enter into a compact or to
5 negotiate in good faith. If the tribe then produces evidence that a compact was never entered into
6 and the state did not respond to the tribe's request to negotiate in good faith, the burden is on the
7 state to prove that it has in fact negotiated with the tribe in good faith to conclude a compact. 25
8 U.S.C. § 2710(d)(7)(A) and (B).

9 If the court still finds the state has failed to negotiate a compact in good faith, the court
10 must order the state and the tribe to conclude a compact within 60 days. If no compact is
11 concluded, the court appoints a mediator to select from the compacts proposed by the tribe and
12 the state. The state then has 60 additional days to consent to that selected compact. If the state
13 does not consent, the Secretary of the Interior prescribes the procedures under which class III
14 gaming may occur. 25 U.S.C. § 2710(d)(7)(B)(iii)–(vii).

15 **III. Legal Standard**

16 Federal Rule of Civil Procedure 12(c) permits a party to seek judgment on the pleadings
17 “[a]fter the pleadings are closed—but early enough not to delay trial.” “Analysis under Rule
18 12(c) is ‘substantially identical’ to analysis under Rule 12(b)(6) because, under both rules, a court
19 must determine whether the facts alleged in the complaint, taken as true, entitle the plaintiff to a
20 legal remedy.” *Pit River Tribe v. Bureau of Land Management*, 793 F.3d 1147, 1155 (9th Cir.
21 2015) (citing *Chavez v. United States*, 683 F.3d 1102, 1108 (9th Cir. 2012)). As to a defendant's
22 motion, judgment on the pleadings is appropriate when, even if all allegations in the complaint
23 are true, the defendant is entitled to judgment as a matter of law. *Westlands Water Dist. v.*
24 *Firebaugh Canal*, 10 F.3d 667, 670 (9th Cir. 1993). As to a plaintiff's motion, similarly,
25 judgment is appropriate when, assuming the truth of the factual allegations, the plaintiff is entitled
26 to judgment as a matter of law. Judgment may properly be granted only if “there is no issue of

27 _____
28 the specific activity undertaken by the legislature, and context for that activity, is offered below in Section IV(c).

1 material fact in dispute.” *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009). *See North Fork*
2 *Rancheria of Mono Indians of California v. State of California*, No. 1:15-cv-00419-AWI-SAB, at
3 *7–8 (E.D. Cal. Nov. 13, 2015).

4 **IV. Analysis**

5 As an initial matter, it does not appear the parties dispute material facts that would
6 preclude judgment on the pleadings. The parties, and legislative counsel on behalf of the
7 California legislature, have offered different accounts on the thoroughness of the instant tribal-
8 state negotiations and how the legislature ordinarily considers a bill. However, clearly the parties
9 would like this Court to make a decision on the legal issue of whether the legislature’s inactivity
10 is covered by the IGRA’s good faith negotiation mandate.

11 The Court takes the parties’ moving papers to raise four main issues: Defendant’s
12 immunity (or waiver thereof) under the Eleventh Amendment; the implications under the Tenth
13 Amendment of subjecting the legislature to the IGRA’s negotiation mandate; whether Plaintiff
14 has fulfilled the prerequisites under IGRA for putting the state to its burden of showing it has
15 negotiated in good faith; and whether the legislature’s inactivity actually constitutes a lack of
16 good faith under the IGRA. The Court therefore turns to each of these issues.

17 **A. Eleventh Amendment immunity**

18 In *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996), the Supreme Court held that
19 the Eleventh Amendment prevents Congress from authorizing suits by Indian tribes against states
20 under the IGRA. The IGRA “cannot grant jurisdiction over a State that does not consent to be
21 sued.” *Id.* at 47. In some circumstances, California has consented to suit under the IGRA. Cal.
22 Gov. Code § 98005 provides in relevant part:

23 [T]he State of California also submits to the jurisdiction of the
24 courts of the United States in any action brought against the state by
25 any federally recognized California Indian tribe asserting any cause
26 of action arising from the state's refusal to enter into negotiations
27 with that tribe for the purpose of entering into a different Tribal-
28 State compact pursuant to IGRA or to conduct those negotiations in
good faith ... or the state’s violation of the terms of any Tribal-
State compact to which the state is or may become a party.

Defendant argues that the legislature’s lack of activity regarding a governor-negotiated compact

1 does not fall within this waiver of immunity. Defendant argues: “[t]he waiver in Government
2 Code section 98005 thus applies only to suits based on the Governor’s failure to either enter into
3 negotiations, or failure to negotiate in good faith. There is no support for the idea that the waiver
4 extends to suits based on the Legislature’s failure to ratify a compact.” (ECF No. 17-1 at 14.)
5 For the reasons stated below, this Court does not agree with Defendant’s argument.

6 First, the Court notes a similar argument was recently rejected by a court in this District.
7 See *North Fork Rancheria of Mono Indians of California v. State of California*, No. 1:15-cv-
8 00419-AWI-SAB, ECF No. 25 (E.D. Cal. Nov. 13, 2015) (Ishii, J.). In *North Fork*, the governor
9 initially approved a gaming compact with the tribe and the legislature ratified it, but the compact
10 was overturned by a popular referendum. Thereafter, the state refused to enter into negotiations
11 regarding a new compact. Judgment in *North Fork* was entered in favor of the tribe, and the
12 parties were ordered to conclude a compact within 60 days, per the same remedial provision
13 Plaintiff seeks in the instant case, 25 U.S.C. § 2710(d)(7)(B)(iii). Relative to the Eleventh
14 Amendment, the *North Fork* court characterized the state’s argument as: “because [plaintiff]
15 *North Fork* alleges that the state as a whole – rather than the Governor – has failed to negotiate,
16 the Court lacks jurisdiction over the portion of this action that relat[es] to conduct by actors other
17 than the Governor.” *North Fork* at * 9. The court rejected that argument. Factual differences
18 aside, this Court agrees with the reasoning in *North Fork*.

