UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

PUEBLO OF POJOAQUE, a federally recognized Indian Tribe: JOSEPH M. TALACHY, Governor of the Pueblo of Pojoaque,

Plaintiffs,

vs.

STATE OF NEW MEXICO, SUSANA MARTINEZ, JEREMIAH RITCHIE, JEFFERY S. LANDERS, SALVATORE MANIACI, PAULETTE BECKER, ROBERT M. DOUGHTY III, CARL E. LONDENE and JOHN DOES I –V,

Defendants.

NO.: 1:15-cv-00625 RB-GBW

PUEBLO OF POJOAQUE'S MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

EXPEDITED REVIEW REQUESTED

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Plaintiffs, PUEBLO OF POJOAQUE, a federally-recognized Indian tribe (the "Pueblo") and JOSEPH M. TALACHY, Governor of the Pueblo, pursuant to Fed.R.Civ.P. 65 (a) and (b) move this Court for a Temporary Restraining Order ("TRO") and for a Preliminary Injunction that enjoins Defendants, STATE OF NEW MEXICO (the "State"), SUSANA MARTINEZ, JEREMIAH RITCHIE, JEFFERY S. LANDERS, SALVATORE MANIACI, PAULETTE BECKER, ROBERT M. DOUGHTY III, and CARL E. LONDENE (collectively, the "Defendants") from taking any action that threatens, revokes, conditions, modifies, fines, or otherwise punishes or takes enforcement against any licensee in good standing with the New Mexico Gaming Control Board ("NMGCB") based wholly or in part on grounds that such licensee is conducting business with the Pueblo.[1]

I. OVERVIEW

Last week, the Pueblo learned that the NMGCB has circulated official letters (the "Letters") to businesses ("Vendor" or "Vendors") that provide gaming equipment to the Pueblo's gaming facilities. The Letters (i) assert that the Pueblo is conducting illegal gaming operations; (ii) list various New Mexico state laws, including criminal laws, that are allegedly violated by doing business with an illegal gaming operation; (iii) inform each Vendor that it is being "audited" by the NMGCB; and (iv) demand the production of all communications and business records between the Vendor and the Pueblo. Since July 2015, the NMGCB has tabled action on state licenses issued to the Vendors until October 21, 2015. State licenses are required for the Vendors to do business with non-Indian "racinos", fraternal and charitable entities, and the State

[1] Counsel for the Pueblo sought concurrence of the counsel for the Defendants for Pueblo's instant Motion pursuant to D.N.M.LR-Civ. 7.1(a). That request was denied on September 25, 2015.

Lottery, but are not required for the Vendors to do business with any tribal gaming facility located on Indian lands within the State's borders. The issuance of the Letters and related actions by the NMGCB compel the Pueblo to seek the extraordinary remedy of a TRO and/or preliminary injunction in this litigation.

The Class III gaming compact (the "Compact") between the State and the Pueblo expired at midnight on June 30, 2015. At that moment, the State's jurisdiction over the Pueblo's gaming activities, including the jurisdiction of the NMGCB, ended. The State is embroiled in litigation with the United States and with the Pueblo regarding how the Pueblo's gaming activities are to be governed in the absence of a tribal-state compact. *New Mexico v. Department of the Interior*, Docket ## 14-2222 and 14-2219, appeals pending (10th Cir.). The State refuses to consent to the good-faith negotiation/mediation remedial scheme Congress intended in the passage of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 et seq. and 18 U.S.C. § 1166 ("IGRA"). The Pueblo refuses to acquiesce to the State's illegal demands for a tax on the Pueblo's gaming revenues, and for other compact provisions that would not withstand the scrutiny of IGRA's remedial scheme. An appeal is currently pending in the Tenth Circuit Court of Appeals, with oral argument set for September 28, 2015.

Prior to the expiration of the Compact, the Pueblo agreed to comply with conditions set by the United States Attorneys Office ("USAO") regarding how the Pueblo's gaming activities would be regulated after the expiration of the Compact and while the litigation remains pending. The Defendants have defied the position of the United States and disregarded the fact that litigation is pending, and have asserted and applied New Mexico state law in a deliberate attempt

to shutter the Pueblo's gaming facilities or force the Pueblo to sign a compact that does not comport with federal law.

The current actions of the State and its officials are a throw-back to one of the darkest times in the history of the European conquest, when the pueblos were required to pay a tribute tax, whereby the Spanish confiscated the pueblos' maize and other resources, and deprived the pueblos' ability to self-sustain. There were more than one hundred pueblos along the Rio Grande at the time of the Spanish conquest yet the Pueblo barely survived, as did only eighteen others. Today, the Pueblo's fight to maintain its gaming revenue is one of survival. The Pueblo looks to this Court to pull the State away from the policies of European conquest and instead force the State to recognize the modern federal policies of tribal self-sufficiency and tribal self-governance. See Decl. of Governor, attached as Exhibit A (herein "Talachy Decl."), ¶ 11.

All of the elements for the extraordinary relief of a TRO and/or preliminary injunction are present here. The law is clear that the State and its officials have no jurisdiction over the Pueblo's gaming activities unless and until New Mexico enters into a new compact agreement with the Pueblo. The Pueblo is and will continue to be irreparably harmed by the actions of the State and the NMGCB, and the negative impacts, including possible closing, arising from such actions. The devastating impacts to the Pueblo, its economy, and the surrounding communities are detailed below. Granting a TRO and/or preliminary injunction will impose no harm upon the State; therefore, the balance of hardships weighs overwhelmingly in favor of the Pueblo. Further, granting a TRO and/or preliminary injunction will advance the public interests in protecting an economy promoting the federal policy of strong and self-sufficient tribal governance.

