United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

TAKE PRIDE IN AMERICA

NOV 30 2001

Honorable Fred D. Matt
Chairman
Confederated Salish and Kootenai
Tribes of the Flathead Nation
P.O. Box 278
Pablo, Montana 59855

Dear Chairman Matt:

On October 17, 2001, we received the Compact between the Confederated Salish and Kootenai Tribes of the Flathead Nation (Tribe) and the State of Montana (State), dated October 12, 2001. 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.

Notwithstanding our approval of the Compact, Section IV (B) and (C) are unclear. To clarify please be advised that Section 2710 (b)(4)(A) of IGRA may require a "tribal ordinance or resolution" to provide for the licensing or regulation of gaming owned by any person or entity other than the Indian tribe conducting gaming on Indian lands. Although Section IV (B) seems to allow the State to "license, regulate, and enforce state law both civil and criminal, exclusive of the Tribe...for all gaming on the Reservation...within the Reservation on fee lands," we do not intend for this approval to circumvent specific provisions of IGRA.

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

Sincerely,

Neal A McCaleb

Assistant Secretary - Indian Affairs

Enclosure

Similar Letter Sent to: Honorable Judy Martz
Governor of Montana
Helena, Montana 59620-0801

cc: Northwest Regional Director w/copy of approved Compact
National Indian Gaming Commission w/copy of approved Compact
Montana United States Attorney w/copy of approved Compact

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved tribal-state compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Compact between the Jicarilla Apache Nation and the State of New Mexico, which was executed on November 7, 2001.

DATES: This action is effective January 15, 2002.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: December 21, 2001.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–904 Filed 1–14–02; 8:45 am]

BILLING CODE 4310–4N–M

AGREEMENT

BETWEEN THE

CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD NATION

AND THE

STATE OF MONTANA

CONCERNING CLASS III GAMING

I. AUTHORITY

This 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. §2701 et seq. ("IGRA"). The Tribes are authorized to enter into this Agreement by Resolution No. 02-05 enacted on October 9, 2001. 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 18-11-112, MCA).

II. PURPOSE

A. The purpose of this Agreement is to provide the terms and conditions for 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 the 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 compact pending resolution of the above mentioned areas of dispute. The terms of this 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 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 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 of 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. 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.

IV. 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, corporations incorporated under Tribal law, 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. 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 on lands held in trust within the Reservation.

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 or corporations incorporated under State law 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 or a corporation incorporated under State law; 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, an Indian, or a corporation incorporated under Tribal law.

D. The jurisdiction of any class III raffle shall be determined by the jurisdiction controlling the site of the drawing of the prize ticket. Jurisdiction shall be determined consistent with the terms contained in this Article IV.

V. PERMITTED GAMING

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

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.

VI. 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 on the reservation a maximum number of video gambling machines equal to the number of video gambling machines permitted by the state for operation within the Flathead Reservation. For the twelve-month period beginning December 1, 2001 the maximum number of machines shall be 331 video gambling machines. For the twelve-month period beginning December 1, 2002 and thereafter the maximum number of video gambling machines shall be the number of machines permitted by the State on October 1, of that year but not less than 331machines. The State shall provide the Tribes with a written notification of the number of permitted machines, no later than October 15 of each year. The Tribes shall provide to the State, prior to November 1 of each year, a written notification of the number of video gambling machines available for play as of October 1 of that year.

(2) Prize limits at tribally owned premises may not exceed a value higher than $ 1500.00 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 Tribes shall provide the State written notice at least 60 days prior to

the operation of such facilities. The notice shall provide the location, number of machines and a general description of the proposed facility.

VII. 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.

VIII. 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.

IX. 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 §18-1-404 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 provide the State 90-days 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.

X. 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 five calendar years from date of full execution, unless terminated earlier in accordance with Article X above. Upon expiration of this Agreement, or at any time after three calendar years from the date of full execution 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.

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:

D. Fred Matt
Chairman
Confederated Salish and Kootenai Tribes
P.O. Box 278
Pablo, MT 59855

(2) If to the State:

Judy Martz
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

D. FRED MATT
Tribal Council Chairman

Date 10/9/01

STATE OF MONTANA

JUDY MARTZ
Governor of the State

Date 10/12/01

APPROVED:

MIKE MCGRATH

DEPARTMENT OF THE INTERIOR

Neal A. McCaleb
Assistant Secretary - Indian Affairs

Date NOV 30 2001