19 As an overriding matter, the language of California’s waiver of immunity appears to be
20 crafted to fit the IGRA’s grant of jurisdiction to federal district courts over failures in compact
21 negotiations. Compare Cal. Gov. Code § 98005, *supra*, with the IGRA: “The United States
22 district courts shall have jurisdiction over – (i) any cause of action initiated by an Indian tribe
23 arising from the failure of a State to enter into negotiations with the Indian tribe for the purpose of
24 entering into a Tribal-State compact ... or to conduct such negotiations in good faith...” 25
25 U.S.C. § 2710(d)(7)(A)(i). The instant lawsuit fits within the plain language of California’s
26 waiver, because it arises from “the state’s refusal to enter into negotiations ... or to conduct those
27 negotiations in good faith ... or the state’s violation of the terms of any Tribal-State compact to
28 which the state is or may become a party.” Cal. Gov. Code § 98005.

1 Further, the full text of § 98005 refers to both the “Governor” and the “State of
2 California”, indicating that if the California legislature had wanted to restrict suits only to those
3 involving conduct by the governor, it could have done so. *North Fork* at *11. Elsewhere in the
4 IGRA, a state’s governor is referred to specifically as the relevant entity. 25 U.S.C. §
5 2719(b)(1)(A) provides that gaming may occur on lands acquired after the IGRA’s enactment, if
6 the “Governor of the State” concurs with the Secretary of the Interior that gaming is in the best
7 interest of a tribe and is not detrimental to the community. Therefore, both California’s gaming
8 law and the IGRA acknowledge a distinction amongst state actors, but did not make that
9 distinction relative to a state’s immunity from suit.⁶

10 The *North Fork* court also noted that the two California statutory provisions giving the
11 Governor the exclusive authority to negotiate IGRA compacts – Cal. Const. Art. IV, § 19; Cal.
12 Gov. Code § 12012.25(c) and (d) – were not enacted until after California had already enacted its
13 waiver of sovereign immunity in § 98005. *See* 1999 Cal. Legis. Serv. Res. Ch. 142 (S.C.A. 11);
14 1999 Cal. Legis. Serv. Ch. 874 (A.B. 1385). Both Cal. Gov. Code § 98005 and § 98002 were
15 enacted as part of the Tribal Government Gaming and Economic Self-Sufficiency Act of 1998.
16 Section 98002, along with all provisions of that Act except for the relevant portion of § 98005,
17 were eventually found unconstitutional by the California Supreme Court. *See Hotel Employees &*
18 *Rest. Employees Int.’l Union v. Davis*, 21 Cal. 4th 585 (1999). However, Section 98002 required
19 the governor to enter into IGRA compact negotiations *and* “reach agreement and execute that
20 compact on behalf of the state.” With some limitations, such as expanding the scope of class III
21 gaming in California, the governor’s authority under § 98002 did “not require action by the
22 Legislature.” Cal. Gov. Code § 98002. Therefore, despite the fact that the governor was tasked
23 with negotiating *and* executing a gaming compact subject to the IGRA, at the time the § 98005

24
25 ⁶ Plaintiff also directs the Court to a decision from the Arizona Supreme Court, *Salt River Pima-Maricopa*
26 *Indian Cmty v. Hull*, 945 P.2d 818 (Ariz. 1997) (en banc), which held that the IGRA’s negotiation mandate extends
27 to the State as a whole, not just the governor. *See id.* at 822 (“The essence of the Governor’s argument is that IGRA
28 requires negotiation with Indian tribes on a case-by-case basis for the terms of gaming compacts covering reservation
land. We agree, but note IGRA confers no powers or privileges on the governor as such. The federal statute requires
only that ‘the State shall negotiate’ and permits any ‘State and any Indian tribe’ to enter into a ‘Tribal-State compact
governing gaming...”).

1 waiver of immunity was enacted, § 98005 still did not refer specifically to the governor and
2 instead authorized suit against the “State” relative to an IGRA compact.⁷ *See North Fork* at *10–
3 11.

4 Defendant has not submitted either state or federal case authority in support of the
5 position that if activity by the legislature constitutes the alleged offense conduct, then the § 98005
6 waiver no longer applies. The relevant language of § 98005 quoted above refers only to the state,
7 and not a more specific entity. For the above reasons, the Court finds Defendant is not immune
8 from suit under the Eleventh Amendment.

9 B. Tenth Amendment sovereignty

10 Defendant also contends that subjecting the California legislature to the IGRA’s
11 negotiation mandate would invade a fundamental aspect of Defendant’s sovereignty, which is
12 prohibited by the Tenth Amendment. Defendant argues that “the Federal Government may not
13 compel the States to implement, by legislation or executive action, federal regulatory programs,”
14 *Printz v. United States*, 521 U.S. 898, 925 (1997).

15 Plaintiff’s position is that the IGRA’s compacting requirement does not compel Defendant
16 to implement a federal program. In part, this is due to the fact that Defendant need not permit
17 class III gaming in the first place. 25 U.S.C. § 2710(d)(1)(B). California has elected to do so.
18 Further, Defendant is not under a duty to negotiate. It may refuse to do so, which ultimately leads
19 to gaming conditions determined by the Secretary of the Interior.

