



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

DEC 15 2017

The Honorable Lynn R. Valbuena
Chairwoman, San Manuel Band of Mission Indians
26569 Community Center Drive
Highland, California 92346

Dear Chairwoman Valbuena:

On October 5, 2017, the Department of the Interior (Department) received the Amendment to the Tribal-State Compact (Amendment) between the State of California (State) and the San Manuel Band of Mission Indians (Tribe).

DECISION

Under the Indian Gaming Regulatory Act (IGRA), the Secretary of the Interior (Secretary) may approve or disapprove a proposed compact within 45 days of its submission. 25 U.S.C. § 2710 (d)(8). If the Secretary does not approve or disapprove the proposed compact within 45 days, IGRA states that the compact is considered approved by the Secretary, "but only to the extent the Compact is consistent with the provisions of [IGRA]." 25 U.S.C. § 2710 (d)(8)(C).

We undertook a thorough review of the Amendment and the additional materials submitted by the parties. While we have concerns with some provisions in the Amendment, we have taken no action within the prescribed 45-day review period. As a result, the Amendment is "considered to have been approved by the Secretary, but only to the extent [it] is consistent with the provisions of [IGRA]." 25 U.S.C. § 2710(d)(8)(C). We proceed in this "deemed approved" manner because the Amendment contains provisions that appear to give the State broad authority over non-gaming activities, such as a hotel and on-reservation development and thus may exceed the lawful scope of State authority in gaming compacts under IGRA.

The Amendment takes effect upon the publication of notice in the Federal Register pursuant to Section 11(d)(3)(8) of IGRA, 25 U.S.C. § 2710(d)(3)(8); 25 C.F.R. § 293.15. We have set forth an explanation of our concerns below.

DISCUSSION

We briefly address an issue related to a jurisdictional concern and the permissible and impermissible subjects of compact negotiation

The Amendment contains provisions that implicate the limitations on compact negotiations prescribed by Congress in IGRA. The IGRA established a statutory scheme that limited tribal gaming and sought to balance tribal, state, and Federal interests in regulating gaming activities on Indian lands. To ensure this balance, Congress limited the subjects over which tribes and

states could negotiate a class III gaming compact.¹ Congress also sought to establish "boundaries to restrain aggression by powerful states."² The legislative history of IGRA indicates that "compacts [should not] be used as subterfuge for imposing state jurisdiction on tribal lands."³ We conduct our review of tribal-state gaming compacts against this legislative history.

When we review a tribal-state compact or amendment submitted under IGRA, we look to whether the provisions fall within the scope of categories prescribed at 25 U.S.C. § 2710(d)(3)(C). One of the most challenging aspects of this review is determining whether a particular provision falls within the "catch-all" category at § 2710 (d)(3)(C)(vii): "... subjects that are directly related to the operation of gaming activities." In this case, we are concerned that the Amendment exceeds the boundaries of this provision.

The amendment to Section 4.2 purports to allow the Tribe to build or locate on its trust lands that are contiguous to the Tribe's Indian lands "all rooms, buildings, and areas, including hotels, parking lots, and walkways, a principal purpose of which is to serve the activities of the Gaming Operation and Gaming Facility rather than providing them with an incidental benefit, and in which no gaming is conducted." 2017 Amended Compact § 4.2. We are concerned that the Amendment appears to regulate tribal activities that are not directly related to the conduct of class III gaming.

Because IGRA is very specific about the reach of a lawful compact, we believe that this provision must be interpreted to apply only to spaces in which gaming actually takes place, to spaces in which gaming-related funds or devices are kept, to spaces in which other activities directly related to gaming occur, and to spaces occupied or frequented by employees who work within the confines of the gaming operation. We reiterate that only activities directly related to the operation of gaming are proper subjects for tribal-state gaming compacts. Nothing in IGRA or its legislative history indicates that Congress intended to allow tribal-state gaming compacts to be used to expand state regulatory authority over tribal activities that are not directly related to the conduct of class III gaming.

¹ Pursuant to IGRA, a tribal-state compact may include provisions relating to:

- (i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for the licensing and regulation of such activity;
- (ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;
- (iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;
- (iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;
- (v) remedies for breach of contract;
- (vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and
- (vii) any other subjects that are directly related to the operation of gaming activities.

25 U.S.C. § 2710(d)(3)(C).

² *Rincon Band of Luiseno Mission Indians of the Rincon Reservation v. Schwarzenegger*, 602 F.3d 1019, 1027 (citing S. Rep. No. 100-446 at 33 (1988) (statement of Sen. John McCain) (9th Cir. Cal. 2010) cert. denied at *Brown v. Rincon Band of Luiseno Mission Indians of the Rincon Reservation*, 131 S. Ct. 3055(2011).

