



# United States Department of the Interior



OFFICE OF THE SECRETARY  
Washington, D.C. 20240

NOV 21 2001

Honorable Gary Johnson  
Governor of New Mexico  
State Capitol  
Santa Fe, New Mexico 87503

Dear Governor Johnson:

On October 10, 2001, we received the Tribal-State Compacts between the State of New Mexico (State) and the Pueblos of Isleta, Laguna, Sandia, San Juan, Santa Ana, Santa Clara, and Acoma (Tribes). The compacts for the Pueblos of Isleta, Laguna, Sandia and San Juan, were executed on October 5, 2001, the compacts for the Pueblos of Santa Ana and Santa Clara were executed on October 2, 2001, and the compact for the Pueblo of Acoma was executed on October 3, 2001.

On October 25, 2001, we sent a letter to the Governor of the State of New Mexico and to the Governors of all seven Indian tribes, seeking clarification on several provisions of the compacts. The responses we have received from the State and the Indian tribes have resolved the questions we had with respect to the various issues raised.

We have completed our review of these compacts and conclude that they do not violate the Indian Gaming Regulatory Act of 1988 (IGRA), Federal law, or our trust obligation. Therefore, pursuant to delegated authority and Section 11 of IGRA, based on a full review of the record and the law we approve the compacts. The compacts will take effect when notice of our approval, pursuant to 25 U.S.C. § 2710(d)(3)(B), is published in the FEDERAL REGISTER. This approval is not intended to be an indication that the sixteen percent payment required under the 1997 compacts comport with the requirements of IGRA.

The Department has approved more than 200 tribal-state compacts to date. Only a few have called for tribal payments to States other than for direct expenses to defray the costs of regulating a gaming activity under the compact.

The Department has limited the circumstances under which Indian tribes can make direct payments to a State for purposes other than defraying the costs of regulating Class III gaming activities. To date, the Department has approved payments to a State only when the State has agreed to provide substantial exclusivity for Indian gaming. As a matter of policy, the Department has determined that it will not approve compacts that call for tribal payments in exchange for less than substantial exclusivity for Indian gaming. In addition, the Department has a trust obligation to Indian tribes to ensure that the benefit received by the State under the proposed compact is appropriate in light of the benefit conferred on the tribe.

Section 11 of the compacts provides that the tribes shall pay to the State an amount equal to eight percent of the Net Win in return for which the State agrees that the tribes have the exclusive right within the State to conduct all types of Class III gaming, with the sole exception of the use of Gaming Machines permitted for racetracks and for veterans' and fraternal organizations.

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Though there is no express cap on the number of gaming machines that could be authorized at racetracks and veterans and fraternal organizations within the compact, we are persuaded that the tribes have substantial exclusivity for the following reasons.

First, with the possible exception of table games at charity casino nights, Indian casinos are the only entities in the state that are entitled to table and card games. Even the exempted entities (racetracks, veterans and fraternal organizations) are limited to slot machines.

Second, the tribes are entitled to an unlimited number of slot machines and the ability of exempted entities to operate slot machines remains limited. Only four racetracks exist in the State with only two within 100 miles of any tribal gaming facility. Thus, geographic exclusivity supports the tribes' view that tracks are not a significant competitive force in the market. In addition, not every veterans and fraternal organization may offer slot machines to every consumer, only those organizations that were in existence on January 1, 1997, and then only for the members and the members' spouses. Moreover, the hours, days and number of slot machines that can be operated is subject to legislative approval and any increases will also require statutory amendments. Further, as the parties have implicitly acknowledged, the likelihood of opening new racetracks is very small given the significant barriers to operation such as licensing requirements, limitation on gaming machines and market conditions. Consequently, we believe the existence of substantial exclusivity remains in this market.

Moreover, it is important to note the present day gaming regime wherein, pursuant to state law, each racetrack is currently limited to a maximum of 600 slot machines (or a maximum of 750 pursuant to an allocation agreement between racetracks) and the veterans and fraternal organizations can only operate 15 per organization.

Finally, the tribes have repeatedly and unequivocally assured the Department that this compact, unlike the 1997 compact, is the product of fully voluntary arms-length bilateral negotiations between the State and the tribes. Therefore, notwithstanding our initial scrutiny of Section 11 of the compact, we believe that the tribes and the State have demonstrated that there is substantial exclusivity in exchange for the payments provided for in the compact.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Alan A. McCabe". The signature is fluid and cursive, written in a professional style.

Assistant Secretary - Indian Affairs

Enclosure

Similar Letter Sent to:

Honorable Cyrus J. Chino  
Governor  
Pueblo of Acoma  
P.O. Box 309  
Acoma, New Mexico 87034

Honorable Alvino Lucero  
Governor  
Pueblo of Isleta  
P.O. Box 1270  
Isleta, New Mexico 87022

Honorable Harry D. Early  
Governor  
Pueblo of Laguna  
P.O. Box 194  
Laguna, New Mexico 87026

Honorable Wilfred Garcia  
Governor  
Pueblo of San Juan  
P.O. Box 1099  
San Juan Pueblo, New Mexico 87566

Honorable Stewart Paisano  
Governor  
Pueblo of Sandia  
P.O. Box 6008  
Bernalillo, New Mexico 87004

Honorable Bruce Sanchez  
Governor  
Pueblo of Santa Ana  
2 Dove Road  
Bernalillo, New Mexico 87004

Honorable Denny Gutierrez  
Governor  
Pueblo of Santa Clara  
P.O. Box 580  
Española, New Mexico 87532

cc: Southwest Region Director w/copy of approved Compact  
National Indian Gaming Commission w/copy of approved Compact  
Southwest Regional Field Solicitor w/copy of approved Compact  
New Mexico United States Attorney w/copy of approved Compact