



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

MAY 08 1997

Honorable Rhonda Swaney
Chairwoman, Confederated Salish
and Kootenai Tribes
P.O. Box 278
Pablo, Montana 59855

Dear Chairwoman Swaney:

On March 25, 1997, we received the Interim Agreement (Compact) Between the Confederated Salish and Kootenai Tribes (Tribe) and the State of Montana (State), concerning Class III Gaming dated March 14, 1997. 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 my delegated authority and Section 11 of the 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 note, however, that the Tribe must come within an exception to the Professional and Amateur Sports Protection Act (PASPA), 28 U.S.C. §§ 3701-3704, to conduct sports betting under the Compact. PASPA makes it unlawful for a government entity, including an Indian tribe, to sponsor or operate gambling on amateur or professional sports. To be lawful, any sports gaming pursuant to Section VI. D. of the Compact must come within one of the exceptions authorized by Section 3704 of PASPA.

The exception at Section 3704 (a)(2) establishes two criteria which must be met to authorize sports betting. First, the gambling must be authorized by a statute in effect on October 2, 1991. Second, the gambling must actually have been conducted sometime between September 1, 1989, and October 2, 1991. Sports betting is authorized by Montana statutes which were enacted in 1977, 1987 and 1991. Montana Code Annotated Sections 23-5-222, 23-5-502, and 23-5-802. The 1991 law authorizing sports fantasy leagues was passed by the Montana Legislature on April 26, 1991, and became effective July 1, 1991. Therefore, if games were conducted as authorized by the Montana statutes during the relevant period, we believe the Tribe may establish that it falls within the exception to the general prohibition against sports betting. We are not, however, in a position to verify the factual basis for establishing whether the Tribe comes within the exception. Therefore, we express no opinion on the matter.

Notwithstanding our approval of the Compact, Section 11(d)(1) of the 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 the 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 the 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,

A handwritten signature in cursive script that reads "Ada E. Deer".

Ada E. Deer
Assistant Secretary - Indian Affairs

Enclosure

Identical Letter Sent to: Honorable Marc Racicot
Governor of Montana
Capitol Station
Helena, Montana 59620

INTERIM AGREEMENT

BETWEEN THE

**CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION**

AND THE

STATE OF MONTANA

CONCERNING CLASS III GAMING

I. AUTHORITY

This Interim Agreement ("Agreement") is made between the Confederated Salish and Kootenai Tribes of the Flathead Nation ("Tribes") and the State of Montana ("State") pursuant to Public Law 100-497, the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2710 et seq. ("IGRA"). The Tribes are authorized to enter into this Agreement by Resolution No. 97-102 enacted on March 13th, 1997. The State is authorized to enter into this Agreement by Section 11(d)(3)(B) of the IGRA and the provisions of the State-Tribal Cooperative Agreements Act (§§ 18-11-101 to 18-11-111, MCA).

II. PURPOSE

A. The purpose of this Agreement is to provide the terms and conditions for interim operation of Class III gaming and to define the respective authority of the Tribes and the State for regulation of Class III gaming as defined by the IGRA on the Flathead Indian Reservation during the term hereof. The State and the Tribes assert mutually exclusive positions regarding several issues arising under IGRA including but not limited to the types of gaming the IGRA requires the State to include in tribal-state negotiations pursuant to § 11(d) of IGRA and whether IGRA permits the State to assert licensing and taxing authority over non-Indian gaming on fee lands within the Flathead Indian Reservation.

B. The State and Tribes desire to allow Class III gaming to be conducted on the Flathead Indian Reservation pursuant to this interim compact pending resolution of the above mentioned areas of dispute. The terms of the interim compact do not reflect the parties' positions regarding the scope of their respective rights

and obligations under the United States Constitution or the IGRA. It is the parties intent that the terms of this interim compact have no affect on any present or future litigation and no precedential effect whatsoever on any subject matter not specifically related to the operation of Class III gaming on the Flathead Indian Reservation conducted pursuant to this Agreement.

C. The State and the Tribes mutually agree that the primary purpose for entering into this interim compact is to ensure that public policy goals and legislative mandates are met and that they are consistent with 25 U.S.C. § 2710(b)(2) and MONT. CODE ANN. § 23-5-110(a) through (f). Therefore, the State and Tribes mutually declare their intent to:

- (1) create and maintain a regulatory climate that assures players, owners, tourists, citizens, and others that the gambling industry on the Flathead Reservation is fair and is not influenced by corrupt persons, organizations, or practices;
- (2) protect legal public gambling activities from unscrupulous players and vendors and detrimental influences;
- (3) protect the public from unscrupulous proprietors and operators of gambling establishments, games and devices;
- (4) protect the tribal, state, and local governments from those who conduct illegal gambling activities that deprive those governments revenues;
- (5) protect the health, safety, and welfare of all citizens of the Flathead Indian Reservation including those who do not gamble, by regulating gambling activities;
- (6) promote programs necessary to provide assistance to those who are adversely affected by legalized gambling, including compulsive gamblers and their families;
- (7) ensure that taxes, fees, penalties or other revenues collected by the State are used in conformity with applicable Montana Statutes; and

- (8) ensure that taxes, fees, penalties, or other revenues collected by the Tribes are used in conformity with applicable tribal ordinances and federal law and regulation.