³ See S. Rep. No. 100-446 at 14.

Although we decline to use our authority to disapprove the Amendment, we caution the parties to avoid applying these provisions in a manner that does not directly relate to the operation of gaming activities. To do so would violate the express provisions of IGRA that limit the scope of tribal-state gaming compacts, and would, therefore, be unlawful.

CONCLUSION

We undertook a thorough review of the Amendment and the additional materials submitted by the Tribe, and decided to take no action within the prescribed 45-day review period. As a result, the Amendment is "considered to have been approved by the Secretary, but only to the extent [it] is consistent with the provisions of [IGRA]." 25 U.S.C. § 2710(d)(8)(c).

The Amendment is effective upon the publication of notice in the Federal Register as required by 25 U.S.C. § 2710(d)(3)(8).

A similar letter is being sent to the Honorable Jerry Brown, Governor of California.

Sincerely,



John Tahsuda
Principal Deputy Assistant Secretary – Indian Affairs
Exercising the Authority of the Assistant Secretary –
Indian Affairs

Enclosure

**AMENDMENT TO THE
TRIBAL-STATE GAMING COMPACT
BETWEEN
THE STATE OF CALIFORNIA
AND THE
SAN MANUEL BAND OF MISSION INDIANS**

**AMENDMENT to the
TRIBAL-STATE GAMING COMPACT
Between the
STATE OF CALIFORNIA
and the
SAN MANUEL BAND OF MISSION INDIANS**

The San Manuel Band of Mission Indians, a federally recognized Indian tribe (Tribe), and the State of California (State) enter into this Amendment to the Tribal-State Compact Between the State of California and the San Manuel Band of Mission Indians pursuant to the Indian Gaming Regulatory Act of 1988 (IGRA) and section 15.1 of the Tribal-State Compact Between the State of California and the San Manuel Band of Mission Indians (2016 Compact).

PREAMBLE

WHEREAS, the Tribe has inhabited the San Bernardino highlands, passes, valleys, mountains and high deserts since time immemorial; and

WHEREAS, the Tribe is committed to improving the environment, educational attainment, and the health, safety, and general welfare of its members and the surrounding communities; and

WHEREAS, in 1999, the Tribe and the State entered into the “Tribal-State Compact between the State of California and the San Manuel Band of Mission Indians” (1999 Compact) to, among other things, enable the Tribe to achieve economic self-reliance, provide essential services to its citizens, and build a strong tribal government; and

WHEREAS, in 2006, the Tribe and the State entered into the Amendment to the 1999 Compact (2006 Amended Compact) that allowed the Tribe to meet additional market demand and significantly increased the Tribe’s revenue payments to the State; and

WHEREAS, in 2016, the Tribe and the State entered into negotiations to amend the 2006 Amended Compact, which resulted in the 2016 Compact; and

WHEREAS, since 1999, in furtherance of its stated objectives of achieving economic self-reliance, providing essential services to its citizens, building a strong tribal government, improving the environment, educational attainment, and the health, safety, and general welfare of its members and the surrounding communities, and in reliance on the terms and conditions set forth in the 1999 Compact, 2006 Amended Compact, and 2016 Compact, the Tribe has made substantial investments on its trust lands related to the development of its gaming facility and gaming-related infrastructure and amenities, all of which inure to the benefit of the tribal government, its citizens, and the surrounding communities; and

WHEREAS, section 15.1 of the 2016 Compact provides that it may be amended upon written agreement of both parties, and the parties agreed in writing to negotiate regarding amending the 2016 Compact to resolve any ambiguity that may exist relative to the use of certain tribal trust lands; and

WHEREAS, the State and the Tribe share an interest in avoiding any ambiguity relative to the use of certain tribal trust lands; and

WHEREAS, the State and the Tribe recognize that this amendment is authorized and negotiated and shall take effect pursuant to IGRA; and

WHEREAS, the State and the Tribe agree that all terms of this Amendment to the 2016 Compact (collectively, 2017 Amended Compact) are intended to be binding and enforceable.

