



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

FEB 08 2013

Honorable Bo Mazzetti
Chairman, Rincon Band of Luiseno Indians
P.O. Box 68
Valley Center, California 92082

Dear Chairman Mazzetti:

On September 18, 2012, we received a letter, order, and proposed compact from the Honorable Edward E. Panelli (ret.), the court-appointed mediator in *Rincon Band of Luiseno Mission Indians v. Brown*. The letter indicated that on June 13, 2012, Justice Panelli issued an order selecting and submitting to the State of California the proposed compact submitted by the Rincon Band of Luiseno Indians (Tribe), and that more than 60 days had passed without the State informing him that the State consented to the proposed compact. Justice Panelli's letter notified the Secretary of the State's failure to consent to the selected compact within 60 days, thereby triggering the Secretary's authority to prescribe, in consultation with the Tribe, Class III gaming procedures that are consistent with the selected compact, the Indian Gaming Regulatory Act (IGRA), and the relevant laws of the State of California. *See* 25 U.S.C. § 2710(d)(7)(B)(vii).

Decision

We have completed our review of the mediator's selected compact and we find that the selected compact, as modified in consultation with the Tribe, is consistent with IGRA and the relevant laws of the State of California (State). We have made minimal changes to the submitted document in order for the document to more accurately reflect the process leading to Secretarial Procedures, or to correct statements that were no longer accurate because of the process. We also removed provisions not related to gaming. Accordingly, we now prescribe the attached Secretarial Procedures under which Class III gaming may be conducted on the Tribe's Indian lands.

Background

Under IGRA, states are required to negotiate gaming compacts "in good faith" with tribes and tribes may enforce this good faith obligation by filing suit in Federal court. *See* 25 U.S.C. § 2710(d)(7)(A). On March 8, 2003, the Tribe filed a request with the State to renegotiate certain compact provisions. The negotiations were unsuccessful and in 2004, the Tribe filed suit in the United States District Court for the Southern District of California against then-Governor Schwarzenegger and the State for failure to conclude compact negotiations in good faith as required by IGRA.¹ In 2008, the court entered a final judgment in favor of the Tribe, and

¹ *Rincon Band of Luiseno Indians of the Rincon Reservation v. Schwarzenegger*, 04-cv-01151-WMC (S.D. Cal. filed June 9, 2004).

ordered the implementation of IGRA's remedial provisions including the commencement of negotiations and the appointment of a mediator consistent with 25 U.S.C. § 2710 (d)(7)(B)(iv). The State appealed the district court's order to the U.S. Court of Appeals for the Ninth Circuit Court of Appeals. In 2010, the Ninth Circuit affirmed the decision of the district court,² and the State subsequently petitioned the United States Supreme Court for *certiorari*. On December 13, 2010, the Supreme Court invited the Solicitor General of the United States to submit its views on the State's petition.³ In response, the United States recommended against granting *certiorari* review in May of 2011. The Supreme Court denied the State's petition on June 23, 2011.⁴

Subsequently, the parties failed to reach an agreement and the district court appointed Justice Panelli to serve as a mediator and, if necessary, to select between the parties' "last best offer" proposed gaming compacts, as required by IGRA. 25 U.S.C. § 2710(d)(7)(B)(iv). On June 13, 2012, Justice Panelli issued an order selecting the Tribe's proposed gaming compact and submitted the selected compact to the State. On September 18, 2012, Justice Panelli informed the Secretary that more than 60 days had passed without the State informing him that it consented to the selected compact.

We note that the compact recommended by the Tribe and selected by the mediator contemplated that, in addition to the Rincon 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 role in Class III gaming operated under an ordinary gaming compact. Since the State did not consent to the selected compact within the 60 day time period set forth in IGRA, we were concerned that the State might not be willing to fulfill such regulatory responsibilities. Accordingly, section 7.3 of the procedures provides for National Indian Gaming Commission (NIGC) to perform the State Gaming Agency's regulatory responsibilities set forth in the procedures unless and until the State notifies the Secretary and NIGC that it will perform the functions set forth in the procedures. On December 26, 2012, we received a letter from the State indicating that the State and Tribe will engage in regulation of the Tribe's Class III gaming activities, as provided in the mediator's submission to the Secretary, should the Secretary issue the submitted document as procedures. In addition to consenting to this arrangement through its submission of such terms in the mediation process, the Tribe acknowledged and agreed with the State's letter. Accordingly, the State has indicated, consistent with section 7.3, that it will perform the regulatory roles assigned to the State in the procedures. If the State subsequently declines to fulfill its regulatory role, the procedures provide for NIGC to perform the State's regulatory responsibilities.

Under IGRA, after receiving notice that a state has not consented to a proposed compact selected by the mediator, "the Secretary shall prescribe, in consultation with the Indian tribe, procedures" which are consistent with the proposed compact selected by the mediator, IGRA, and the relevant provisions of state law. 25 U.S.C. § 2710 (d)(7)(B)(vii). We have completed our

² *Rincon Band of Luiseno Mission Indians v. Schwarzenegger*, 602 F.3d 1019 (9th Cir. 2010).

³ *Schwarzenegger v. Rincon Band of Luiseno Mission Indians of the Rincon Reservation*, 131 S. Ct. 847 (2010).

⁴ *Brown v. Rincon Band of Luiseno Mission Indians of the Rincon Reservation*, 131 S. Ct. 3055 (2011).

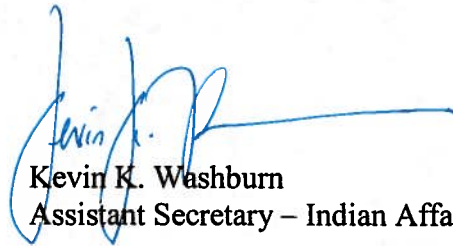
review of the compact, as modified in consultation with the Tribe, and we find that it is consistent with the compact selected by the mediator, IGRA, and the relevant laws of the State of California. In the course of our review, we have made minor changes and deletions to the mediator-submitted document to ensure accuracy in the procedures. While there are other provisions that we might have changed, consistent with IGRA and the mediator's submission, such as the term of the procedures and other regulatory provisions, we have refrained from doing so because our consultation with the Tribe convinced us that the Tribe wished to have those provisions included in the procedures.

Conclusion

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

We wish the Tribe continued success in its economic venture.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kevin K. Washburn", with a long horizontal flourish extending to the right.

Kevin K. Washburn
Assistant Secretary – Indian Affairs