II. JURISDICTION

The Pueblo notes that in Defendants' Answer (Doc. 16 at pp. 3 and 20) the State declines yet again to allow the federal court to hear the Pueblo's claims that the State has failed to conclude negotiations in good faith for a tribal-state compact under IGRA. The State's assertion of Eleventh Amendment immunity as an affirmative defense precludes this Court from hearing Count One of the Pueblo's Complaint. *See Seminole Tribe of Florida v. Florida,* 517 U.S. 44, (1996) (*"Seminole I"*). Defendants' assertion that the Eleventh Amendment defense requires the dismissal of the lawsuit in its entirety is simply wrong.[2]

Eleventh Amendment immunity is not a viable defense as to all remaining claims. This Court has already ruled in *United Keetoowah Band of Cherokee v. Oklahoma*, 927 F.2d 1170, 1173 (10th Cir. 1991) that it has jurisdiction under 28 U.S.C. § 1362 in this type of action. *See also Sycuan Band v. Roache*, 54 F.2d 535, 538 (9th Cir. 1994). Separately, the Court has jurisdiction against the individual State officials in their official capacities under the doctrine of *Ex Parte Young*, 209 U.S. 123 (1908). Very recently, on September 17, 2015, a District Court rejected Arizona's Eleventh Amendment defense on very similar claims. *Tohono O'odham Nation v. Ducey*,__F. Supp. 3d____, 2015 WL 5475290 (D. Ariz. 2015):

> The Supreme Court held in *Ex parte Young*, 209 U.S. 123 (1908), that state officials can, in some circumstances, be sued to enjoin violations of federal law. This exception to sovereign immunity applies when lawsuits are brought against

[2] Defendants' assertion of collateral estoppel is also wrong. Count I of this lawsuit is premised on the State's failure to conclude negotiations in good faith under a new request under IGRA. The Pueblo will likely notice a new request for compact negotiations immediately upon the dismissal of Count I. The Pueblo is committed to do everything IGRA requires it to do, including the pursuit of a negotiated compact. The State at any juncture, now and in the future, may waive Eleventh Amendment immunity, as California did in *Rincon Band v. Schwarzenegger*, 602 F.3d 1019 (9th Cir. 2010), or simply choose not to assert Eleventh Amendment immunity as Wyoming did in *Northern Arapaho Tribe v. Wyoming*, 389 F.3d 1308 (10th Cir. 2004).

> state officers in their official capacities for an injunction prohibiting future violations of federal law. Such "official-capacity actions for prospective relief are not treated as actions against the State" for purposes of the Eleventh Amendment. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 n.10 (1989) (internal quotations omitted). This is because "state officers have no authority to violate the Constitution and laws of the United States," and an injunction against such violations therefore does not infringe any legitimate state power. (citation omitted)

2015 WL 5475290 at *4. *See also Timpanogos Tribe v. Conway*, 286 F.3d 1195 (10th Cir. 2002). The *Tohono O'odham* decision expressly rejected the argument by the Director of the Arizona Department of Gaming[3] ("ADG") that *Seminole I* precludes an action by a tribe seeking an injunction against state officials, noting that the Tohono O'odham's actions seeking to enjoin ADG from threatening vendors were separate and distinct from claims that Arizona had failed to negotiate a compact in good faith. *Id*., 2015 WL 5475290 at *6-7; *see also Massachusetts v. Wampanoag Tribe of Gay Head (Aquinnah)*, __ F. Supp. 3d ___, 2015 WL 854850 at *17 (D. Mass. 2015) (counterclaims by tribe against state seeking to enjoin interference with tribe's gaming activities are cognizable under the *Ex parte Young* doctrine).

III. STANDARDS

A. TEMPORARY RESTRAINING ORDER

The Pueblo seeks an immediate TRO that the Defendants be enjoined from their actions taken against the Pueblo's Vendors. As discussed in section IV below, NMGCB's threats, actions, and the official September 9, 2015 letter auditing the Vendors' interactions with the Pueblo have already created a chilling effect, negatively impacting the Pueblo's ability to

[3] The Court in *Tohono O'odham* dismissed the Tribe's claims against the Arizona Governor and Arizona Attorney General because the only acts attributed to them were private letters to the ADG Director recommending ADG take action. 2015 WL 5475290 at *5-6. In contrast, here, Defendants Governor Martinez and her lead negotiator, Jeremiah Ritchie, caused public threats to be issued against the Pueblo's Vendors, employees and others.

conduct business. Accordingly, the Pueblo seeks a TRO until this Court may convene a hearing and rule on whether a preliminary injunction should be entered. NMGCB has indicated that it will take formal action on Vendors' licenses as early as October 21, 2015.

A TRO preserves the status quo and prevents immediate and irreparable harm until the court may pass upon the merits of a request for preliminary injunction. "The essence of a temporary restraining order is its brevity, its ex parte character, and its informality." *Flying Cross Check L.L.C. v. Central Hockey*, 153 F. Supp. 2d 1253, 1258 (D. Kan. 2001) (quoting *Geneva Assur. Syndicate, Inc. v. Medical Emergency Services Associates*, 964 F.2d 599, 600 (7th Cir. 1992)). The issuance of a TRO or other preliminary injunctive relief is within the sound discretion of the district court. *Generation & Trans. Ass'n Inc. v. Shoshone River Power, Inc.*, 805 F.2d 351, 354 (10th Cir. 1986); *Sac and Fox Nation of Missouri v. LaFavor*, 905 F. Supp. 904, 906-07 (D. Kan. 1995) (TRO issued against State of Kansas from imposing motor fuels tax on fuel sales occurring on Indian lands). The instant motion for a TRO is prepared on the assumption that legal counsel for the Defendants has notice and is able to participate in a hearing on the motion.[4] In such circumstances, for a TRO to be entered, the Pueblo must meet all the criteria that are otherwise required for the entry of a preliminary injunction. *Emmis Commc'ns Corp. v. Media Strategies, Inc.*, 2001 WL 111229 (D. Colo. 2001).

B. PRELIMINARY INJUNCTION

A preliminary injunction is an extraordinary remedy never awarded as of right. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24, 129 S. Ct. 365 (2008). To carry its heavy burden,

[4] If the Pueblo is unable to provide notice to legal counsel of record for Defendants, it will inform the Court of its efforts to provide such notice and the reasons why the TRO should be granted in the absence of Defendants' counsel.

a plaintiff "must show: (1) a substantial likelihood of success on the merits; (2) irreparable harm to the plaintiff if the injunction is denied; (3) that the threatened injury outweighs the harm that the preliminary injunction may cause the opposing party [or Tribe]; and (4) that the injunction, if issued, will not adversely affect the public interest." *Patrella v. Brownback*, 787 F.3d 1242 (10th Cir. 2015); *O Centro Espirita Beneficiente Uniao do Vegetal v. Ashcroft*, 389 F.3d 973, 975–76 (10th Cir. 2004) (*en banc*) *affirmed and remanded*, 546 U.S. 418, 126 S. Ct. 1211 (2006) (federal government preliminarily enjoined from enforcement of Controlled Substance Act against huasca used for religious purposes)[5]; *Navajo Health Found.-Sage Memorial Hosp. v. Burwell*, ___F.Supp.3d____, 2015 WL 1906107 (D.N.M. 2015) (federal government preliminarily enjoined from withdrawal of funding for hospital on Navajo Indian lands); *Estate of Norman v. Laverne*, 2015 WL 2414565 (W.D. Okla. 2015) (preliminary injunction granted).