20 It should be noted that while the IGRA preempts state regulation of class III gaming, it
21 does extend to Defendant a role in the regulatory process by providing for a tribal-state compact.
22 As stated in the August 13, 1988 Senate Report on the IGRA:

23 The mechanism for facilitating the unusual relationship in which a
24 tribe might affirmatively seek the extension of State jurisdiction and
25 the application of state laws to activities conducted on Indian land
26 is a tribal-State compact. In no instance, does [the IGRA]
contemplate the extension of State jurisdiction or the application of
State laws for any other purpose.

27 ⁷ This is the Court’s understanding of the timeline underlying § 98002 and § 98005; Cal. Const., Art. IV., §
28 19(f); and Cal. Gov. Code § 12012.25(c) and (d). The parties have not briefed this issue, although in their
supplementary briefing regarding the *North Fork* decision, they do not identify error in the court’s analysis on this
point.

1 ...

2 It is also true that [the IGRA] does not contemplate and does not
3 provide for the conduct of class III gaming activities on Indian
4 lands in the absence of a tribal-State compact ... This legislation is
5 intended to provide a means by which tribal and State governments
6 can realize their unique and individual governmental objectives,
7 while at the same time, work together to develop a regulatory and
8 jurisdictional pattern that will foster a consistency and uniformity in
9 the manner in which laws regulating the conduct of gaming
10 activities are applied.

7 ...

8 [The IGRA] is intended to expressly preempt the field in the
9 governance of gaming activities on Indian lands. Consequently,
10 Federal courts should not balance competing Federal, State, and
11 tribal interests to determine the extent to which various gaming
12 activities are allowed.

11 S. REP. 100-446, 6, 1988 U.S.C.C.A.N. 3071, 3075–76.

12 The IGRA’s preemptive effect is consistent with the plenary power afforded to the federal
13 government over Indian affairs. *See Bryan v. Itasca County, Minnesota*, 426 U.S. 373, 376 n. 2
14 (1976) (Congress has “plenary and exclusive power ... to deal with Indian tribes”); *Morton v.*
15 *Mancari*, 417 U.S. 535, 551–52 (1974) (plenary power is “drawn both explicitly and implicitly”
16 from the Indian Commerce Clause, U.S. Const. Art. I, § 8, cl. 3, and the President’s treaty power,
17 U.S. Const. Art. II, § 2, cl. 2); *United States v. Sioux Nation of Indians*, 448 U.S. 371, 413 (1980)
18 (citing *Lone Wolf v. Hitchcock*, 187 U.S. 553, 565 (1903)) (“Plenary authority over the tribal
19 relations of the Indians has been exercised by Congress from the beginning ...”). As such,
20 Plaintiff’s position that Defendant’s power to regulate Class III gaming “derive[s] not from the
21 reserved powers of state sovereignty, but rather from the delegated powers of national
22 sovereignty,” is supported. *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 805 (1995).

23 Defendant refers to *Printz, supra*, which considered the constitutionality of the Brady
24 Handgun Violence Prevention Act under the Tenth Amendment. That Act required chief law
25 enforcement officers at the local level to conduct background checks and perform related tasks on
26 an interim basis until the national system for doing so became operative. The Supreme Court
27 held that violated the Tenth Amendment because it effectively permitted the federal government
28 to “impress into its service – and at no cost to itself – the police officers of the 50 states,” a power

1 ordinarily reserved for the states. *Printz*, 521 U.S. at 922. *See Jacobson v. Commonwealth of*
2 *Massachusetts*, 197 U.S. 11, 24–25 (1905). By contrast, here “the Congressional intent and
3 purpose of IGRA as a whole emphasize that the relationship between the State and the Tribes is
4 that of two sovereign entities cooperating to reconcile potentially competing interests, but
5 remaining subject to federal regulation and authority.” *Rumsey Indian Rancheria of Wintun*
6 *Indians, Table Mountain Rancheria v. Wilson*, No. CIV-S-92-812 GEB, 1993 WL 360652, at *11
7 (E.D. Cal. July 20, 1993).

8 This is particularly so, in light of the fact that Defendant is not required to permit class III
9 gaming in the first place. If a state does permit class III gaming, it is not required to negotiate
10 with a tribe to conclude a compact, in the sense that there is no ultimate mandate that a tribal-state
11 be agreed upon. As the Tenth Circuit reasoned: “IGRA’s directive to the states to conclude a
12 compact must be read in the context of the sections that immediately follow in § 2710(d)(7),
13 which contemplate that a state and tribe may fail to agree to a compact. In that event, the states
14 are not required to do anything further, and instead the Secretary of the Interior takes over. Had
15 Congress intended to mandate that the states enter into compacts with Indian tribes, it would not
16 have included these latter sections in § 2710(d)(7).” *Ponca Tribe of Oklahoma v. State of*
17 *Oklahoma*, 37 F.3d 1422, 1435 (10th Cir. 1994). *See id.* at 1433–1434 (referencing *New York*,
18 112 S. Ct. 2408, 2420–24 (1992) (Congress “may direct a state to consider implementing a
19 federal program so long as the states retain the prerogative to decline Congress’ invitation”);
20 *Cheyenne River Sioux Tribe v. State of S.D.*, 3 F.3d 273, 281 (8th Cir. 1993) (internal quotation
21 marks omitted) (“We agree with the district court that the IGRA gives states the right to get
22 involved in negotiating a gaming compact because of the obvious state interest in gaming casino
23 operations within the state boundaries, but does not compel it”).⁸

