Honorably William J. Janklow  
Governor, State of South Dakota  
Pierre, South Dakota  57501-5070

Dear Governor Janklow:

We have completed our review of a Tribal-State Compact (Compact) between the Yankton Sioux Tribe (Tribe) and the State of South Dakota (State) and two Amended Gaming Compacts (Amended Compacts) between the Tribe and the State, executed respectively on August 4, 1993, June 19, 1992 and March 2, 1994. The Compact and the Amended Compacts were signed by a representative of the State of South Dakota and the Tribal Chairman authorized to act on behalf of the Tribe on the dates they were executed. For the following reason, the Compact and the Amended Compacts are hereby disapproved.

It is our position that we can only approve compacts and/or amendments between Indian tribes and states that have been entered into by the appropriate state and tribal officials. In this instance, Governor Janklow, by letter dated December 23, 1998, revoked his predecessors’ approval of these documents before their submission by the Tribe to the Department of Interior.

The Indian Gaming Regulatory Act (IGRA) requires the Secretary to either approve or disapprove a compact within 45 days of its submission. 25 U.S.C. § 2710(d)(8)(C). If the Secretary does not approve the compact within 45 days, the compact is considered to have been approved by the Secretary to the extent the compact is consistent with IGRA. Id. Given IGRA’s time constraints and automatic approval provision, we defer to the representation of Governor Janklow, as the Chief Executive Officer of the State of South Dakota, that State law authorizes him to revoke his predecessors’ approval of the Compact and the two Amended Compacts. Generally, the Department defers to such representations unless it is clear beyond cavil that the Governor lacks this authority.

We regret that our decision could not be more favorable at this time.

Sincerely,

[Signature]

Assistant Secretary - Indian Affairs

Identical Letter Sent to:    Honorable Stephen Cournoyer, Jr.  
Chairman, Yankton Sioux Tribe  
P.O. Box 248  
Marty, South Dakota  57361-0248

cc:    Aberdeen Area Office  
Superintendent, Yankton Agency  
National Indian Gaming Commission
Honorale Michael L. Stepentin  
Chairman, Nisqually Indian Tribe 
4820 She-Nah-Num Drive S.E.  
Olympia, Washington 98513

Dear Chairman Stepentin:

On February 10, 1998, we received the Tribal-State Compact for Class III Gaming (Compact) between the Nisqually Indian Tribe (Tribe) and the State of Washington (State), dated May 25, 1995. We have completed our review of this Compact and conclude that it does not violate the Indian Gaming Regulatory Act of 1988 (IGRA), Federal law, or our trust responsibility. Therefore, pursuant to delegated authority and Section 11 of IGRA, we approve the Compact. The Compact shall take effect when the notice of our approval, pursuant to Section 11(d)(3)(B) of IGRA, 25 U.S.C. § 2710(d)(3)(B), is published in the FEDERAL REGISTER.

We interpret Section III(A) of the Compact to allow the Tribe to engage in sports betting if the Tribe meets one of the exceptions of the Professional and Amateur Sports Protection Act, 28 U.S.C. §§ 3701-3704 (PASPA). PASPA makes it unlawful for a governmental entity, including an Indian tribe, to sponsor, operate or authorize by law or compact, gaming based on the outcome of professional and amateur sports competitions. This prohibition does not extend to parimutuel animal racing or jai-alai games. To be lawful, any prohibited sports gaming pursuant to Section III(A) of the Compact must come within one of the two exceptions in PASPA which are applicable to Indian tribes.

Under the first exception, the general prohibition does not apply to a State or other governmental entity, including an Indian tribe, to the extent that the sports gaming activity was conducted by that State or other governmental entity between January 1, 1976 and August 31, 1990. The second exception establishes two criteria which must be met to authorize an otherwise prohibited sports betting activity within a State or governmental entity: (1) the activity must actually have been authorized by a statute in effect on October 2, 1991; and (2) the activity must actually have been conducted at some point between September 1, 1989 and October 2, 1991 pursuant to the law of that State or other governmental entity. We are not, however, in a position to verify the factual basis for establishing whether the Tribe comes within one of the two exceptions described above. Therefore, we express no opinion on the matter.
We note that the Compact contains a provision for the sale of Washington State Lottery tickets on Indian lands as a Class III gaming activity. The issue of whether a state lottery is a Class III gaming activity under IGRA was addressed in Confederted Tribes & Bands of the Yakama Indian Nation v. Lowry, 968 F. Supp. 531 (E.D. Wash. 1996), which is currently on appeal before the Ninth Circuit Court of Appeals. We anticipate that the Ninth Circuit's disposition of this case will likely resolve the issue and clarify the treatment of state lotteries on Indian lands under IGRA.

Notwithstanding our approval of the Compact, Section 11(d)(1) of IGRA, 25 U.S.C. § 2710(d)(1), requires that tribal gaming ordinances be approved by the Chairman of the National Indian Gaming Commission (NIGC). Regulations governing approval of Class II and Class III gaming ordinances are found in 25 C.F.R. §§ 501.1-577.15 (1996). Pursuant to IGRA and the regulations, even previously existing gaming ordinances must be submitted to the NIGC for approval when requested by the Chairman. The Tribe may want to contact the NIGC at (202) 632-7003 for further information to determine when and how to submit the ordinance for approval by the NIGC.

In addition, if the Tribe enters into a management contract for the operation and management of the Tribe's gaming facility, the contract must likewise be submitted to, and approved by the Chairman of the NIGC pursuant to Section 11(d)(9) of IGRA, 25 U.S.C. § 2710(d)(9) and the NIGC's regulations governing management contracts. The Tribe may want to contact the NIGC for information on submitting the ordinance and the management contract for approval by the NIGC.

We wish the Tribe and the State success in their economic venture.

Sincerely,

Kevin Gover
Assistant Secretary - Indian Affairs

Enclosure

Identical Letter Sent to: Honorable Mike Lowry
Governor of Washington
State Capitol
Olympia, Washington 95804

cc: Portland Area Director w/copy of approved Compact
Supt., Puget Sound Agency w/copy of approved Compact
National Indian Gaming Commission w/copy of approved Compact
Portland Regional Solicitor w/copy of approved Compact
Western Dist. U.S. Attorney w/copy of approved Compact

bcc: Secy Surname, SOL-IA, 101-A, Bureau RF, Surname, Chron, Hold
corr per DJordan:TWoodward:trw:3/6/98