If the moving party satisfies the first three requirements, the standard for meeting the fourth requirement, the likelihood of success on the merits, generally becomes more lenient. In such a case, the movant need only show that the issues are so serious, substantial, difficult, and doubtful as to make them a fair ground for litigation. *Amedisys Inc. v. Interim Healthcare of Wichita, Inc*., 2015 WL 1912308 (D. Kan. 2015); *Sac and Fox*, 905 F. Supp. at 907.

Although the term "irreparable harm" does not readily lend itself to definition *Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1250 (10th Cir. 2001), Tenth Circuit case

[5] The en banc panel in *Ashcroft* affirmed the issuance of the injunction, noting that the mandate against enforcement could be considered an affirmative injunction that altered the status quo, and that such disfavored injunctions are subject to a "heightened" application of the four criteria. 389 F.3d at 975-76. The status quo at issue here is that the NMGCB has not taken enforcement action and the Pueblo is operating under the terms required by the USAO, hence the Pueblo's motion seeks to preserve the status quo. The Pueblo, however, establishes the four criteria even under the "heightened" standard articulated by the *Ashcroft* Court, were it to be applied.

law provides significant guidance. The injury must be "both certain and great," not "merely serious or substantial"; incapable of being "adequately atoned for in money"; or of the sort that "the district court cannot remedy following a final determination on the merits." *Id.*; *Port City Props. v. Union Pac. R.R. Co*., 528 F.3d 1186, 1190 (10th Cir. 2008). A plaintiff satisfies this requirement by demonstrating "a significant risk that it will experience harm that cannot be compensated after the fact by monetary damages". *RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 1210 (10th Cir. 2009); *Greater Yellowstone Coal v. Flowers*, 321 F.3d 1250, 1258 (10th Cir. 2003). The movant need not establish an actual injury or the certainty of an injury occurring; it is enough to show a strong threat of irreparable injury before trial. *Diamontiney v. Borg*, 918 F.2d 793, 795 (9th Cir. 1990) (quoting 11C Wright & A. Miller, *Federal Practice and Procedure* § 2948 at 437-38 (1973)).

Specific to Indian Country, the prospect of significant interference with tribal self-governance satisfies the irreparable harm criteria for preliminary injunctive relief. *Wyandotte Nation v. Sebelius*, 443 F.3d 1247, 1255 (10th Cir. 2006) (enjoining Kansas from enforcing its gaming laws on Wyandotte Indian lands); *Seneca-Cayuga Tribe of Oklahoma v. Oklahoma*, 874 F.2d 716 (10th Cir. 1989) (concluding inability to offer bingo would cause irreparable loss of governmental revenue and jobs, interfering with tribal self-governance); *Ute Indian Tribe v. Utah*, 790 F.3d 1000 (10th Cir. 2015) (reversing District Court denial of preliminary injunction where Utah's unlawful prosecution of tribal member interfered with tribal sovereignty); *Prairie Band*, 253 F.3d at 1250 (finding irreparable harm to tribal interests in governing motor vehicles within its reservation boundaries); *Burwell*, ___ F.Supp.3d at ___, 2015 WL 1906107; (inability to continue critical medical care to tribal membership); *Sac and Fox*, 509 F. Supp. at 907 (lost

fuels tax revenue would devastate funding of tribal governmental programs); *Winnebago Tribe of Nebraska v. Stovall*, 216 F. Supp. 2d 1226 (D. Kan. 2002); *See also Poarch Band of Creek Indians v. Hildreth*, 2015 WL 4469479 (S.D. Ala. 2015) ("By imposing taxes on the Tribal Trust Property, Hildreth would be exercising jurisdiction over the Tribe and directly assaulting its sovereign immunity," citing *Wyandotte Nation*).

Moreover, the jurisdictional basis for the claims against the State officials in their official capacities is the doctrine of *Ex parte Young*, 209 U.S. 123 (1908), which is limited to prospective equitable relief. Courts have found that the inability to recover monetary damages because of state Eleventh Amendment immunity renders the harm to be irreparable for purposes of preliminary injunctive relief. *Prairie Band*, 253 F.3d at 1251; *Kansas Health Care Ass'n Inc. v. Kansas Dep't of Soc. and Rehab. Servs.*, 31 F.3d 1536, 1543 (10th Cir. 1994); *Sac & Fox*, 509 F. Supp. at 907.

Even in the non-Indian context, where monetary damages are possible, courts will still find irreparable harm in situations similar to those currently facing the Pueblo where the consequences of losses are extremely serious and devastating. *See Doran v. Salem Inn, Inc*., 422 U.S. 922, 932, 95 S. Ct. 2561 (1975); *Commodity Futures Trading Comm'n v. British American Commodity Options Corp.,* 434 U.S. 1316, 1322, 98 S. Ct. 10 (1977); *Tri-State Gen. & Transmission Ass'n*, 805 F.2d at 356.

IV. FACTS RELEVANT TO THE INSTANT MOTIONS – NMGCB ACTIONS

To date, Defendants have threatened, but have not taken formal action against NMGCB licensees doing business as Vendors with the Pueblo. The reasonable reading of NMGCB's September 9, 2015 letter, however, informs the Vendors that negative action will be taken if they

continue to do business with the Pueblo. See Decl. of Michael Allgeier, attached as Exhibit B (herein "Allgeier Decl."), ¶16. The NMGCB deferred action on Pueblo Vendors licenses at its meetings on July 15 and August 18, and has indicated that it will take action at its regularly scheduled meeting of October 21, 2015. See Talachy Decl., ¶ 8; Allgeier Decl., ¶16. The Pueblo requests that the Court schedule pleadings to be filed and a hearing to be held sufficiently in advance of October 21, 2015 such that the Court will have ruled on the Pueblo's request for a preliminary injunction in advance of the NMGCB's October 21, 2015 meeting.

The NMGCB, through the State Gaming Representative ("SGR"), monitors tribal gaming activities to ensure that the proper revenue sharing and regulatory fees are paid to the State. On February 26, 2015, the NMGCB asked to perform its routine annual compliance review of the Pueblo's gaming operations on November 3-5, 2015, for the 2014 calendar year. See Talachy Decl., ¶ 6. For the first time in the NMGCB's history with the Pueblo, the Board requested a second and earlier compliance review in May. *Id.* Also for the first time, the acting SGR, Paulette Becker, requested, "[a]ny and all contract [sic] with Class III Gaming Machine Manufacturers, including and [sic] Lease, Purchase and Service Agreements". *Id.*

On June 24, 2015, the Pueblo submitted to a 2014 compliance review by the NMGCB. Pursuant to the Pueblo's document production obligations under the Compact, the Pueblo provided the requested Vendor contracts during its compliance review. Six days later, on the day the Compact expired, Governor Martinez issued press statements threatening individuals and entities maintaining employment and business relationships with the Pueblo, stating specifically: "[a]dditionally, the U.S. Attorney's decision provides no protection to banks, credit card vendors, gaming machine vendors, advertisers, bondholders, and others that are now doing

business with an illegal gambling enterprise" and "it could mean trouble for companies doing business with 'an illegal gambling enterprise.'" See Talachy Decl., ¶ 7.