III. PROPOSAL FOR FINAL RESOLUTION

The parties agree to continue a dialogue, and to negotiate in good faith on the outstanding disputed gaming compact issues including scope of gaming, jurisdiction, regulations and taxation.

IV. DEFINITIONS

A. "Gaming" The term "gaming" means those Class III gaming activities authorized under and conducted in accordance with this Agreement.

B. "Premises" The term "premises" means a structure or facility that is clearly defined by permanently installed walls that extend from floor to ceiling and that has a public external entrance, leading to a street or other area, which entrance is not shared with another premises. If the premises shares a common internal wall with another premises offering gaming, the common wall must be permanently installed, opaque, and extend from floor to ceiling and may not contain an internal entrance through which public access is allowed.

C. "Regulate" The term "regulate" means the power to control through statute, ordinance, resolution, administrative rule, guideline or administrative procedure and to impose taxes, fees, assessments and penalties insofar as is consistent with the IGRA.

D. "Reservation" The term "Reservation" means the Flathead Indian Reservation as established by the Treaty of Hell Gate, 12 Stat. 975.

E. "State" The term "State" means the State of Montana or any agency thereof.

F. "Tribes" The term "Tribes" means the Confederated Salish and Kootenai Tribes, any agency, organization or subdivision of

those Tribes, or any corporate entity in which such Tribes are the sole owner.

G. "Indian" The term "Indian" means any person who would be subject to the jurisdiction of the United States under 18 U.S.C. § 1153 if that person were to commit an offense listed in that section in Indian country to which that section applies.

V. JURISDICTION OF THE TRIBES ~ STATE

A. The Tribes shall license, regulate, and enforce tribal and federal law, exclusive of the State and concurrently with the United States, for all gaming on the Reservation conducted or operated by the Tribes or Indians within the Reservation on lands held in trust by the Tribes or federal government or on tribally-owned or Indian owned fee lands.

B. The State shall license, regulate, and enforce state law both civil and criminal, exclusive of the Tribes and concurrently with the United States, for all gaming on the Reservation conducted or operated by non-Indians within the Reservation on fee lands.

C. Whenever an interest in any gambling operation or facility is owned in part by a non-Indian and in part by an Indian: the State shall regulate the gambling activity if located on fee land owned by a non-Indian; the Tribes shall regulate the gambling activity if located on land held in trust by the United States for the Tribes or an Indian, or on land owned in fee by the Tribes or an Indian.

VI. PERMITTED GAMING

The following gaming may be regulated by the Tribes pursuant to Article IV.A:

A. Video gambling machines when conducted in compliance with the provisions of Appendix A.

B. Simulcast racing when conducted in compliance with the provisions of Appendix B.

C. Calcutta pools when conducted in compliance with the provisions of Appendix C.

D. Fantasy sports leagues when conducted in compliance with the provisions of Appendix D.

E. Fishing derbies and betting on natural occurrences when conducted in compliance with the provisions of Appendix E.

F. Lotteries when conducted in compliance with the provisions of Appendix F.

G. Shake-a-day and shaking for music or drinks when conducted in compliance with the provisions of Appendix G.

H. Live keno when conducted in compliance with the provisions of Appendix H.

I. Sports pools and sports tab games when conducted in compliance with the provisions of Appendix I.

J. Raffles when conducted in compliance with the provisions in Appendix J.

VII. GENERAL REGULATIONS

The following regulations shall apply to all Class III gaming activities on the Flathead Indian Reservation.

A. Persons under 18 years of age shall not participate in any gaming activity except as allowed under state and tribal law regarding fishing derbies and charitable raffles.

B. A person who is not physically present on the premises where the gaming activity is actually conducted may not be allowed to participate except for lotteries conducted in compliance with Appendix F and simulcast racing conducted in compliance with Appendix B.

C. The consideration paid for the chance to play shall be strictly cash. Every participant must present the money with which (s)he intends to play the game at the time the game is played. No check, credit card, note, IOU, or other evidence of indebtedness shall be offered or accepted as part of the price of participation in such game or as payment of a debt incurred therein. No person or organization shall be permitted to offer credit for gaming for a fee. This restriction shall not apply to credits won by players who activate gambling machines after inserting coins or currency into the machines, and shall not restrict the right of the Tribes or any other person to offer

check cashing or to install or accept bank card or credit card transactions in the same manner as would be normally permitted at any retail business.