24
25 ⁸ *See also Kentucky Division, Horsemen’s Benevolent & Protective Ass’n, Inc. v. Turfway Park Racing Ass’n*,
26 20 F.3d 1406, 1415–16 (6th Cir. 1994). At issue in *Turfway* was the Interstate Horseracing Act, which provided that
27 a race facility had to obtain the state’s consent to participate in interstate wagering. The state argued this violated the
28 Tenth Amendment, because it required the state to exercise its regulatory authority in either granting or denying a
facility’s request. The Sixth Circuit held there was no constitutional problem, however, because the Act did “not
require a State to do *anything* when presented with a request for its consent to off-track betting. Under the Act, the
State remains free to ignore such a request. It is true that the State’s inaction will preserve the general federal
prohibition of interstate off-tracking betting ... but that effect does not amount to ‘regulation’” *Id.* at 1415.

1 The Ninth Circuit has acknowledged the multiple interests balanced by the IGRA, and has
2 even characterized the state's role under as the IGRA as an "obligation". *See In re Indian*
3 *Gaming Related Cases*, 331 F.3d at 1096 (citing *Artichoke Joe's v. Norton*, 216 F. Supp. 2d 1084,
4 1092 (2002)) ("IGRA is an example of 'cooperative federalism' in that it seeks to balance the
5 competing sovereign interests of the federal government, state governments, and Indian tribes, by
6 giving each a role in the regulatory scheme"); *Rincon Band of Luiseno Mission Indians of Rincon*
7 *Reservation v. Schwarzenegger*, 602 F.3d 1019, 1030 (9th Cir. 2010) ("In IGRA, Congress took
8 from Plaintiffs collectively whatever sovereign rights they might have had to engage in
9 unregulated gaming activities, but imposed on the states the obligation to work with tribes to
10 reach an agreement under the terms of IGRA permitting Plaintiffs to engage in lawful class III
11 gaming activities"). Based on the foregoing, the Court finds that subjecting the California
12 legislature to the IGRA's negotiation provision would not invade a fundamental aspect of
13 Defendant's sovereignty, thereby violating the Tenth Amendment.

14 Importantly, the foregoing is not at odds with the fact that Defendant may determine the
15 procedure by which a compact is negotiated and entered into. *See North Fork* at *22; *Tulalip*
16 *Tribes of Washington v. Washington*, 787 F.3d 1151, 1153 (9th Cir. 2015); *Pueblo of Santa Ana*
17 *v. Kelly*, 104 F.3d 1546, 1557 (10th Cir. 1997) ("IGRA says nothing specific about how we
18 determine whether a state and tribe have entered into a valid compact. State law must determine
19 whether a state has validly bound itself to a compact"). The Court does not find – and Plaintiff
20 does not appear to argue for – an inherent problem with the two-step process of negotiation and
21 ratification enacted under California law. If that is the process by which Defendant wants to
22 negotiate and enter into gaming compacts, it appears that California may do so. On this issue,
23 Plaintiff directs the Court to *Biggs v. Wilson*, 1 F.3d 1537 (9th Cir. 1993), which is on point. In
24 *Biggs*, the California Department of Transportation paid late wages because a state budget had not
25 been passed, and thus no funds appropriated for that purpose. That, however, violated minimum
26 wage provisions of the federal Fair Labor Standards Act ("FLSA"). *Id.* at 1538. The state argued
27 that applying the FLSA would "require California to pass a budget on time, a [] serious
28 infringement of state sovereignty." *Id.* at 1543. The Ninth Circuit found that argument

1 unavailing:

2 [W]e nevertheless find that the application of the FLSA is not
3 preempted by the Tenth Amendment. To the extent compliance
4 with the FLSA interferes with the state budgetary process, that
5 interference is caused by state law, not federal law. The FLSA does
6 not require California to pass a budget on time; it only requires
California to do what all employers must do—pay its employees the
minimum wage on payday. That California has made its federal
obligation dependent upon the operation of state law does not
render the federal law unconstitutional.

7 *Id.* at 1543.

8 In the same vein, as the *North Fork* court reasoned, the IGRA defines negotiation broadly
9 as an activity between Plaintiff and Defendant. California may then specify which intra-state
10 entity does the negotiation, but that state-created definition is not what the Court looks to in
11 determining whether negotiation, per the IGRA, has been conducted in good faith. *North Fork* at
12 *22. The Court is bound to evaluate negotiation as described in the broad sense under the IGRA,
13 which refers only to the state, not the governor or the legislature.

14 As a further reference point, Plaintiff submits and it appears to be the case that in Arizona,
15 the governor alone “may enter into negotiations and execute tribal-state compacts” for class III
16 gaming. A.R.S. § 5-601. Were a scenario to exist in which the Arizona governor negotiated a
17 gaming compact, but then refused to take further action on it for nearly two years, surely that
18 would suggest a violation of the IGRA’s good faith negotiation mandate. That is the scenario in
19 this case, except California has divided the authority for negotiating and ratifying the compact
20 between two entities. The Court does not view the fact that Defendant, under state law, has
21 elected to enter into a compact in this manner to be grounds for a violation of Defendant’s state
22 sovereignty under the Tenth Amendment.

