United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUL 2 9 2016

The Honorable Maryann McGovran
Chairwoman, North Fork Rancheria
of Mono Indians of California
P.O. Box 929
North Fork, California 93643

Dear Chairwoman McGovran:

On April 28, 2016, the Department of the Interior (Department) received a letter, order, and proposed compact from the court-appointed mediator (Mediator) in *North Fork Rancheria of Mono Indians of California v. California* 1:15-cv-00419-AWJ-SAB (E.D. Cal. 2015) that initiated the process for the Department's issuance of Class III gaming procedures consistent with 25 U.S.C. § 2710(d)(7)(B)(vii). The Mediator took this action because the State of California (State) failed to consent to a mediator-selected compact under the process set forth in the Indian Gaming Regulatory Act (IGRA).[1] After more than 90 days of review by the Department of the Mediator's submission, I am issuing the enclosed procedures under which the North Fork Rancheria of Mono Indians (Tribe) may conduct Class III gaming consistent with IGRA.

It is important to note that the issuance of these procedures is the result of the State's actions after a State referendum overturned the legislative ratification of the Tribe's 2012 Compact. First, the State failed to negotiate a Class III compact in good faith. A Federal court expressly found that the State violated IGRA requirement for states to negotiate a compact in good faith. Second, the State further refused to consent to a compact selected by the Mediator. The State's consistent failure to comply with the law triggered the Secretary of the Interior's (Secretary) duty under IGRA to prescribe Class III gaming procedures. [3]

The Secretary's duty to issue procedures is one of IGRA's fundamental safeguards of tribal sovereignty. In IGRA, Congress expressly reaffirmed that tribes maintain their pre-existing sovereign reserved right to conduct gaming. This reserved tribal right, confirmed by the Supreme Court in *Cabazon*,[4] endures throughout IGRA's framework. While Congress provided states a limited role to negotiate a tribal-state compact governing Class III gaming activities, Congress did not eviscerate tribal sovereignty. Recognizing the underlying tribal reserved right, Congress expressly provided that, when a state does not negotiate a tribal-state compact in good faith and does not agree with a Federal court-appointed mediator's compact, tribes retain the

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[1] 25 U.S.C. §2710(d)(7)(B). This is not the first time that a court-appointed mediator has taken such action because the State failed to negotiate a compact in good faith. In 2013, the Department issued procedures governing Class III gaming by the Rincon Band of Luiseno Indians.

[3] 25 U.S.C. § 2710(d)(7)(B)(vii).

[4] *California v. Cabazon Band of Mission Indians,* 480 U.S. 202 (1987).

sovereign right to conduct Class III gaming pursuant to Federal procedures issued by the Secretary.[5] The Department's action here upholds that tribal sovereign right.

Under IGRA, states are required to negotiate gaming compacts "in good faith" with tribes and address issues that are specific to each individual tribe. Tribes may enforce this good faith obligation by filing suit in Federal court[6].

In 2012, the Governor and the Tribe executed a compact (2012 Compact) governing Class III gaming. On May 2, 2013, the California Legislature passed AB 277, which ratified the 2012 Compact.[7] In compliance with the requirements of 25 C.F.R. Part 293, the California Secretary of State submitted the 2012 Compact to the Secretary for review and approval. On October 22, 2013, the Assistant Secretary – Indian Affairs published notice in the *Federal Register* that the 2012 Compact between the State and the Tribe was approved and in effect to the extent that it was consistent with IGRA.[8]

In a November 4, 2014 referendum, California voters opted to overturn AB277, the legislative ratification of the 2012 Compact. Following the 2014 referendum, the State refused to recognize the validity of the 2012 Compact or to enter into further negotiations with the Tribe for a new Tribal-State compact.

The Tribe filed suit in Federal district court challenging the State's refusal to negotiate. The State raised several defenses, including sovereign immunity. On November 13, 2015, the Federal District Court for the Eastern District of California held that the State failed to negotiate in good faith with the Tribe after the 2014 referendum. The Court ordered the State and Tribe to reach an agreement within 60 days.[9]

The parties failed to reach an agreement within 60 days, and the Court appointed a mediator, as required by IGRA. The Tribe and State subsequently each submitted a respective "last best offer" proposed compact to the Mediator. The Mediator determined that the Tribe's proposed compact best comported with the terms of IGRA, any other applicable Federal law, and the findings and order of the Court.[10] The Mediator notified the Tribe and State of her selection and gave the State 60 days to consent to the compact. The State failed to consent to the Mediator's selected compact and, as noted above, the Mediator submitted her selection to us on April 28, 2016.

We note the Mediator's selected compact contemplated that, in addition to the North Fork Tribal Gaming Commission's role as a regulator of the Tribe's gaming activities, the State would also have regulatory responsibilities largely consistent with the State's regulatory role in Class III gaming under numerous existing compacts with tribes in the State. Since the State did not consent to the selected compact within the 60 day period set forth in IGRA, the State may not

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[5] 25 U.S.C. § 2710 (d); *see also* 25 C.F.R. Part 291.
[6] 25 U.S.C. § 2710(d)(7)(A).
[7] Cal. Govt. Code § 12012.59.
[8] Notice of Tribal-State Class III Gaming Compact taking effect, 78 Fed. Reg. 62649 (Oct. 22, 2013).
[9] 25 U.S.C. § 2710(d)(7)(B)(iii).
[10] 25 U.S.C. § 2710 (d)(7)(B)(iv).

be willing to fulfill such regulatory responsibilities. Accordingly, Section 8.2 provides a 60 day "opt-in" period for the State to provide written notice that it agrees to perform the State Gaming Agency's regulatory responsibilities set forth in the procedures. If the State does not opt-in, the National Indian Gaming Commission has agreed to perform such responsibilities pursuant to a Memorandum of Understanding with the Tribe.

The IGRA requires the Secretary to prescribe procedures after receiving notice that a state has not consented to a mediator's selected compact. After government-to-government consultations with the Tribe, the procedures are to be consistent with a mediator's selected compact, IGRA, and the relevant provisions of state law.[11] We find that the procedures meet those requirements. We note, however, that the procedures we issue today do not draw bright lines for future compacts. Through this process, we have purposely refrained from changing regulatory provisions in deference to the Mediator's submission to the Department and the Tribe's specific request that we change that submission as little as possible. In many respects, we understand that the Mediator's submission to the Department reflects compromises the Tribe agreed to make rather than compromises that the Tribe was required to make under IGRA.

Finally, we note that this action to issue procedures is separate from the Departmental decision made years ago requesting the Governor's concurrence to allow gaming on the subject parcel as well as the subsequent decision made in 2012 to accept that parcel into trust.

By this letter we hereby notify the Tribe and the State that the attached Secretarial Procedures for the conduct of Class III gaming on the Tribe's Indian lands are prescribed and in effect.

Sincerely,

Lawrence S. Roberts
Acting Assistant Secretary – Indian Affairs

cc: Governor of California
National Indian Gaming Commission

Enclosure

[11] 25 U.S.C. § 2710 (d)(7)(B)(vii).