



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

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Honorable Janice Prairie Chief-Boswell
Governor, Cheyenne and Arapaho Tribes
P.O. Box 38
Concho, Oklahoma 73022

Dear Governor Prairie Chief-Boswell:

On September 23, 2013, the Department of the Interior (Department) received the proposed Class III First Amended Settlement Agreement (Agreement) between the Cheyenne and Arapaho Tribes (Tribes) and the State of Oklahoma (State), providing for the conduct of Class III gaming activities by the Tribes.

The Tribes currently operate Class III gaming under the terms of the model tribal-state gaming compact enacted by Oklahoma's legislature in 2004. Last year, the State challenged the Tribes' operating an Internet gaming site, *www.pokertribes.com*. The Tribes and the State entered into a dispute resolution process in an attempt to resolve their differences. Their efforts resulted in execution of the Agreement that is before us today, which entirely replaces the previous Settlement Agreement that we disapproved on August 1, 2013. *See* Letter to Ms. Janice Prairie Chief-Boswell, Governor, Cheyenne-Arapaho Tribes from Kevin Washburn, Assistant Secretary - Indian Affairs. For the following reasons, we must disapprove this Agreement.

Under the Indian Gaming Regulatory Act (IGRA), the Secretary may approve or disapprove a proposed compact within 45 days of its submission. 25 U.S.C. § 2710 (d)(8). We have completed our review of the Agreement, along with the additional material submitted by the Tribes and the State.

The Department's regulations at 25 C.F.R. § 293.4 (b) provide that "[a]ll amendments, regardless of whether they are substantive amendments or technical amendments, are subject to review and approval by the Secretary." We, thus, review the proposed amendments to determine whether they violate IGRA, any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or the trust obligations of the United States to Indians. 25 U.S.C. § 2710(d)(8)(B)(i-iii).

The Agreement modifies the existing Compact by expanding the scope of games the Tribe is currently operating to include internet gaming as part of the Compact's covered games.¹ The

¹ Section 3 of the Compact defines a "covered game" which, in general, authorizes electronic bonanza-style bingo games, electronic amusement games, electronic instant bingo, non-house-banked card games, and other games that would require a compact and if the game has been approved by the Oklahoma Horse Racing Commission for use by an organizational licensee, approved by state legislation for use by any person or entity, or approved by amendment of the State-Tribal Gaming Act as agreed by written supplement to the Compact.

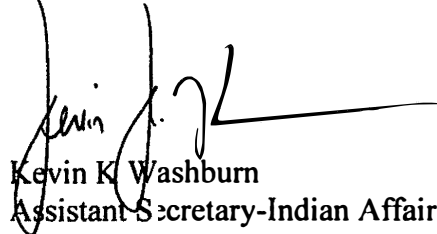
Agreement allows internet gaming if the individual player is located or resides outside the boundaries of the United States and its territories during the entirety of a gaming transaction. The Agreement then extends the existing revenue sharing provisions to the State based on the expanded scope of gaming.

The Department is committed to adhering to IGRA's statutory restrictions on tribal-state gaming compacts. IGRA prohibits the imposition of a tax, fee, charge, or other assessment on Indian gaming except to defray the state's costs of regulating Class III gaming activities. 25 U.S.C. § 2710 (d)(4). To determine whether a state may collect revenues from Indian gaming, we ordinarily consider whether the state has offered "meaningful concessions" to the tribe. For purposes of this decision, we assume, without deciding, that the Tribes may operate internet gaming, and may include that gaming in the scope of a Compact, to the extent that internet gaming may be permitted under IGRA. Here, the proposed expansion of the Compact's definition of covered games to include internet gaming by persons located outside of United States and its territories introduces an inappropriate basis for revenue sharing in a Compact. The State cannot control, nor can it offer, exclusive access to a market of patrons located entirely outside the United States and its territories. As a result, the State's concession is illusory. Therefore, the revenue sharing requirement for the proposed internet gaming activities amounts to an impermissible tax in violation of IGRA. *See* 25 U.S.C. § 2710 (d)(4). Based upon this determination, the Agreement is disapproved.

We appreciate the efforts of the Tribes and the State to work together to attempt to reach an agreement on important matters affecting their relationship. However, the Department is committed to upholding IGRA, and we cannot approve a compact that violates IGRA in the manner described above.

A similar letter has been sent to the Honorable Mary Fallin, Governor of the State of Oklahoma.

Sincerely,



Kevin K. Washburn
Assistant Secretary-Indian Affairs