23 C. California legislature’s activity

24 The parties do not appear to dispute that, standing alone, the governor and Plaintiff’s
25 negotiations were conducted in good faith prior to the Compact being sent to the legislature.
26 Plaintiff has filed the Compact with the Court, and explained some of the key points of
27 negotiation leading to that agreement. (ECF No. 1-2, Ex. E; Compl. ¶¶ 40–48.) In this lawsuit,
28 Defendant has not identified any specific provisions in the Compact which are objectionable.

1 Rather, the issue is whether the legislature’s inaction constitutes a breach of Defendant’s good
2 faith negotiation mandate.

3 Based on the parties’ filings, the Court takes Defendant’s activity after the Compact was
4 signed, to be as follows: After the Compact was signed in August, 2012, it was transmitted from
5 the governor’s office to the legislature. After the Yuba parcel was taken into trust, in May, 2013,
6 Plaintiff informed the governor’s office and members of the legislature of this development, and
7 requested that the Compact be ratified. No action was taken by the legislature during the 2013
8 session. Throughout the first half of 2014, Plaintiff engaged in a “concerted effort” with the
9 governor’s office to secure ratification. (Compl. ¶¶ 49–51.)

10 According to legislative counsel’s amicus brief, after the legislature accepted the Compact
11 from the governor, the California Senate sought input from stakeholders in an effort to better
12 understand the impact of gaming compacts, including the instant Compact, on Defendant.⁹ On
13 May 27, 2014, the Compact was amended into AB 1098, and a day later was referred to the
14 Senate Committee on Rules. AB 1098 was permitted to remain with the Committee on Rules,
15 which is “a decision consistent with internal legislative rules permitting the Rules Committee of
16 each house to refer bills to a policy committee, or to retain the bill as the Committee sees fit.”¹⁰
17 (ECF No. 19 at 5.) Legislative counsel clarifies that only a small percentage of the thousands of
18 bills introduced each year are actually taken up for a vote. There is no legislative rule compelling
19 the houses to ratify a compact within a certain period of time. Some bills are reintroduced from
20 one legislative session to another. Legislative counsel also appears to indicate that all tribal-state
21 compacts transmitted to the legislature over the past fifteen years were eventually ratified. (ECF
22 No. 19 at 5–6.)

23 Plaintiff has also filed a copy of a July, 2013, letter to the governor from California
24 Senator Kevin de León. (ECF No. 1-2, Ex. G.) Senator León related that the senate was creating
25 a working group to examine gaming compacts which permitted tribes to operate casinos on non-
26 reservation lands. He expressed a concern specifically relative to the compact which was the

27 ⁹ Legislative Counsel does not further elaborate.

28 ¹⁰ See Assembly Rule 14(a), Senate Rule 13(g).

1 subject of the *North Fork* litigation, which had been signed by the governor and ratified by the
2 legislature. He requested that the governor not submit such gaming compacts to the legislature
3 for ratification, until the working group had “completed its ratification and California ha[d]
4 adopted a clear and coherent policy on off-reservation gaming.” (ECF No. 1-2, Ex. G at 277.)

5 Plaintiff has also filed with this Court a *Los Angeles Times* article from August, 2013,
6 reporting that Senator de León wanted the governor to delay submitting the instant Compact for
7 legislative approval. (ECF No. 1-2, Ex. H.) Plaintiff avers that the governor was aware of the
8 legislature’s intent, but nonetheless intended to work toward ratification. (Compl. ¶ 54.)

9 In summary, the Compact was submitted to the legislature shortly after signature by the
10 governor and Plaintiff in August, 2012. The Compact was eventually amended into a bill and
11 referred to the Senate Committee on Rules, in May, 2014. Thereafter, no action on the Compact
12 took place. The Compact expired by its own terms on July 1, 2014. Thus, nearly two years
13 passed since the Compact was signed and submitted to the legislature before the Compact
14 expired. The parties have not noticed the Court of any new activity taking place in the legislature
15 with respect to the Compact or a new compact. Thus, as of entry of this order, over three years
16 have passed since the Compact was signed and transmitted to the legislature. The issue is
17 whether this activity by Defendant constitutes a breach of the IGRA’s mandate that Defendant
18 negotiate in good faith to conclude a compact.

19 D. 180-day period

20 An Indian tribe may initiate a cause of action arising from the state’s failure to enter into a
21 compact or to conduct good faith negotiations, only after the close of a 180-day period beginning
22 on the day on which the request was made to enter into negotiations. 25 U.S.C. § 2710(d)(3)A
23 and (7)(A)–(B). It has been over 180 days since Plaintiff’s negotiations with the governor “began
24 in earnest” in August, 2012. (Compl. ¶ 41.) After the parcel of land was taken into trust in May,
25 2013, Plaintiff informed the governor’s office and members of the legislature, and requested that
26 the Compact be ratified. The legislature took no activity to ratify the Compact during the 2013
27 session. (Compl. ¶ 50.) Throughout the first half of 2014, Plaintiff engaged in a “concerted
28 effort” with the governor’s office to secure ratification in the legislature. (Compl. ¶ 51.)

1 Although the filings with this Court indicate that Plaintiff sent a request to begin compact
2 negotiations with the governor as far back as 2000, the Court finds that, at minimum, the
3 negotiations that occurred in August, 2012 establish that the 180-day requirement under 25
4 U.S.C. § 2710(d)(3)A) and (7)(A)–(B) is met.