On July 15, 2015, the NMGCB held a regular board meeting. During a closed session, the Board considered several licenses for the Pueblo's Vendors. See Talachy Decl., ¶ 8. After the closed session, the Board announced it had determined that the Pueblo was acting illegally in its continued operation of Class III gaming activities. As a result, the NMGCB placed in abeyance the approval of any license application or renewal for those licensees known to be Vendors to the Pueblo based on information provided during the Pueblo's compliance review in June, until it could meet with the Vendors to determine if they would continue to conduct business with an "illegal operation". *Id.* No other vendor applications were placed in abeyance and no other vendors were asked to verify whether they conducted business with the Pueblo.

Buffalo Thunder, Inc. ("BTI") and Bally Gaming, Inc. ("BGI") (now owned by Scientific Games, Inc. ("SGI")) entered into a contract for a new casino management system ("CMS") in March of 2015. See Allgeier Decl., ¶ 11. On March 31, 2015, BTI paid BGI $875,000 as a deposit for the new CMS. Allgeier Decl., ¶ 12. The new CMS was expected to be installed and operating by October 1, 2015. Since July 1, 2015, however, SGI, as successor-in-interest to BGI, has taken the position that installing the new CMS cannot occur until the NMGCB has made a determination regarding whether SGI can continue to do business with the Pueblo. See Allgeier Decl., ¶¶ 14, 19, 21; Decl. of Mitch Bailey, ¶¶ 10, 13, 20 attached as Exhibit C. Since July, SGI has also stopped deliveries of all new products, including system upgrades, wide area progressive games, leases and other related services so as not to endanger SGI's other licenses with the NMGCB. SGI's actions have been based upon express statements from the NMGCB to

the effect that if SGI does business with the Pueblo, it is putting its New Mexico licenses at risk. See Allgeier Decl., ¶¶ 21, 33; Bailey Decl., ¶¶ 11, 33. SGI indicated to Pueblo representatives that the company is at the mercy of the NMGCB. See Bailey Decl., ¶ 17. SGI has further advised that the NMBCB sent a note to the SGI's compliance team in August asking them to put any further action with the Pueblo "on hold" until there is a resolution of the gaming matters between the Pueblo and NMGCB. Acting Director Lieurance further indicated that, based on an August 28, 2015 call, the NMGCB would be taking some disciplinary or other actions against the Vendors. *Id.* On September 9, 2015, the NMGCB embarked on a further inquiry and issued a letter regarding what business the Vendors were conducting with the Pueblo, and expanded that inquiry to the Vendors business activities with other gaming operations, including the racetracks and other tribes within New Mexico, and extraterritorially to the Poarch Band of Creek Indians ("Poarch Band"), all based on the NMGCB's independent determination that the Pueblo was acting illegally. See Talachy Decl., ¶ 10. The letter alleged that the Pueblo was operating its gaming facilities illegally, and cited NMGCB regulations prohibiting licensees from "failing to comply with all federal, state and local laws and regulations governing the operation of a gaming establishment" and "engaging in, furthering, or profiting from any illegal activity . . . ." SGI is the parent company of "WMS" and "Bally's" two of the major suppliers of gaming equipment to the Pueblo's gaming operations. After receiving the September 9 letter, "IGT", a third major vendor, told the Pueblo that it too is unable to provide parts and services to the Pueblo as a result of NMGCB's actions. See Bailey Decl., ¶ 24.

V. THE PUEBLO ESTABLISHES EACH OF THE FOUR CRITERIA REQUIRED FOR THE ISSUANCE OF A PRELIMINARY INJUNCTION

A. THE PUEBLO WILL PREVAIL ON THE MERITS

New Mexico lacks jurisdiction over gaming activities on the Pueblo's Indian lands. Several Courts, including the Tenth Circuit, have looked to the language and history of IGRA to rule that states have no jurisdiction over gaming activities occurring on Indian lands except as expressly agreed upon in the context of a tribal-state compact. *Wyandotte Nation v. Sebelius*, 443 F.3d 1247 (10th Cir. 2006); *United Keetoowah Band of Cherokee v. Oklahoma*, 927 F.2d 1170 (10th Cir. 1991) ("Indeed, the very structure of the IGRA permits assertion of state civil or criminal jurisdiction over Indian gaming *only* when a tribal-state compact has been reached to regulate class III gaming"); *Alabama v. PCI Gaming Authority et al*., ___ F.3d___, 2015 WL 5157426 (11th Cir. 2015); *Florida v. Seminole Tribe of Florida*, 181 F.3d 1237, 1247 (11th Cir. 1999) (*"Seminole II*"); *Sycuan Band v. Roache*, 54 F.2d 535, 538 (9th Cir. 1994) ("The Bands have not consented to the transfer of criminal jurisdiction to the State. As far as IGRA is concerned, therefore, the State had no authority to prosecute the Bands' employees for conducting the Bands' gaming. Having correctly so concluded, the district court was well within its equitable power to enjoin the prosecutions"); *AT&T Corp. v. Coeur d'Alene Tribe*, 295 F.3d 899, 909 (9th Cir. 2002) (State Attorney Generals lacked jurisdiction to send warning letters to communications companies that doing business with Tribally operated lottery was illegal); *U.S. v. Sisseton-Wahpeton Sioux Tribe*, 897 F.2d 358. 364 (8th Cir. 1990) ("Permitting South Dakota to apply its substantive law to the blackjack game here, which is properly classified as class II gaming, conflicts with congressional intent"); *Lac du Flambeau Band of Lake Superior Chippewa v. Wisconsin*, 473 F.Supp. 645, 646-48 (D. Wisc. 1990) ("Unless and until the state

negotiates a tribal-state compact in which [the tribe] consents to the exercise of such jurisdiction, the United States has the exclusive authority to enforce violations of state gambling laws on plaintiffs' reservations"); *see also Cabazon Band of Mission Indians v. Wilson*, 124 F.3d 1050, 1059 (9th Cir. 1997) ("IGRA limits the state's regulatory authority to that expressly agreed upon in a compact. Outside the express provisions of a compact, the enforcement of IGRA's prohibitions on class III gaming remains the exclusive province of the federal government").