NOW, THEREFORE, the Tribe and the State agree to amend the 2016 Compact as set forth herein:

Section 4.2 of the 2016 Compact is repealed and is replaced as follows:

The Tribe may establish and operate not more than two (2) Gaming Facilities within which to offer Gaming Activities and if the Tribe chooses to operate more than one (1) Gaming Facility, then one (1) of the two (2) Gaming Facilities shall have no more than one thousand (1,000) Gaming Devices. The Tribe's Gaming Facilities may be located only on the Tribe's Indian lands on which Class III Gaming may lawfully be conducted under IGRA as those Indian lands exist on the effective date of this Compact. Notwithstanding anything to the contrary in this Compact, including section 4.2, subdivision (a) herein, all rooms, buildings, and areas, including hotels, parking lots, and walkways, a principal

purpose of which is to serve the activities of the Gaming Operation and Gaming Facility rather than providing them with an incidental benefit, and in which no gaming is conducted, may be located on lands held in trust for the Tribe as of the effective date of this 2017 Amended Compact which are contiguous to the aforesaid Indian lands.

- (a) To ensure that a new Gaming Facility is on Indian lands that reflect the Tribe's and the State's agreement regarding the Tribe's land that is eligible for that purpose, for those parcels of land taken into trust for the Tribe after October 17, 1988 the Tribe shall, no later than ninety (90) days prior to the commencement of a Project to construct the Gaming Facility, provide written notice to the State, along with documentation adequate to support the Tribe's determination that the Gaming Facility will be located on property that is Indian lands eligible for Class III Gaming within the meaning of IGRA and this section 4.2.
- (b) The parties shall meet within thirty (30) calendar days of the State's receipt of the Tribe's notice and documentation to confirm that the parcel or parcels were Indian lands eligible for gaming as of the effective date of this Compact. If the State determines that the parcel or parcels do not meet the necessary criteria, or that it has not received documentation adequate for purposes of making that determination, then it may institute the dispute resolution process set forth in section 13.0 to resolve whether the parcel or parcels meet the requirements of this section.
- (c) If the State fails to respond to the Tribe's notice and documentation within thirty (30) days of receipt, refuses to meet, or fails within fifteen (15) days after the meeting to initiate the dispute resolution process, then the Tribe may institute the dispute resolution process set forth in section 13.0 to resolve whether the parcel or parcels meet the requirements of this section before a Gaming Facility may be constructed thereon.

A new Section 18.9 is hereby added as follows:

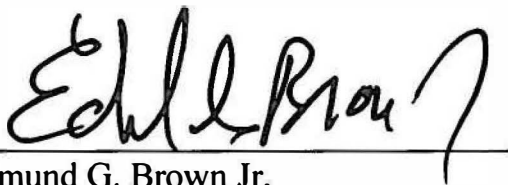
Sec. 18.9. Representations.

- (a) The Tribe expressly represents that as of the date of the undersigned's execution of this 2017 Amended Compact, the undersigned has the authority to execute this 2017 Amended Compact on behalf of the Tribe, including any waiver of sovereign immunity and the right to assert sovereign immunity therein, and will provide written proof of such authority and of the ratification of this 2017 Amended Compact by the tribal governing body to the Governor no later than thirty (30) days after the execution of this 2017 Amended Compact by the undersigned.
- (b) The Tribe further represents that it is (i) recognized as eligible by the Secretary of the Interior for special programs and services provided by the United States to Indians because of their status as Indians, and (ii) recognized by the Secretary of the Interior as possessing powers of self-government.
- (c) In entering into this 2017 Amended Compact, the State expressly relies upon the foregoing representations by the Tribe, and the State's entry into the 2017 Amended Compact is expressly made contingent upon the truth of those representations as of the date of the Tribe's execution of this 2017 Amended Compact through the undersigned. If the Tribe fails to timely provide written proof of the undersigned's aforesaid authority to execute this 2017 Amended Compact or written proof of ratification by the Tribe's governing body, the Governor shall have the right to declare this 2017 Amended Compact null and void.

- (d) This 2017 Amended Compact shall not be presented to the California State Legislature for a ratification vote until the Tribe has provided the written proof required in subdivision (a) to the Governor.

IN WITNESS WHEREOF, the undersigned sign this Amendment to the Tribal-State Compact Between the State of California and the San Manuel Band of Mission Indians on behalf of the State of California and the San Manuel Band of Mission Indians.

STATE OF CALIFORNIA



Edmund G. Brown Jr.
Governor of the State of California

Executed this 18th day of August,
2017, at Sacramento, California.

SAN MANUEL BAND OF
MISSION INDIANS



Lynn R. Valbuena
Chairwoman of the San Manuel
Band of Mission Indians

Executed this 8th day of August,
2017, at San Manuel Reservation,
California.

ATTEST:



Alex Padilla
Secretary of State, State of California