5 Defendant argues that Plaintiff – prior to filing suit – must request that Defendant again
6 enter into negotiations. Then if good faith negotiations do not occur a second time, Plaintiff may
7 file suit. Defendant does not provide any legal authority in support of this argument. However,
8 Plaintiff made several requests during the terms of at least three governors to negotiate a compact,
9 some of which were rejected. According to Plaintiff after negotiations began in 2012, “the
10 Governor indicated that he was giving serious consideration to concurring in the Secretary’s []
11 determination, but only if the Tribe would first agree to negotiate and enter into a tribal-state
12 compact that provided the State and its residents with the same or similar protections as other
13 compacts in California.” (Compl. ¶ 41.) After further negotiation, including acceptance by
14 Plaintiff of provisions found in other compacts which the legislature had ratified, Plaintiff and the
15 governor signed the instant Compact on August 30, 2012. It is undisputed that those negotiations
16 were conducted in good faith and resulted in the Compact being signed in August, 2012. Thus,
17 the request by Plaintiff to enter into good faith negotiations was actually honored. After the
18 Compact was signed, in May of 2013, Plaintiff informed the governor and the legislature that the
19 land had been taken into trust and requested that the compact be ratified. The instant lawsuit does
20 not arise from the failure of Defendant to enter into compact negotiations or conduct those
21 negotiations in good faith. Essentially, Defendant’s argument would require that the request for
22 negotiations under the IGRA, for purposes of suit, be called for at multiple stages of the process
23 depending on where a hold-up in negotiations occurred.

24 For example, in *North Fork*, a compact was signed by the governor, ratified by the
25 legislature, and noticed to the Secretary of the Interior who approved it. Subsequently, a popular
26 referendum overturned the Compact. At that point, Plaintiff requested again for further
27 negotiations with the state in order to conclude the compact. After the state refused, Plaintiff
28

1 brought suit.¹¹ *North Fork* at 5, 13–14. It appears Defendant argues a similar step should occur
 2 here: due to the legislature’s inactivity, Plaintiff should again request that Defendant negotiate in
 3 good faith.

4 As an initial matter, Plaintiff submits and Defendant has not disputed, that Plaintiff
 5 conducted negotiations with the governor’s office to secure ratification, after the Compact had
 6 been signed and transmitted to the legislature. (Compl. ¶ 51.) In *North Fork*, the compact had
 7 already been concluded in the sense Plaintiff seeks here, which is legislative ratification,
 8 presumably followed by notice to the Secretary of the Interior. 25 U.S.C. §2710(d)(8). As an
 9 overriding matter, however, Defendant does not identify authority holding that the state-created
 10 process – negotiation by the governor and ratification by the legislature – is not subject to the
 11 IGRA’s plain statement that Plaintiff may bring suit if 180 days have passed since Plaintiff
 12 requested negotiations. The IGRA provides that upon request the “State” shall enter into good
 13 faith negotiations over a compact, and permits suit after 180 days arising from the “failure of a
 14 State” to do so. 25 U.S.C. §2710(d)(3)A) and (7)(A)–(B). Defendant does not cite to authority
 15 holding that IGRA requires additional requests depending on the stage at which compact
 16 negotiations with the state are stalled or otherwise halted. Further, it appears the course of events
 17 in this case are: negotiation with the governor in 2012; the signing of the Compact and
 18 transmission to the legislature; and the eventual expiration of the Compact. Nothing like the
 19 disruptive event at issue in *North Fork* – overturning the compact by referendum vote after it had
 20 already been concluded for the purposes of IGRA – is suggested by the parties here.¹²

21 E. Good faith negotiation under the IGRA

22 After a tribe brings suit, it must then introduce evidence that a “compact has not been
 23 entered into” and “the State did not respond to the request of the Indian tribe to negotiate such a
 24 _____

25 ¹¹ *North Fork* states that the validity of the referendum and compact is the subject of litigation now pending
 26 before the California Fifth District Court of Appeal. *See Stand Up for California v. State of California et al.*, 5th
 DCA Case No. F070327, filed Dec. 27, 2014; *North Fork* at 5.

27 ¹² The Court discusses briefly below Plaintiff’s suggestion that the Legislature did not want to consider
 28 compacts involving non-reservation gaming.

1 compact or did not respond to such request in good faith.” 25 U.S.C. § 2710(d)(7)(B)(ii). No
2 compact has been entered into. The legislature’s nearly two years of inactivity regarding the
3 Compact until it expired, and no activity since then, constitute evidence that Defendant has not
4 responded in good faith to requests to negotiate.

5 After the introduction of such evidence, the “burden of proof shall be on the State to prove
6 that the State has negotiated with the Indian tribe in good faith to conclude a Tribal-State compact
7 governing the conduct of gaming activities.” 25 U.S.C. § 2710(d)(7)(B)(ii). Therefore, the Court
8 turns to whether Defendant has met its burden.