Notably, the New Mexico Supreme Court acknowledged the State's lack of jurisdiction over non-compacted gaming in rejecting an equal protection challenge brought by charitable and fraternal organizations over the exchange of free games for actual pull-tabs. *Am. Legion Post # 49 v. Hughs*, 1994-NMCA-153:

> Even if it is true that the State does not enforce its gambling laws against Indians, there is a compelling reason for failing to do so. The State of New Mexico has no jurisdiction to enforce its gambling laws in Indian Territory. . . . [T]he United States has provided for exclusive federal jurisdiction over criminal prosecutions for violations of those laws, except in limited circumstances not applicable to this case.

1994-NMCA-153, ¶ 16 (citing *Sycuan Band v. Roache*, *supra*); *see also Taxpayers of Michigan Against Casinos v. State*, 471 Mich. 306, 323, 685 N.W.2d 221, 229 (Mich. 2004) ("Moreover, this 'federalization' of state law regulating gambling does not give a state enforcement power over violations of state gambling laws on tribal lands because "the power to enforce the incorporated laws rests solely with the United States. The state remains powerless to assert any regulatory authority over tribal gaming *unless* the tribes have assented to such authority in a compact under IGRA.") (emphasis in original).

The above-cited cases are consistent and clear: the State's jurisdiction over gaming activities that occur on Pueblo Indian lands ended on June 30, 2015 when the Compact expired.

The State's assertion of Eleventh Amendment immunity and refusal to negotiate a new compact in good faith carries with it the consequence that it does not and will not have jurisdiction over Pueblo gaming activities unless and until the State negotiates a compact with the Pueblo in good faith under IGRA. Two of the appellate cases cited above warrant closer review by this Court.

Wyandotte Nation v. Sebelius

During the time frame at issue, Kansas was involved in pending litigation against the Department of the Interior, which ultimately resolved the question of the Wyandotte Nation's authority to offer gaming on certain land (the "Shrine Tract") as a matter of federal law. Kansas decided unilaterally that it would not wait for the courts to resolve the issue, and under the alleged authority of Kansas state law:

> Determined to shut down the tribe's gaming facility and unwilling to wait for the case to travel through proper legal channels, Kansas officials decided to simply bypass the federal court system. They sought and obtained a search warrant in Kansas state court based on suspected violations of state gaming law. On April 2, 2004, armed officials from the Kansas City Police Department, the Kansas Bureau of Investigation, and the Office of the State Attorney General stormed the casino, seized gambling proceeds and files, and confiscated gaming machines. The law enforcement officers arrested Ellis Enyart, the casino's general manager, for violating state gambling laws. That same day, the officers seized a bank account owned by the Wyandotte. In total, the officers seized more than $1.25 million in cash and equipment. Criminal charges were filed against Enyart but a state court rightly dismissed them because Kansas has no authority to enforce its gaming laws on the Shriner Tract. *Kansas v. Enyart,* Case No. 04–CR–540 (Kan. Dist. Ct.) (July 7, 2004 Order).

443 F.3d at 1251-52. The District Court correctly granted the Wyandotte Nation's motion to enjoin the State of Kansas from applying state gaming laws to the Nation's Indian lands. 337 F. Supp. 2d 1253 (D. Kan. 2004). The Court reasoned:

> The IGRA's penal provision, 18 U.S.C. § 1166, incorporates state laws as the federal law governing all nonconforming gambling in Indian country. Section 1166(a) makes "all State laws pertaining to the licensing, regulation or

> prohibition of gambling, including but not limited to the criminal sanctions applicable thereto" enforceable in Indian country. Under the IGRA, the power to enforce these incorporated state laws rests solely with the United States: "The United States shall have *exclusive* jurisdiction over criminal prosecutions of violations of State gambling laws that are made applicable under this section to Indian country...." The states have no authority to regulate tribal gaming under the IGRA unless the tribe specifically consents to the regulation in a compact.

337 F. Supp. 2d at 1256 (emphasis in original);

> The IGRA confers power to enforce Indian gaming laws exclusively with the United States. The structure of the IGRA permits assertion of state civil or criminal jurisdiction over Indian gaming *only* when a tribal-state compact has been reached to regulate Class III gaming. No such compact has been reached.

337 F. Supp. 2d at 1273 (emphasis in original). The District Court cites to a prior Tenth Circuit decision, *United Keetoowah Band of Cherokee v. Oklahoma*, 927 F.2d 1170 (10th Cir. 1991), wherein the Appeals Court vacated an injunction sought by the State of Oklahoma to enjoin the Band's gaming, alleging that state law applied under the Assimilated Crimes Act. *Id.* at 1182. The Appeals Court reasoned that state law had no application to the Band's gaming except as expressly agreed upon in the context of a negotiated tribal/state compact. *Id.* at 1177.

The District Court in *Wyandotte*, however, went too far and also enjoined the Nation from gaming pending the resolution of all the various lawsuits. Both the Nation and Kansas appealed. The Tenth Circuit, reasoning that "the likelihood that courts will determine that Kansas can exercise jurisdiction over the Shriner Tract is remote," affirmed the injunction against the State and vacated the injunction against the Nation. 443 F.3d at 1256.

Alabama v. PCI Gaming Authority

Very recently, on September 3, 2015, the Eleventh Circuit issued an opinion rejecting the State of Alabama's attempt to regulate non-compacted gaming conducted by the Poarch Band.

Alabama v. PCI Gaming Authority et al., ____F.3d____ 2015 WL 5157426 (11th Cir. 2015). The Eleventh Circuit reasoned:

> Indeed, if we were to hold that states could sue to enjoin class III gaming when a tribe engaged in class III gaming without a compact, we would undermine IGRA's careful balance of federal, state, and tribal interests. *Seminole Tribe II*, 181 F.3d at 1247. Section 2710(d)(7)(A)(ii) indicates that Congress intended for a state to have a right of action to enjoin class III gaming only where the gaming is unauthorized by a compact between the state and the tribe allowing some class III gaming. Permitting a state to sue to enjoin class III gaming in the absence of a compact "would be tantamount to deleting the second requirement that must be met in order for the state to pursue this express right of action" under § 2710(d)(7)(A)(ii). *Seminole Tribe II*, 181 F.3d at 1249. We cannot "usurp the legislative role by deleting it ourselves, particularly when doing so would undermine one of the few remaining incentives for a state to negotiate a compact with a tribe." *Id.*

2015 WL 5157426 at *15. The Eleventh Circuit also went into detail as to how allowing Alabama to assert jurisdiction would usurp legislative intent:

