United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

TAKE PRIDE IN AMERICA

MAR - 1 1994

Honorable Wilbur Wilkinson
Chairman, Tribal Business Council
Three Affiliated Tribes
HC3 Box 2
New Town, North Dakota 58763-9402

Dear Chairman Wilkinson:

We have received the Pari-Mutuel Racing Addendum to the Gaming Compact Between the Three Affiliated Tribes (Tribe) and the State of North Dakota (State), dated April 14, 1993.

We have reviewed the Addendum and conclude that it does not violate the Indian Gaming Regulatory Act (IGRA), Federal law, or our trust responsibility. Therefore, pursuant to my delegated authority and Section 11 of the IGRA, we approve the Addendum. The Addendum shall take effect when notice of our approval, pursuant to Section 11(d)(3)(B) of the IGRA (25 U.S.C. § 2710(d)(3)(B)), is published in the FEDERAL REGISTER.

Notwithstanding our approval of the Addendum, be advised that Section 11(d)(1) of the IGRA (25 U.S.C. §2710(d)(1)) requires that gaming cannot be conducted without a tribal gaming ordinance approved by the Chairman of the National Indian Gaming Commission (NIGC). On July 8, 1992, the NIGC published in the FEDERAL REGISTER proposed regulations to govern approval of Class II and Class III gaming ordinances. The final regulations were published in the FEDERAL REGISTER on January 22, 1993 (58 Fed. Reg. 5802), and became effective on February 22, 1993. Under the statute and regulations, even previously existing gaming ordinances must be submitted to the NIGC for approval when requested by the Chairman.

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In addition, if the Tribe intends to enter into a management contract for the operation and management of the Tribe's gaming facility, such contract must 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. The Tribe may want to contact the NIGC at (202) 632-7003 for further information on submitting the ordinance and the management contract for approval by the NIGC.

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

Sincerely,

/S/ Ada E. Deer

Ada E. Deer
Assistant Secretary - Indian Affairs

Enclosures

Identical Letter Sent to: Honorable Edward T. Schafer
Governor of North Dakota
600 E. Boulevard Avenue
Bismarck, North Dakota 58505

cc: Aberdeen Area Director, w/copy of approved Addendum
Supt. Fort Berthold Agency, w/copy of approved Addendum
National Indian Gaming Commission w/copy of approved Addendum
Twin Cities Field Solicitor's Ofc w/copy of approved Addendum
North Dakota United States Attorney w/copy of approved Addendum

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved addendum to Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), 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 (casino) gaming on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Pari-Mutuel Racing Addendum to the Gaming Compact Between the Three Affiliated Tribes and the State of North Dakota, which was executed on April 14, 1993.

DATES: This action is effective March 10, 1994.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: March 1, 1994.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 94–5465 Filed 3–9–94; 8:45 am]

BILLING CODE 4310–02–P

PARI-MUTUEL RACING ADDENDUM
TO
GAMING COMPACT
BETWEEN THE
THREE AFFILIATED TRIBES
AND
THE STATE OF NORTH DAKOTA

WHEREAS, the State of North Dakota (hereinafter "State") and the Three Affiliated Tribes on the Fort Berthold Reservation as defined by the compact (hereinafter "Tribe" and "Reservation") have previously negotiated and executed a Class III gaming compact entitled "Gaming Compact Between the Three Affiliated Tribes and the State of North Dakota" (hereinafter "the Compact") dated October 7, 1992; and,

WHEREAS, section 3.1(g) of the Compact "Kinds of Gaming Authorized" includes "pari-mutuel and simulcast betting pursuant to a separate agreement between the parties as an Addendum to this Compact"; and,

WHEREAS, the State of North Dakota permits and regulates pari-mutuel wagering on horse racing at authorized simulcast and live racing and wagering facilities at various locations within the state, under the terms of chapter 53-06.2, North Dakota Century Code (pari-mutuel horse racing) and title 69.5, North Dakota Administrative Code (Racing Commission, North Dakota); and,