D. (1) The Tribes may make available for play a maximum of forty-one (41) video gambling machines at the KwaTaqNuk Resort. The Tribes may operate additional premises which shall make no more than twenty video gambling machines available for play at which alcohol may be served.

(2) Prize limits at tribally owned premises may not exceed a value higher than \$1000.00 for each individual award. No more than twenty (20) machines per premise shall be available for play by individual tribally-licensed operators with a maximum payout of \$800.00 for each individual award or a payout equal to that which is allowed under state law.

(3) In the event the Tribes wish to operate additional facilities that would contain more than twenty (20) machines, the State and the Tribes shall conduct good faith negotiations concerning the terms and conditions of operation of such facilities.

VIII. TRIBES MAY CONTRACT WITH STATE

The Tribes may contract with the State to certify and inspect machines by paying a fee for each machine which does not exceed the actual cost incurred by the State for such inspections. The Tribes may contract with the State to conduct background and financial examinations of persons associated with any gaming operation allowed under this Agreement. State officials acting in this capacity shall act as independent contractors of the Tribes, and shall not be deemed to be acting on the State's behalf.

IX. ENFORCEMENT OF COMPACT PROVISIONS RELATING TO CLASS III GAMING

A. The primary responsibility for the on-site regulation, control and security of the tribally regulated gaming operation authorized by Article IV shall be that of the Tribal Gaming Commission. The Tribal Gaming Commission shall investigate any reported violation by a tribally-regulated gaming operator and shall require the operation to correct any violations upon such

terms and conditions as the Tribal Gaming Commission determines are just and necessary to bring the matter into compliance with Tribal and federal law. If requested by the Tribal Gaming Commission, the State may assist in any investigation initiated by the Tribal Gaming Commission and provide other requested services to ensure proper compliance with the provisions of this Agreement. Any such assistance or provision of services by the State shall be pursuant to written contract between the Tribes and the State.

B. The State shall license, regulate, and control state licensed gaming in accordance with all state law and regulation and any applicable federal law.

X. DEFAULT AND TERMINATION

A. Default by Tribes. In the event of a failure by the Tribes in the performance of their obligations under this Agreement, the State shall have the right to terminate the Agreement without further notice or proceeding, provided that: a) the State shall have given the Tribes 90 days written notice of such default; b) the Tribes have not agreed in writing within such 90-day period to remedy the breach and not resume the conduct identified by the State as a breach, and; c) the Tribes have not in fact remedied the breach. If within 90 days after such notice, the Tribe agrees to correct and in fact corrects the violation of this Agreement, the State shall not terminate the Agreement. If the State asserts that the violation of the Agreement is also a violation of law, the State shall so state in the termination notice. In this case, the State may treat the Agreement as immediately suspended pending the Tribes' compliance with law. Nothing in this provision precludes the Tribes from initiating suit in the courts of the State of Montana under MONT. CODE ANN. § 18-8-404 for the purpose of, inter alia, securing a declaratory ruling concerning the meaning of the compact or enjoining the compact's termination pending judicial resolution of the dispute. The State expressly reserves its immunity from suit in federal or tribal forums.

B. Default by State. In the event of a failure by the State in the performance of its obligations under this Agreement, the Tribes shall have the right to terminate the Agreement without further notice or proceeding, provided that: a) the Tribes provided the State 90-day written notice of such default; b) the State has not agreed in writing within such 90-day period to remedy the breach and not resume the conduct identified by the Tribes as a breach and; c) the State has not in fact remedied

the breach. If, within 90 days after such notice, the State agrees to correct and in fact corrects the violation of this Agreement, the Tribes shall not terminate the Agreement. If the Tribes assert that the violation of the Agreement is also a violation of law, the Tribes shall so state in the termination notice. In this case, the Tribes may treat the Agreement as immediately suspended pending State compliance with law.

C. Voluntary Termination. Either party may terminate this Agreement by a written notice giving the other party one hundred and twenty days notice in writing of intent to terminate. This Agreement may also be terminated by mutual consent of the parties, upon such terms as they deem just.

D. Continuing Duty to Bargain. Entry into this Agreement shall not be deemed to waive or otherwise suspend the obligation of the State to negotiate in good faith with the Tribes in accordance with Section 11(d)(3)(A) of the IGRA.

XI. MISCELLANEOUS TERMS

A. Effective Date and Term. This Agreement shall be effective upon execution and approval of the Secretary of Interior and shall continue in effect for three calendar years from date of full execution, unless terminated earlier in accordance with Article X above. Upon expiration of this Agreement or upon its termination, the parties may agree to the renewal of the Agreement for a term agreed upon by the parties.