> After considering the text of § 1166 and the structure of IGRA, we conclude that Congress did not intend to create an implied right of action in § 1166 But even if the statutory text and structure did not conclusively resolve whether there is an implied right of action, the legislative history and context of the statute make Congress's intent clear. As we explained in *Seminole Tribe II,* the legislative history "indicates that Congress, in developing a comprehensive approach to the controversial subject of regulating tribal gaming, struck a careful balance among federal, state, and tribal interests." 181 F.3d at 1247 (citing S.Rep. No. 100-446 at 5-6). To strike this balance, Congress placed "limits on the application of state laws and the extension of state jurisdiction to tribal lands." *Id.* (citing S.Rep. No. 100-446 at 5-6). According to the Senate Report, " 'the compact process is a viable mechanism for settling various matters between [states and tribes as] equal sovereigns.' " *Id.* at 1248 (quoting S.Rep. No. 100-446 at 13) (alteration in original). The Senate Report recognized the need for " 'some incentive' " for states to negotiate in good faith. *Id.* (quoting S.Rep. No. 100-446 at 13) Permitting states to sue to enjoin class III gaming without a compact "would surely frustrate [Congress's] intent [as expressed in the legislative history]." *Id.*

2015 WL 5157426 at *16. It is curious that NMGCB's September 9, 2015 letter, drafted at least a week after the Poarch Band opinion was issued by the Eleventh Circuit, expressly identifies

three gaming entities which are arms of the Poarch Band subsidiaries. See Talachy Decl., ¶ 10. Justifiably, the Poarch Band sent a letter to the NMGCB directing it to cease and desist its efforts to assert jurisdiction over the Tribe's gaming activities. *Id.* Subsequently, NMGCB sent a letter, dated[6] September 11, to all recipients of the September 9 letter referencing the Eleventh Circuit decision and clarifying that the request no longer included the Poarch Band's gaming facilities. *Id.* It appears that Defendants initially believed New Mexico had jurisdiction over Poarch Band's gaming activities even though the Eleventh Circuit had ruled that Alabama did not. Once informed of the Poarch Band decision, the NMGCB stood down as to the Poarch Band, but not as to the Pueblo. Yet, the application of *Alabama v. PCI Gaming Authority* supports the conclusion that New Mexico lacks jurisdiction over the Pueblo's gaming. NMGCB's actions regarding the Poarch Band merely reinforce the correctness of granting the Pueblo's motion for injunctive relief.

The Pueblo, having established the State's lack of jurisdiction over the Pueblo's gaming activities, has a substantial likelihood of prevailing on Counts II, III and V of its Complaint.

Count II seeks a declaration that Plaintiffs have the right, based on the Supremacy Clause, to engage in activity on the Pueblo's Indian lands in a manner that is free from state interference except to the limited extent that Congress, in the exercise of the United States'

[6] The dates of the NMGCB letters are curious. The "September 11, 2015" appears to be attached to an email from NMGCB dated September 21, 2015. See Talachy Decl., ¶ 10 and Exhibits 6 and 7 attached thereto, which would be the following Monday after the Poarch Band sent its cease and desist letter to the State (and not seven days before receiving the letter). The Pueblo first learned and received a copy of the NMGCB's letter dated September 9, 2015 on September 15, 2015. *Id.*

plenary authority over Indian affairs allows. The recent decision in *Tohono O'odham*[7] found that granting such relief is within the inherent equitable jurisdiction of the federal courts:

> Invoking this equitable right of action, the Supreme Court has recognized that "[a] plaintiff who seeks injunctive relief from state regulation, on the ground that such regulated is pre-empted by a federal statute, which, by virtue of the Supremacy Clause of the Constitution, must prevail, . . . presents a federal question which the federal courts have jurisdiction[.]"

2015 WL 5475290 at *10 (citing *Shaw v. Delta Air Lines, Inc*., 463 U.S. 85, 96 n.14 (1983)).

Count III, brought by Plaintiff Governor Talachy on his own behalf and on behalf of the individual members of the Pueblo seeks vindication of their civil rights under 42 U.S.C. §§ 1981 and 1983. The Supreme Court has held that the right of tribal self-governance is protected by the United States Constitution. *Worcester v. Georgia*, 31 U.S. (6 Pet) 515 (1832); *Fisher v. District Court of Sixteenth Judicial Dist. Of Montana*, 424 U.S. 382, 386, 96 S. Ct. 943, 946 (1976); *Antione v. Washington*, 420 U.S. 194, 205, 95 S. Ct. 944, 951 (1975); *Lac Courte Oreilles Band v. Wisconsin*, 668 F. Supp. 1233, 1239 (W.D. Wis. 1987). Accordingly, such right may be vindicated by suits brought under § 1983. *Ross v. Neff*, 905 F.2d 1349, 1353-54 (10th Cir. 1990); *Joe v. Marcum*, 621 F.2d 358, 360, 361(10th Cir. 1980); *United States v. Washington*, 935 F.2d 1059, 1061 (9th Cir. 1991); *United States v. Washington*, 459 F. Supp. 1020, 1030 n.3 (W.D. Wash. 1978) *appeal dismissed*, 573 F.2d 1117 (9th Cir. 1978); *Lac Courte Oreilles Band v. Wisconsin*, 663 F. Supp. 682, 692 (W.D. Wis. 1987) *appeal dismissed*, 829 F.2d 601 (7th Cir.

[7] The *Tohono O'odham* Court denied the Tribe's motion for a preliminary injunction because the Tribe failed to demonstrate irreparable harm because it was able to operate Class II gaming without the injunction. 2015 WL 5475290 at *13-14. In sharp contrast, the Pueblo presents evidence that the highly competitive Class III gaming market in New Mexico, generally, and the immediate Pojoaque area, specifically, with which the Pueblo must compete, as well as the added cost of Class II equipment makes Class II not viable and would cause a default in the Pueblo's indenture agreements. See Allgeier Decl., ¶¶ 34-40.

1987); *Mille Lacs Band v. Minnesota,* 853 F. Supp. 1118, 1126-27 (D. Minn. 1994); *Muckleshoot Tribe v. Puget Sound Power & Light*, 875 F.2d 695, 697 n.1 (9th Cir. 1989).