WHEREAS, the North Dakota Racing Commission ("Commission") is the agency established under North Dakota State law to administer and enforce all laws, rules, and regulations affecting horse racing and pari-mutuel wagering within the state; and,

WHEREAS, operation of a simulcast or live racing and wagering facility is a Class III gaming activity under the Indian Gaming Regulatory Act; and,

WHEREAS, the Tribe has duly enacted a tribal ordinance permitting such gaming activities on and within the Reservation if conducted in conformity with an applicable Tribal-State Compact; and,

WHEREAS, the Tribe and the State each recognize the sovereign authority and interests of the other in regulating gaming activities within their respective areas of jurisdiction and ensuring that simulcast and live wagering is conducted fairly, honestly, professionally, and in a manner that promotes the North Dakota horse racing industry; and,

WHEREAS, the parties hereto deem it to be in their respective best interest to enter into this Addendum for the purpose set forth herein and in furtherance of the Compact; and,

WHEREAS, the Commission has recommended the approval and execution of this Compact by the Governor on behalf of the State of North Dakota; and,

WHEREAS, the Tribe and the State each wish to develop and maintain coordinated and viable live horse racing and simulcast racing industries within the state of North Dakota, including upon the Indian Reservations located within the state;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows:

I. DEFINITIONS.

1.1 General Definitions. Except where the context otherwise requires, the terms employed in this Addendum shall have the same meaning ascribed to them in 1992 North Dakota horse racing law and the rules and regulations of the Commission and the Class III Gaming Compact between the State and the Tribe.

1.2 Additional Definitions.

A. Commission shall mean the North Dakota Racing Commission, the agency established under North Dakota State law to administer and enforce all laws, rules, and regulations affecting horse racing and pari-mutuel wagering within the state.

B. Live Racing Service Provider appointed by the Tribe shall mean such service provider as may be appointed by the Tribe to render primary services to the Tribe relating to the conduct of live racing.

C. North Dakota Racing Service Provider shall mean the party licensed by the North Dakota Racing Commission pursuant to title 69.5, North Dakota Administrative Code, to provide services to live horse racing meets within the state of North Dakota.

D. Simulcast shall mean the simultaneous video transmission and projection of a racing event occurring elsewhere.

E. Simulcast Service Provider appointed by the Tribe shall mean such service provider as may be appointed by the Tribe to render primary services to the Tribe relating to the conduct of simulcast of racing events.

F. North Dakota Simulcast Service Provider shall mean the party licensed by the North Dakota Racing Commission pursuant to title 69.5, North Dakota Administrative Code, to provide primary services to simulcast site licensees within the state of North Dakota.

II. PURPOSE.

The purpose of this Addendum is to establish and declare the terms upon which a simulcast and a live racing and wagering facility may be established and operated upon the Reservation by the Tribe as a means of generating revenues necessary to provide tribal services and programs, while providing the Commission and the Tribe with an effective means of regulating such activities.

IN FURTHERANCE THEREOF, this Addendum, along with the Compact, constitutes the sole expression of the mutual will of the parties concerning the subject to which it pertains.

III. AUTHORIZATION TO OPERATE LIVE AND SIMULCAST RACING AND WAGERING FACILITIES.

The Tribe is authorized to establish and operate:

A. Live horse racing;

B. Such other live racing as may be allowed by law and authorized through action of the North Dakota Racing Commission; and

C. Simulcast of any horse racing event, dog racing event, or of any other racing event allowed by North Dakota law and authorized by the North Dakota Racing Commission;

each together with attendant wagering facilities, within the geographic scope of the Compact as defined at section XXX of the Compact, provided that such facility is operated in conformity with the Indian Gaming Regulatory Act, the Compact, and this Addendum.

IV. EXCLUSIVITY.

Except as provided in the Compact and/or this Addendum, no prohibition upon, regulation, establishment or operation of a live or simulcast racing or wagering facility on the Reservation will be imposed upon the Tribe by the State.

V. PROHIBITION OF STATE TAXATION.

No tax will be imposed by the State on a live or simulcast horse racing and wagering facility established by the Tribe upon the Reservation, or on the operation thereof.