B. Amendments. This Agreement may be amended only with the consent of both parties and only by written instrument signed by both parties. If the IGRA or state law is amended in any way affecting the terms of this Agreement, the parties agree to negotiate in good faith to amend this Agreement so as to achieve the objectives provided for and to ensure compliance with all applicable state and federal law, and, in the case of a change in state law which would prohibit gaming authorized under this Agreement, the Tribes may continue to engage in gaming for up to ninety days, during which time such gaming may continue in order to enable the Tribes to receive a reasonable return on investments made under this Agreement.

C. Negative Declaration. This Agreement is not intended to reflect or be viewed as reflecting in any other context either party's position with respect to the jurisdictional authority of the other. Nothing in this Agreement or in any conduct undertaken pursuant thereto shall be deemed as enlarging or diminishing the

jurisdictional authority of either party except to the extent necessary to implement and effectuate the Agreement's terms. Neither this Agreement nor conduct pursuant thereto shall be offered as evidence, otherwise referred to in any present or future litigation, or used to further either party's equitable or legal position in any litigation unrelated to the subject matter of the Agreement.

D. Expansion of Class III Gaming. If, after the date of this Agreement, the State. authorizes pursuant to State law: (a) any form of gaming classified as Class III under the IGRA in addition to those forms permitted by this Agreement ("Additional Class III Games"), or, (b) wager, prize, machine or other limits or restrictions on gaming, including Additional Class III Games authorized under subsection 2 below, less restrictive than those set forth in this Agreement ("Less Restrictive Provisions"), then the following provisions shall apply:

- (1) The State shall promptly notify the Tribes of such Additional Class III Games or Less Restrictive Provisions.
- (2) This Agreement shall be deemed amended to permit Additional Class III Games provided that they are conducted in conformity with the least restrictive terms and conditions applicable to them under the State law.
- (3) This Agreement shall be deemed amended so as to include such Less Restrictive Provisions.
- (4) The Tribes may notify the State that they desire to amend this Agreement to authorize such Additional Class III Games on the Reservation on terms and conditions less restrictive than those applicable to them under the foregoing provisions. Upon such notice, the parties shall in good faith endeavor to negotiate amendments to provide for such gaming by the Tribes hereunder in conformity with the IGRA.

E. Severability. Each provision, section and subsection of this Agreement shall stand separate and independent of every other provision, section, or subsection. In the event that a court of competent jurisdiction shall find any provision, section, or subsection of this Agreement to be invalid, the remaining provisions, sections, and subsections of the Agreement shall remain in full force and effect.

F. Notices. All notices and other communications required to be given hereunder by the Tribes and the State shall be deemed to have been duly given when delivered in person or posted by United States certified mail, return receipt requested, with postage prepaid, addressed as follows:

(1) If to the Tribes:

Rhonda Swaney
Chairwoman
Confederated Salish and Kootenai Tribes
P.O. Box 278
Pablo, MT 59855

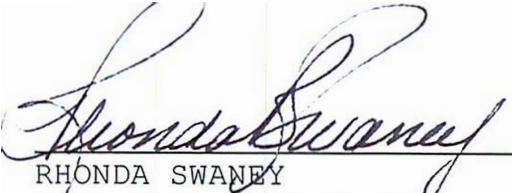
(2) If to the State:


Marc Racicot
Governor of the State of Montana
Capitol Station
Helena, MT 59620

or to such other address or addresses as either the Tribes or the State may from time to time designate in writing.

**CONFEDERATED SALISH AND
KOOTENAI TRIBES:**

STATE OF MONTANA:

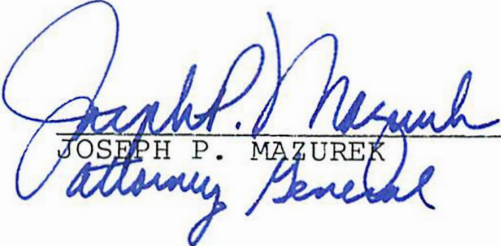

RHONDA SWANEY
Tribal Council Chairwoman


MARC RACICOT
Governor of the State

Date: 3-14-97

Date: 3-13-97

APPROVED:


JOSEPH P. MAZUREK
Attorney General

Consistent with 25 U.S.C.A. Sec. 2710 (d) (8), the Interim Agreement Between the Confederated Salish and Kootenai Tribes of the Flathead Nation and the State of Montana Concerning Class III Gaming dated March 14, 1997, is hereby approved on the 8th day of May, 1997, by the Assistant Secretary - Indian Affairs, United States Department of the Interior.

Ada E. Deer

Ada E. Deer
Assistant Secretary - Indian Affairs