United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

AUG 13 2003

Honorable Joan Delabreau
Chairman, Menominee Indian Tribe of Wisconsin
P.O. Box 910
Keshena, Wisconsin 54135-0910

Dear Chairman Delabreau:

On April 29, 2003, we received the 2003 Amendments (Amendments) to the Menominee Indian Tribe of Wisconsin and the State of Wisconsin Gaming Compact of 1992, executed on April 25, 2003.

Under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2710(d)(8)(C), the Secretary of the Interior (Secretary) may approve or disapprove the Amendments within forty-four days of its submission. If the Secretary does not approve or disapprove the Amendments within the forty-four days, IGRA provides that the Amendments are considered to have been approved, but only to the extent that they are consistent with the provisions of IGRA. Under IGRA, the Secretary can disapprove the Amendments if she determines that the Amendments violate IGRA any provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or the trust obligations of the United State to Indians.

We have completed our review of the Amendments, along with the submission of additional documentation submitted by the parties and a number of third parties. Pursuant to Section 11 of IGRA, we have decided to allow the 2003 Amendments to take effect without Secretarial action for the following reason.

Under the 2003 Amendments, Section IV.A of the Compact is amended by adding, *inter alia,* electronic keno, roulette, craps, poker and similar non-house banked card games, and games played at blackjack style tables. We need to determine whether the inclusion of these gaming activities in the Compact complies with the requirements of Section 11(d)(1)(B) of IGRA. In our view, whether the addition of electronic keno and casino table games complies with the Section 11(d)(1)(B) of IGRA, Section U.S.C. § 2710(d)(1)(B), which requires that such gaming activities be permitted in the State of Wisconsin "for any purpose by any person, organization, or entity" is an unsettled issue. As you are well aware, the scope of gaming question is one of the issues raised in the state court litigation in *Dairyland Greyhound Park v. Doyle,* No. 01-CV-2906. In addition, we understand that a petition has been filed with the Wisconsin Supreme Court on April 2, 2003, by the Majority Leader of the Wisconsin Senate and the Speaker of the Wisconsin Assembly seeking a declaratory judgement on several issues relating to the 2003 Amendments, including the permitted scope of

gaming in the State. Although we are mindful that in the *Dairyland* case, the Dane County Circuit has ruled in favor of the Governor, the decision has been appealed to an intermediate court which is unlikely to be the final appeal of the case within the State court system. As a result, we believe that the best alternative available to the Department of the Interior under IGRA is to have the 2003 Amendments go into effect by operation of law.

Our decision to neither approve nor disapprove the 2003 Amendments within 45 days means that the 2003 Amendments are considered to have been approved, "but only to the extent they are consistent with the provisions of [IGRA]." The Amendments will take effect when notice is published in the FEDERAL REGISTER pursuant to Section 11(d)(3)(B) of IGRA, 25 U.S.C. § 2710(d)(3)(B).

Sincerely,

/sgd/ Theresa Rosier

for Deputy Assistant Secretary - Indian Affairs

Similar letter sent to: Honorable Jim Doyle
Governor of Wisconsin
State Capitol
Madison, Wisconsin 53707

cc: Midwest Regional Director
National Indian Gaming Commission
Wisconsin United States Attorney