VI. APPROVAL OF FACILITIES.

6.1 Live Racing Facilities. In the event that the Tribe seeks to establish and operate a live racing and wagering facility on the Reservation and decides to have such facility licensed, subject to regulation by the Commission, it shall notify the Commission in writing of this intention. Within 30 days following receipt of this notice, the Commission shall inspect the proposed facility or review plans and specifications as provided by the Tribe. If the Commission finds that the existing or proposed facility complies or will comply with the substantive requirements of title 69.5, North Dakota Administrative Code, Racing Commission, North Dakota, or the then applicable requirements for approving a live racing and wagering facility, and the applicable building and construction code, as set forth by the Tribe, the Commission shall approve and license, subject to applicable regulation, the proposed tribal facility as a live racing facility.

6.2 Simulcast Racing Facilities. If the Tribe decides to have simulcast race wagering on the Reservation licensed and regulated by the Commission, and the Tribe thereafter seeks to establish and operate a simulcast facility within the geographic scope of the Compact as set forth in section XXX of the Compact, the Tribe shall notify the Commission in writing of this intention. Within 30 days following receipt of this notice, the

Commission shall inspect the proposed facility or review plans and specifications as provided by the Tribe. If the Commission finds that the existing or proposed facility complies or will comply with the substantive requirements of title 69.5, North Dakota Administrative Code, Racing Commission, North Dakota, or the then applicable requirements for approving simulcast facilities, and the applicable building and construction code, as set forth by the Tribe, the Commission shall approve and license, subject to applicable regulation, the proposed tribal facility as a simulcast facility.

6.3 Continuing Obligation to Maintain Facilities. The Tribe agrees to maintain its live and simulcast facilities in a manner that complies with all live and simulcast facility requirements at all times.

VII. LIVE RACING EVENTS.

7.1 Conduct of Live Racing. In order to permit the conduct of live racing on the Reservation, the Tribe is hereby authorized to enter into agreements with any service provider which is established pursuant to title 69.5, North Dakota Administrative Code, Racing Commission, North Dakota, or, alternatively, to present live racing events itself as long as they do not allow pari-mutuel wagering at the event. Live racing events shall be limited to horse racing and such other live racing as may hereafter be authorized to be conducted within the state of North Dakota.

The Commission shall require that as a condition of its licensure by the Commission to operate within North Dakota, no such service provider shall refuse to enter into such agreement with the Tribe on the ground that the Tribe is not an entity eligible to be authorized to operate a live race meeting under State law, or that the proposed agreement with the Tribe is otherwise inconsistent with any other provision of State law, or the rules and regulations of the Commission, as long as the proposed agreement between the Tribe and the service provider complies with federal law and with the terms of this Addendum. A copy of any such agreement entered into by the Tribe shall be provided to the Commission subsequent to its execution and prior to commencement of the live race meet. Except as herein provided nothing in the Compact is intended to alter in any way the rights of the service provider under State law. Cost of such licensing and regulation would be actual costs to the Commission and would be paid by the Tribe.

7.2 Live Racing Service Providers. Such live racing service providers as may be appointed by the Tribe shall be subject to the licensing, background investigation, and prohibitions, as applicable, as set forth within sections VIII, IX, X, and XII of the Compact. In addition, if the Tribe decides to apply for Commission licensure of a live race meet, all background investigation and prohibitions normally exercised by the

Commission may be used and which the Commission shall provide in a timely manner similar to all other licensees. In the selection of live racing service providers, the Tribe shall consider and give weight to advantages of maintaining coordination as to racing events within the state of North Dakota.

7.3 Right of Entry. The Tribe hereby grants the Commission a right of entry onto the Reservation for purposes of inspecting its live racing and simulcast facilities and monitoring compliance with this Addendum. Such inspection or other site visits shall be conducted by the Commission in accordance with the same policies, schedules, and procedures that the Commission customarily applies to live racing and simulcast facilities licensed under State law.