9 “The structure and content of § 2710(d) make clear that the function of the good faith
10 requirement and judicial remedy is to permit Plaintiff to process gaming arrangements on an
11 expedited basis, not to embroil the parties in litigation over their subjective motivations. We
12 therefore hold that good faith should be evaluated objectively based on the record of negotiations
13” *Rincon*, 602 F.3d at 1041. Plaintiff also relies upon cases in the National Labor Relations
14 Act (“NLRA”) context as the standard for what constitutes good faith negotiation. Courts
15 considering IGRA have looked to guidance from NLRA case law, because both IGRA and the
16 NLRA contain obligations to negotiate in good faith. *See* NLRA § 8(d), 29 U.S.C. § 158(d);¹³
17 *Big Lagoon Rancheria v. California*, 700 F. Supp. 2d 1169, 1178–79 (N.D. Cal. 2010); *In re*
18 *Indian Gaming Related Cases*, 147 F. Supp. 1001, 1020–21 (N.D. Cal. 2001). Relying on this
19 precedent, Plaintiff argues that good faith is lacking if: 1) an agreement is negotiated but given no
20 practical effect via approval by an authority not present during the negotiations, 2) there is undue
21 delay, 3) or a party declines to negotiate and at the same time refuses to articulate any concerns
22 with a proposed agreement. As a standing objection to all three arguments, Defendant argues that
23 the instant case simply is not analogous to the labor law context. The Court agrees with the
24 Northern District that it “does not intend to import federal case law interpreting the NLRA
25 wholesale into its interpretation of the IGRA. Obviously, the relationship of employers to unions
26 is not analogous to the relationship between states and tribes. However, the Court considers the

27 ¹³ “[T]o bargain collectively is the performance of the mutual obligation of the employer and the
28 representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours,
and other terms and conditions of employment, or the negotiation of an agreement....” 29 U.S.C. § 158(d).

1 NLRA case law for guidance in interpreting a standard undefined by the IGRA.” *In re Indian*
2 *Gaming Related Cases*, 147 F. Supp. 2d at 1021. Moreover, the three principles stated above are
3 generic, and not unique either to IGRA or NLRA. The Court turns to each of these three
4 principles.

5 First, Plaintiff argues that bad faith is present because the entity with ultimate approval
6 authority (the legislature) is not present at the negotiations and then refuses to approve a
7 negotiated compact. *See e.g. H.J. Heinz Co. v. NLRB*, 311 U.S. 514, 526 (1941). Defendant
8 responds that the NLRB standard proposed by Plaintiff would eliminate the legislature’s ability to
9 decline to ratify a compact. Defendant also argues that curtailing the legislature’s role would
10 violate Defendant’s sovereign immunity under the Tenth Amendment.

11 However, the issue is not whether a federal court may eliminate the legislature’s ability to
12 decline to ratify a Compact. This is not a scenario where the legislature has voted not to ratify a
13 Compact, thus prompting a lawsuit. The issue is whether inaction by the legislature can support a
14 finding of bad faith negotiation under the IGRA. Neither party has cited authority specific to the
15 IGRA context, discussing whether inaction may support bad faith negotiation. However, the
16 Court agrees that the minimal activity undertaken by the legislature supports a finding of bad faith
17 negotiation in violation of the IGRA. The thrust of Defendant’s argument on this point is
18 analogous to its argument under the Tenth Amendment: that the legislature is not subject to
19 IGRA’s negotiation mandate. Defendant’s argument is unavailing. As this Court has stated in
20 relation to Defendant’s Tenth Amendment argument, *supra*, the ultimate mandate for the state
21 under the IGRA is not to compel negotiation. If the state refuses to negotiate, gaming conditions
22 will ultimately be determined by the Secretary of the Interior.

23 Second, Plaintiff argues that the delay by the legislature in taking up the Compact for a
24 vote constitutes a lack of good faith. *See e.g. NLRB v. Nat’l Shoes*, 208 F.2d 688, 692 (2d Cir.
25 1953). Plaintiff argues that the IGRA’s remedial provision codifies this principle, by requiring
26 specifically that a State engage in good-faith negotiations within 180 days, or be subject to suit.
27 25 U.S.C. § 2710(d)(7)(B); *Mashantucket Pequot Tribe v. State of Conn.*, 913 F.2d 1024, 1033
28 (2d Cir. 1990) (“T]he manifest purpose of [§ 2710(d)(7)(B)] is to move negotiations toward a

1 resolution where a state either fails to negotiate, or fails to negotiate in good faith, for 180 days
2 after a tribal request to negotiate”).

3 Defendant responds that there is no basis for importing a labor negotiation timeline into
4 the IGRA. The IGRA’s 180 day period is not a deadline, but a waiting period that must pass
5 before Plaintiff may sue. The Ninth Circuit has held that delay in the negotiating process, by
6 itself, does not necessarily indicate bad faith. *See In re Indian Gaming Related Cases*, 331 F.3d at
7 1109–10 (finding seven years of Tribal-State negotiations did not indicate bad faith). Defendant
8 reiterates that Plaintiff does not allege delay in the negotiation process itself, which the governor
9 engaged in, but delay in ratification by the legislature, which Defendant argues is not actionable
10 under the IGRA.

11 However, in *In re Indian Gaming Related Cases*, most of the negotiation at issue occurred
12 in the 1990s, before California had even enacted its current statute permitting certain class III
13 gaming only on Indian lands. At the time the amended complaint was filed by plaintiff in the
14 district court, seeking redress under the IGRA, the state remained willing to meet with plaintiff
15 for further discussions. *Id.* at 1110. The Ninth Circuit also stated plaintiff’s main objections in
16 that case were not to the “timing and procedure” of the negotiations, but to substantive provisions
17 in the gaming compact. *Id.* at 1110.