Count V seeks relief from Defendants' tortious interference with contractual relations. Under New Mexico case law, there are five elements needed to establish liability for tortious interference with contractual relations: (1) Defendants' knowledge of the contract between the Pueblo and the Vendor; (2) performance of the contract was refused; (3) Defendants played an active and substantial part in causing the Pueblo to lose the benefits of the contract; (4) damages flowed from the breached contract; and (5) Defendants induced the breach without justification or privilege in doing so. *Lenscrafters v. Kehoe*, 2012-NMSC-020; *Wolf v. Perry*, 1959-NMSC-044, 65 N.M. 457, 461-62. The Pueblo having established the fifth element, the Defendants actions brazenly evidence the first four elements. Defendants' actions are directed against those Vendors who have contracts with the Pueblo and evidence an active and substantial role in causing those Vendors to cease doing business with the Pueblo. With at least two vendors, SCI and IGT, the second and fourth elements have been established. SCI has informed the Pueblo that it will not perform on its contract to install a new CMS. See Bailey Decl., ¶ 11. Both SCI and IGT have informed the Pueblo they will no longer provide gaming equipment and services. Allgeier Decl., ¶ 14; Bailey Decl., ¶ 22. If the Defendants carry through their threat of denying or revoking licenses with other Vendors (as Defendants have announced that they will do on October 21, 2015), the second and fourth elements will be established for virtually every Vendor licensed by the NMGCB and doing business with the Pueblo. Money damages are not an adequate remedy hence the Pueblo has established a substantial likelihood of prevailing on its

claims that Defendants should be enjoined from tortious interference with the Pueblo's contractual relations.

The first criteria for the issuance of a TRO and/or preliminary injunction having been established, the Pueblo now turns to the establishment of irreparable harm.

B. IRREPARABLE HARM[8]

Net gaming revenues provide a stable revenue stream for the Pueblo that is a critical funding source for essential governmental services and programs. Gaming revenues also create a source of strength and stability to all Pueblo economic development activity. Closure of the Pueblo's gaming operations would cause measurable, immediate and irreparable harm, including layoffs at both gaming and other commercial enterprises, as well as reductions in governmental services. See Talachy Decl., ¶ 4. The result would cripple both the Pueblo's governmental operations and its economy, and would devastate an entire region's economy. See Talachy Decl., ¶¶ 4, 14, 17-17-18, 23, 27-28, 31; Allgeier Decl., ¶¶ 41-43.

The impacts of not being able to effectively conduct Class III gaming activities would be immediate and irreparable both as to the Pueblo and the greater northern New Mexico community. Buffalo Thunder Development Authority ("BTDA") is a political subdivision and unincorporated instrumentality of the Pueblo, and was created to own all gaming operations of the Pueblo. BTDA's three (3) subsidiaries are BTI, Pojoaque Gaming, Inc. ("PGI"), and Pueblo of Pojoaque Development Corporation ("PPDC"). Talachy Decl., ¶ 19. BTI operates the Buffalo Thunder Resort, which is comprised of a gaming facility, the Hilton Santa Fe Buffalo Thunder

[8] This section is a mere summary of the irreparable harm more fully set forth in the Declarations of Pueblo Governor Talachy, CEO Mike Allgeier, and Executive Director Mitch Bailey. The Court is encouraged to review those Declarations to fully assess the certain and great harm to be suffered by the Pueblo, its members and the greater community if injunctive relief is denied.

Resort, five restaurants, a retail promenade, and conference space. Talachy Decl., ¶ 24; Allgeier Decl., ¶ 6.

PGI owns and operates the Cities of Gold™ Casino. Talachy Decl., ¶ 25; Allgeier Decl., ¶ 1. PPDC owns The Downs at Santa Fe, a former horse track, which no longer provides horseracing but offers stables, training areas, equestrian events, concert and other events, and soccer fields for the Santa Fe Youth Soccer Club. See Talachy Decl., ¶ 26. The cessation of gaming activities will also have a devastating impact on non-gaming commercial enterprises owned by the Pueblo corporations including hotels, a RV park, restaurants, two gas stations, a supermarket, apartment complex and a mobile home park, a bowling alley, storage units, hardware store, farmer's market, and vacation rentals. If the Pueblo is not able to conduct Class III gaming operations, it will be forced to lay off employees throughout all of its businesses, further cut funding for governmental services, cut or eliminate programs, and delay commitments for future economic growth. See Talachy Decl., ¶ 21; Allgeier Decl., ¶¶ 42-44.

1. Immediate Impacts/Irreparable Harm to Pueblo Gaming Operations

Defendant's actions have already caused SGI and IGT to cease doing business with the Pueblo. The Pueblo projects revenue loss of $300,000 per month starting October 1, 2015, due to its inability to install and implement the new CMS. Allgeier Decl., ¶ 21. Further, the Pueblo's inability to enter into contracts for new game purchases, new game leases, and conversions of older games to new machines, has an immediate negative effect on gaming revenue and fees paid to Vendors. See Allgeier Decl., ¶¶ 26-28. If the NMGCB is not immediately enjoined, the Pueblo will suffer imminent harm, as the operations will immediately lose 17% of their current revenue

from an inability to support existing games. *Id*. The gaming operations are now at risk of the entire CMS failing, which will result in an inability to operate Class II or Class III gaming.

2. Immediate Impacts/ Irreparable Harm to Pueblo Businesses and the Greater Economy

If the Pueblo is not able to effectively conduct Class III gaming operations, it will face immediate impacts on and irreparable harm to its economy. The Pueblo is the largest private employer north of Santa Fe providing 1,200 New Mexico residents with employment and employment-related benefits. Talachy Decl., ¶ 3. As an employer, the Pueblo pays a total of $46,300,000 in combined annual payroll and benefits. The Pueblo's gaming/resort businesses alone employ nearly 800 individuals with annual payroll and benefits of $32,500,000. The inability to conduct Class III gaming operations would not only result in the loss of highly-trained employees but, for some, the Pueblo's inability to continue to provide employment, career training, and employment-related benefits would force them to rely upon state and federal assistance.

The Pueblo's gaming operations also have a significant multiplier effect. Many of the casino employees reside at Pueblo-owned commercial rental properties. These employees generate much needed non-gaming revenue and gross receipt taxes for both Pueblo and non-Pueblo businesses. Talachy Decl., ¶ 32. There are also many off-reservation impacts flowing from the Pueblo's gaming operations, which directly and indirectly generate economic activity within the State through vendor and service agreements, goods and services purchases, and tourism activities. Vendors and contractors who do business with the Pueblo's gaming operations also pay state and local taxes, and purchase goods and services throughout the entire State. See Talachy Decl., ¶ 31. This economic activity and the associated taxes will decrease exponentially.