7.4 Concurrent Tribal Authority. Unless expressly prohibited under the terms of this Addendum, nothing contained herein shall operate to preclude the Tribe from exercising such additional and concurrent governmental authority as it may otherwise possess over the activities authorized under this Addendum; provided, however, that any regulatory authority exercised by the Tribe shall be no less stringent than that which the Commission would exercise over live racing or simulcast facilities approved under State law.

VIII. SIMULCAST OF RACING EVENTS.

8.1 Simulcast Service Providers. In order to permit the conduct of intrastate simulcast wagering and out-of-state wagering at the tribal simulcast wagering facility, the Tribe is hereby authorized to enter into an agreement with any simulcast service provider which is established pursuant to title 69.5, North Dakota Administrative Code, Racing Commission, North Dakota, and which service provider supplies to North Dakota simulcast operators the audio-visual signal of, and operates simulcast wagering on, racing events authorized by the Commission to be received in North Dakota. The Commission shall require that as a condition of its licensure by the Commission to operate within North Dakota, no simulcast service provider shall refuse to enter into such an agreement with the Tribe on the ground that the Tribe is not an entity eligible to be authorized to operate a simulcast wagering facility under State law, or that the proposed agreement with the Tribe is otherwise inconsistent with any other provision of State law, or with the rules and regulations of the Commission, as long as the proposed agreement between the Tribe and the simulcast service provider complies with federal law and with the terms of this Addendum. A copy of any such agreement entered into by the Tribe shall be provided to the Commission subsequent to its execution and prior to the commencement of simulcast programming. Except as herein provided,

nothing in this Compact is intended to alter in any way the rights of the simulcast service provider under State law.

The Tribe may agree with the Commission to have simulcast race wagering on the Reservation licensed and regulated by the Commission. Cost of such licensing and regulation would be actual costs to the Commission and would be agreed upon between the Tribe and the commission.

8.2 Additional Simulcast Providers. Alternatively, or in addition thereto, the Tribe may itself import signals of racing events occurring outside its Reservation. Such simulcast service providers as may be appointed by the Tribe shall be subject to the licensing, background investigation, and prohibitions as applicable, as set forth within sections VIII, IX, X, and XII of the Compact. In addition, if the Tribe decides to apply for Commission licensure of simulcast racing, all background investigation and prohibitions normally exercised by the Commission may be used. In the selection of simulcast service providers, the Tribe shall consider and give weight to advantages of maintaining coordination among simulcast facilities within the state of North Dakota.

A copy of any agreement entered into by the Tribe with a simulcast service provider shall be provided to the Commission subsequent to its execution and prior to the commencement of simulcast programming.

8.3 Commission Authority. The Commission may, at its option, irrespective of whether the Tribe and the Commission agree to have the Commission license and regulate all aspects of live and simulcast operations, regulate technical specifications of simulcast operations in a manner to assure conformity with North Dakota law and/or industry standards; financial aspects of betting, oddsmaking, and payment in a manner to assure betting integrity; and may, except as to members of the Tribe, undertake a program of licensing employees, and contractors, in similar manner as the Commission undertakes for licensing employees and contractors of non-Tribal racing simulcast operators. Costs associated with such licensing and regulation shall be considered as actual expenses, to the Commission, and shall be paid by the Tribe.

In addition to the foregoing provisions, the Tribe may agree with the Commission to have simulcast pari-mutuel wagering fully licensed and regulated by the Commission, providing, however, that the Tribe requests the Commission to license and regulate live Reservation based racing. Costs, associated with such licensing and regulation, shall be agreed upon between the Tribe and the Commission, and shall be considered as actual expenses to the Commission incurred pursuant to this Addendum and paid by the Tribe.

To the extent that acceptance of interstate off-track wagers is authorized by State law, the execution of this Compact by the State shall constitute consent to acceptance of interstate off-track wagers by the Tribe at the Tribe's simulcast facility, as required under 15 U.S.C. § 3004(a)(3). The North Dakota Racing Commission, if requested, shall acknowledge in writing the consent given herein.