18 The difference in this case is that the parties have not presented any dispute over
19 substantive provisions in the Compact. Plaintiff’s argument is that the legislature has not
20 considered the Compact or presented any concerns with its provisions. Legislative counsel points
21 out that there is no internal rule compelling the houses to ratify a compact within a certain period
22 of time, and some bills are reintroduced from one legislative session to another. Further, under
23 the plain terms of the IGRA, the 180 day period is not a deadline for the conclusion of compact
24 negotiations; it is a minimum period after which Plaintiff may bring suit. 25 U.S.C. §
25 2710(d)(7)(B). However, Defendant does not cite to any authority holding that the legislature
26 may sit on a compact indefinitely, with the possibility of taking the compact up for a vote at an
27 undetermined point, and thereby make the state immune from the IGRA’s period for permitting
28 suit after 180 days. The nearly two-year period of inaction by the legislature before the Compact

1 expired, and no additional activity since then, supports a finding of IGRA bad faith negotiation.

2 Third, Plaintiff argues that if the legislature has legitimate concerns regarding the
3 Compact, it must articulate those concerns so that the parties may seek redress through further
4 negotiation. *See e.g. Nat'l Mgmt. Consultants, Inc.* 313 NLRB 405, 408 (1993) (finding that
5 company had failed to negotiate in good faith where it “offered no reasons, offered no
6 counterproposals, and made no attempt to schedule any meetings to discuss the matter” with the
7 union).

8 Defendant responds that the legislature’s ability to make counterproposals is not stated in
9 the California Constitution Article IV, section 19(f), which speaks only of ratification. Further,
10 there is no basis to import NLRA requirements regarding counterproposals into the IGRA.

11 As an initial matter, Plaintiff’s position that the legislature can do more than passively
12 review and vote on a compact has some support. For instance, as discussed immediately below,
13 Plaintiff submits that the legislature formed a working group at some point in 2013 to study the
14 effects of casinos on non-reservation lands, and requested that the governor refrain from
15 submitting compacts relative to such casinos for ratification. Regardless, this Court makes no
16 finding here regarding what specific action the legislature must take with respect to a compact.
17 The Court agrees with Defendant that Plaintiff has presented no authority holding that a state
18 legislature is required to submit counterproposals in order to further negotiations. The remedy,
19 upon a finding of bad faith, is not to compel ratification by the legislature, or to compel any
20 specific activity relative to concluding a compact. Defendant, including the legislature, may
21 continue to take no action over a compact. If so, the IGRA provides for a mediator-selected
22 compact. If Defendant also rejects that result, then authority is transferred to the Secretary of the
23 Interior. 25 U.S.C. § 2710(d)(7)(B)(iii)–(vii). If the legislature desires such a result, then it is
24 well on its way to achieving such a result with its inaction in the instant matter.

25 Ultimately, it is Defendant’s burden to show it has negotiated in good faith.¹⁴ 25 U.S.C. §

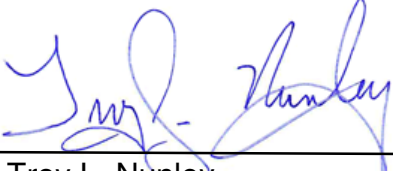
26 ¹⁴ In considering whether good faith is present, the Court “may take into account the public interest, public
27 safety, criminality, financial integrity, and adverse economic impacts on existing gaming activities,” and “shall
28 consider any demand by the State for direct taxation of the Indian tribe or of any Indian lands as evidence that the
State has not negotiated in good faith.” 25 U.S.C. § 2710(d)(7)(B)(iii). The Court has considered these provisions,
but neither party has argued there are specific issues relative to these provisions that should dictate the Court’s ruling.

1 2710(d)(7)(B)(ii). Defendant has presented no evidence of negotiation conducted after
2 transmission of the Compact to the legislature, and agrees that the legislature has conducted little
3 to no activity relative to the Compact. Plaintiff has presented evidence that in 2013, California
4 Senator Leòn wrote to the governor voicing the legislature’s concerns over non-reservation
5 casinos, and that he was creating a working group to consider casinos on non-reservation lands.
6 (ECF No. 1-2, Ex. G.) Senator Leòn requested that the governor not submit such gaming
7 compacts to the legislature for ratification, until the working group had “completed its ratification
8 and California ha[d] adopted a clear and coherent policy on off-reservation gaming.” (ECF No.
9 1-2, Ex. G at 277.) Defendant has failed to address Senator Leòn’s letter to the governor in these
10 filings. Considering the letter relative to when the signed Compact was sent to the legislature, the
11 Court is led to believe that the legislature was not interested in taking action on such compacts,
12 which is relevant to whether Defendant has negotiated in good faith. However, Defendant has not
13 offered any information on the result of the working group referenced in Senator Leòn’s letter.
14 The Court is aware that the legislature was concerned with non-reservation casinos and/or created
15 a group to study it, only because Plaintiff raised the issue and filed documentation with the Court.
16 Defendant relies only upon its legal argument that the legislature is not subject to the IGRA’s
17 good faith mandate, which the Court finds is not supported. For the foregoing reasons, the Court
18 finds Defendant has not met its burden of showing it has negotiated in good faith in order to
19 conclude a compact.

20 **V. Conclusion**

21 For the foregoing reasons, Plaintiff’s motion for a judgment on the pleadings is
22 GRANTED, and Defendant’s motion for judgment on the pleadings is DENIED. Defendant and
23 Plaintiff are ordered to proceed pursuant to the remedial process set forth in the IGRA, 25 U.S.C.
24 § 2710(d)(7)(B)(iii)–(vii). As the immediate remedy, Defendant and Plaintiff are ordered to
25 conclude a gaming compact within 60 days. § 2710(d)(7)(B)(iii).

26
27 Dated: February 16, 2016

28

Troy L. Nunley
United States District Judge