3. Immediate Harm to the Pueblo's Economic Infrastructure

The Pueblo is greatly concerned about the financial integrity of, and adverse impacts upon, its other existing economic infrastructure. The inability to effectively conduct Class III gaming operations would cause immediate harm to the Pueblo's existing financial agreements, would interrupt debt service payments/obligations of the gaming operations, and could potentially cause the Pueblo to violate those agreements and present a loss of economic security. See Talachy Decl., ¶¶ 22-23. This would also generate a series of events that would irreparably damage the Pueblo's other non-gaming commercial activities. For example, a portion of the Pueblo's taxes and tribal distributions from gaming activities are related to other note financing activities and debt agreements with outside institutions. See Talachy Decl., ¶ 23. The disruption of non-gaming financial agreements would result in the loss of employee and financial confidence, and would interfere with existing financial relationships manifestly jeopardizing the economic security of existing, non-gaming commercial enterprises. *Id.*

4. Greater Impacts to Essential Governmental Operations & Programs

IGRA requires that gaming revenues be used first and foremost to fund tribal government operations or programs. 25 U.S.C. § 2710(b)(2)(B)(i). The Pueblo is fully committed to fulfilling this requirement. The Pueblo receives from its gaming operations approximately $4,200,000 annually for essential governmental services and programs. Talachy Decl., ¶ 13. Without Class III gaming revenue, essential governmental services and programs would be cut and/or eliminated.

Because of the Pueblo's location and long history of contributing to the larger community, its gaming revenues not only allow for the provision of essential governmental

services for the benefit of the Pueblo but also for the entire Pojoaque Valley (including non-Indian residents, visitors, and neighbors), surrounding counties and, ultimately, the State. See Talachy Decl., ¶ 18. The Pueblo's net gaming revenues help to provide law enforcement; fire, rescue, and other emergency services; utility, water and infrastructure development and maintenance; and community health and wellness services. *Id.*

The Pueblo spends an additional $3,500,000 on early childhood development, its Senior Citizen Center, social services, community health services, and culture revitalization programs. The Poeh Museum and Cultural Center is fully funded by gaming revenues and grant funding. Losing gaming revenue will impact the efforts to teach the Pueblo's native language, traditional song and dance, and material culture. Talachy Decl., ¶¶ 14-17.

All of the Pueblo's businesses contribute (through taxes, rents, contributed capital, etc.) 58% of the total cost to support these programs. See Talachy Decl., ¶ 33. The remainder comes from grants and governmental contracts, although the State denied all capital outlay requests for the Pueblo in 2014. *Id.* If tribal and non-tribal residents in the Pojoaque Valley are unable to use Pueblo services, these participants will turn to other non-Pojoaque local, county and state sources.

5. Irreparable Harm to the Pueblo's Economy—The Domino Effect

While the Pueblo provides New Mexico residents with employment, it also realizes the value of investing in its future workforce and has made education a top priority, funding higher education and private schooling for tribal members. The Pueblo's Education Department is subsidized 100% by gaming revenues. If the Pueblo cannot effectively conduct Class III gaming operations, the education of all tribal members currently enrolled within the program will be

interrupted. See Talachy Decl., ¶¶ 15, 34 and most of these students will be unable to continue their education.

C. THE STATE IS NOT IRREPARABLY HARMED IN ANY MATERIAL MANNER IF THE MOTION FOR TRO/PRELIMINARY INJUNCTION IS GRANTED

Any harm caused to the Defendants by granting the TRO or preliminary injunction is substantially outweighed by the harm that the Pueblo would suffer if the Court does not grant the TRO or preliminary injunction. The District Court in *Wyandotte* reasoned:

> [A]n order enjoining the State Defendants from exerting jurisdiction could very well adversely affect the State of Kansas's sovereignty, but in the context of entering a preliminary injunction, the Tribe is faced with more devastating losses than the State Defendants' temporary inability to enforce its state gaming laws.

Wyandotte, 337 F. Supp. 2d at 1270. In affirming, the Tenth Circuit reasoned:

> Even at the heightened standard by which mandatory injunctions are judged . . . the harm caused by granting the injunction to Kansas is minimal at best whereas the harm to the Wyandotte's sovereignty and well-being caused by permitting the state to continue exercising jurisdiction is quite substantial.

Wyandotte, 443 F.3d at 1255.

There is no harm of which the Pueblo is aware that the State will suffer if the requested relief is granted. The Pueblo's gaming activities have continued since June 30, 2015 in exactly the same manner they occurred prior to June 30, 2015, except that, per the request of the USAO, the gaming tax previously paid to the State is paid into an independent trust account, and compliance audits conducted by qualified independent accounting firms of the gaming activities are performed by outside entities, the results of which will be made available to the USAO. See Allgeier Decl., ¶ 4 and Exhibits 1 and 2 attached thereto. In all other respects, except for the harm and negative consequences described herein and resulting from the NMGCB's actions, the

Pueblo's gaming is conducted as if the Compact that expired on June 30, 2015 were still in effect.

Accordingly, the balance of harms tips overwhelmingly in favor of granting the requested relief. Any intangible harm to be incurred by the State does not negate the devastating and irreparable harm the Pueblo will suffer if the requested relief is denied.

D. AN INJUNCTION WILL ADVANCE AND ENHANCE PUBLIC INTEREST

The public interest factor of the TRO/preliminary injunction analysis weighs heavily in favor of the Pueblo. IGRA identifies the public policy interests that Congress intended to advance namely "to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." 25 U.S.C. § 2702(1). The public interest in assuring the continued presence of economic development and employment, social and education programs and benefits, and life and public safety services that result from gaming revenue generated on Indian lands is significant. The public also has a genuine interest in helping to assure tribal self-government, self-sufficiency and self-determination. *Sac and Fox*, 509 F. Supp. at 908-09; *Winnebago*, 216 F. Supp. 2d at 1233-34.

VI. CONCLUSION

Overwhelmingly establishing the four criteria for granting preliminary injunctive relief, this Court should enter a TRO and/or preliminary injunction prohibiting Defendants from taking any action that threatens, revokes, conditions, modifies, fines, or otherwise punishes or takes enforcement against any licensee in good standing with the NMGCB, based wholly or in part on grounds that such licensee is conducting business with the Pueblo.

RESPECTFULLY SUBMITTED this 25th day of September

BY:

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CERTIFICATE OF SERVICE

I, Scott Crowell, hereby certify that on September 25, 2015, I caused the PUEBLO OF POJOAQUE'S MOTION FOR TRO AND/OR PRELIMINARY INJUNCTION, DECLARATION OF JOSEPH M. TALACHY, DECLARATION OF MICHAEL ALLGEIER, DECLARATION of MITCHELL BAILEY AND ALL EXHIBITS ATTACHED TO EACH DECLARATION to be served upon counsel of record through the Court's electronic service system.

/s/Scott Crowell
Scott Crowell, AZ Bar No. 009654**