The Tribe shall require, as a condition of contract with any Simulcast Service Provider appointed by the Tribe, that the Simulcast Service Provider, so appointed, agree that throughout such relationship with the Tribe, it shall be licensed by the North Dakota Racing Commission, and on notice of at least ninety (90) days, provide the State of North Dakota with simulcast services equivalent to that provided by the Commission licensed Simulcast Service Provider in the most recent year in which the Commission has licensed such a contractor to service licensees of the Commission, within the state of North Dakota, outside of Indian reservations. Such simulcast services shall be provided under terms and conditions not less favorable to the state's licensed site operators than those in effect during the most recent year between the licensed site operators, and the Commission's licensed simulcast service provider, and shall continue for such period as the Commission may designate, not to exceed, absent agreement by the

Commission and the Simulcast Services Provider, the period of the contractual relationship between the Tribe and the Simulcast Services Provider as to the provision of simulcast services. However, the Simulcast Services Provider need not accept such engagement for a period of less than nine (9) months. Further, after a period of one year of delivery of simulcast services to the state's licensed site operators, the Simulcast Services Provider and the state's licensed site operators shall, should either party request, negotiate an adjustment of fees based upon published United States Government or State of North Dakota economic indicators, including, but not limited to, cost of living statistics.

8.4 Simulcast Monitoring.

a. At such times as the Tribe is under contract for simulcast services from the North Dakota Simulcast Services Provider licensed by the Commission pursuant to title 69.5, North Dakota Administrative Code, and has elected to apply for and has obtained Commission licensure of its simulcast operation, the Commission shall provide, free of charge to the Tribe, the services of the Commission steward assigned to monitor and audit simulcast races provided by the simulcast service provider to all simulcast sites in North Dakota. The simulcast steward will provide to the Tribe and to the Commission weekly reports on all simulcast programs provided to the Tribe by the simulcast organization. The

audit report provided by the Commission steward to the Tribe will be in the form normally used to audit and report on simulcast races at all other sites within North Dakota.

b. Irrespective of whether or not a current contract is in effect for simulcast services between the Tribe and the service provider licensed by the State of North Dakota, the Commission is authorized to monitor and audit simulcast races utilized by the Tribe.

8.5 Licensing of Personnel.

a. Live Racing. Every person employed at a live racing event shall be licensed by the Commission and approved by the Tribe.

b. Simulcast Racing. Every person employed at or by a simulcast site shall be:

1) For individuals who are not enrolled members of the Tribe:

a) licensed by the Tribe after that person met all the requirements for employees as set forth in the Compact, sections VIII, IX, X, and XII.

2) For enrolled members of the Tribe:

a) licensed by the Tribe subject to the requirements as set forth in the Compact for enrolled members, sections VIII, IX, X, and XII.

8.6 Security Control Over Enclosure. The Tribe shall maintain such security controls over its premises for live and simulcast horse racing as the North Dakota Racing Commission's Executive Director shall direct and shall remove, deny access to, eject, or exclude persons whose presence within the premises is inimical to the interests of the State as provided in North Dakota Administrative Code title 69.5, or the interests of the Tribe in operating an honest, legitimate facility.

8.7 Civil Regulation.

a. Generally, except as modified by this Compact, and except to the extent that they are in conflict with the provisions of federal law, the constitution and all statutes of the State of North Dakota specifically pertaining to the conduct of simulcast and live pari-mutuel racing and wagering and all regulations, policies, and regulatory and enforcement practices of the North Dakota Racing Commission or its successor which are now in existence or which may hereafter be enacted, adopted, or from time to time amended and which apply generally to live and simulcast horse racing and wagering facilities within the state, are hereby incorporated into this Addendum and are applicable to live or simulcast horse racing and wagering facilities established or operated by the Tribe on the Reservation and to all persons, entities, and things operating on behalf or under the authority, supervision, direction or control of

the Tribe, its governing body, or any enterprise formed for the purpose of establishing or operating such facility.

b. Nondiscrimination in enforcement. In exercising the regulatory enforcement authority granted herein, such authority and the application of its rules, regulations, and procedures shall be exercised by the Commission in a manner that does not improperly discriminate against the Tribe or is more stringent than that applied to regularly approved simulcast or live horse racing and wagering facilities under normal state jurisdiction.

IX. BREEDERS, PROMOTION AND PURSE FUNDS.

9.1 Tribal Contributions. The Tribe shall make contributions to the Breeders Fund, Promotion Fund, and Purse Fund, each respectively, from pari-mutuel wagers at live racing meets and simulcast racing and wagering facilities, subject to this Addendum. Said contributions shall, except as otherwise provided herein, be the same as that provided for under State law for simulcast and live horse racing and wagering facilities in the state of North Dakota.

9.2 Disbursements from Special Fund. The Tribe shall have full access to and may apply for disbursement from the purse, breeders, and/or promotion special funds established and administered by the Commission, and associated with live and simulcast racing. Access and availability to the funds shall be under the same

parameters, procedures, and constraints as other eligible entities operating within North Dakota. It is understood, however, that monies from the promotion fund which the Commission designates for advertising and promotion of the racing industry shall be utilized to promote and/or develop live and simulcast racing by Indian tribes at reservation locations collectively in roughly the same proportion as tribal contributions bear to total contributions. Equipment purchased for common usage using promotion fund monies shall be reasonably available to all participants in the special funds. The Tribe shall have the opportunity to review promotional material developed for distribution.

X. USAGE OF ESCROW ACCOUNT FOR STATE EXPENSES.

The Escrow Fund established and maintained by the Tribe for State expenses pursuant to section XXV of the Compact may be utilized by the Racing Commission in accordance with the procedures therein specified, for reimbursement of expenses incurred, pursuant to this Addendum.

XI. The State shall not enter into any agreement with any third party granting territorial exclusivity associated with racing or simulcast within the geographic scope of the Compact as set forth at section XXX.

XII. SOVEREIGN IMMUNITY.

12.1 Tribe. Nothing in this Addendum shall be deemed to be a waiver of the sovereign immunity of the Tribe.

12.2. State. Nothing in this Addendum shall be deemed to be a waiver of the sovereign immunity of the State.

XIII. IGRA REMEDIES PRESERVED.

Nothing in this Addendum shall be construed to limit the rights or remedies available to the parties under the Indian Gaming Regulatory Act, 25 U.S.C. § 2701, et seq.

XIV. INCORPORATION OF COMPACT TERMS GENERALLY.

Except as otherwise provided or qualified within the Addendum, the terms of the Class III Gaming Compact between the Tribe and the State shall be fully applicable to the subject matter of this Addendum.

XV. DISPUTE RESOLUTION.

If either party believes that the other party has failed to comply with any requirement set forth within this Addendum, it may invoke the Dispute Resolution procedures as set forth at article XXVII of the Compact.

XVI. TERM OF ADDENDUM.

Unless terminated and/or amended by mutual consent of the parties, with approval by the United States Secretary of Interior, the duration of this Addendum shall be simultaneous with that of the Compact as set forth at section XXIX of the Compact.

XVII. ENTIRE AGREEMENT.

This Addendum contains the entire agreement of the parties hereto with respect to the matters covered by this Addendum and no other statement, agreement, or

promise made by any party, officer, or agent of any party, shall be valid or binding.

XVIII. AUTHORITY TO EXECUTE.

Each of the undersigned represents to each of the other parties that he or she is duly authorized and has the authority to execute this agreement on behalf of the party for which he or she is signing.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed as of the day and year first written below.

THREE AFFILIATED TRIBES

Dated 14 April, 1993.

BY Wilbur Wilkinson
Wilbur Wilkinson, Chairman

STATE OF NORTH DAKOTA

Dated 14 April, 1993.

BY Edward T. Schafer
Edward T. Schafer, Governor

DEPARTMENT OF THE INTERIOR

Dated 3-1-94

BY Ada E. Deer
Ada E. Deer
Assistant Secretary - Indian Affairs