DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming; Rosebud Sioux Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved 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) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Gaming Compact Between the Rosebud Sioux Tribe and the State of South Dakota, enacted on February 4, 1993.

DATES: This action is effective April 14, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gami Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4068.

Dated: April 6, 1993.

Stan Speaks,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–8676 Filed 4–13–93; 8:45 am

BILLING CODE 4310-02-M

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

TAKE PRIDE IN AMERICA

APR 0 3 1993

Honorable Alex J. Lunderman
President, Rosebud Sioux
Tribal Council
Rosebud, South Dakota 57570

Dear President Lunderman:

On February 22, 1993, we received the Gaming Compact Between the Rosebud Sioux Tribe (Tribe) and the State of South Dakota (State).

We have reviewed the Compact 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 Compact. The Compact shall take effect when notice of our approval, pursuant to Section 11(d)(3)(B) of the IGRA, is published in the FEDERAL REGISTER.

Notwithstanding our approval of the Compact, Section 11(d)(1) of the IGRA (25 U.S.C. § 2710(d)(1)) requires that tribal gaming ordinances be 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. The Tribe may want to contact the NIGC at (202) 632-7003 for further information to determine when and how to submit the ordinance for approval by the NIGC.

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

Sincerely,

/S/ Stanley M. Speaks

ACTING Assistant Secretary - Indian Affairs

Enclosures

Identical Letter Sent to: Honorable George Mickelson
Governor of South Dakota
500 East Capitol
Pierre, South Dakota 57501

cc: Aberdeen Area Director w/copy of approved Compact
Supt., Rosebud Agency w/copy of approved Compact
Neil McDonald, SOL-IA (2)
National Indian Gaming Commission w/copy of approved Compact
Minneapolis Regional Solicitor w/copy of approved Compact
South Dakota United States Attorney w/copy of approved Compact

RECEIVED 4/20/93 NIGC

FEB 8 1993

GAMING COMPACT BETWEEN THE ROSEBUD SIOUX TRIBE AND THE STATE OF SOUTH DAKOTA

This Agreement is made and entered into as of the 4th day of February, 19 93, by and between the Rosebud Sioux Tribe (Tribe), and the State of South Dakota (State).

WHEREAS, the Tribe is a federally recognized Indian Tribe; and

WHEREAS, the State has, through constitutional provisions and legislative acts, authorized limited gaming activities to be conducted in Deadwood, South Dakota; and

WHEREAS, the Congress of the United States has enacted the Indian Gaming Regulatory Act, Public Law 100-497, 102 Stat. 2426, 25 U.S.C. § 2701, et seq. (1988) which permits Indian tribes to operate Class III gaming activities on Indian reservations pursuant to a Tribal-State compact entered into for that purpose; and

WHEREAS, the Tribe intends to operate gaming activities on the Rosebud Sioux Reservation in Todd County, South Dakota, at the location set out in paragraph 8.5; and

WHEREAS, the Tribe and the State desire to negotiate a Tribal-State compact to permit the operation of such gaming activities; and

NOW, THEREFORE, in consideration of the foregoing, the Tribe and the State hereto do promise, covenant, and agree as follows:

1. Declaration of Policy

In the spirit of cooperation, the Tribe and the State hereby set forth in joint effort to implement the terms of the Indian Gaming Regulatory Act. The State recognizes the positive economic benefits that gaming may provide to the Tribe. The Tribe and the State recognize the need to insure that the health, safety and welfare of the public and the integrity of the gaming industry in South Dakota is protected.

2. Purpose and Scope of Compact

This compact and the Tribe's gaming regulations and ordinances shall govern the regulation and operation of gaming on the Rosebud Sioux Reservation. The purpose of this compact is to provide the Tribe with the opportunity to operate gaming activities in a manner that will benefit the Tribe

economically, that will insure fair operation of the games, and that will minimize the possibility of corruption.

3. Type of Gaming Permitted

The Tribe shall operate blackjack, poker and slot machines pursuant to the terms of this compact and the Tribe's gaming regulations and ordinances. The Tribe shall be permitted to operate such other gaming as may be authorized by state law after the date of the signing of this compact, upon written amendment of this agreement.

For the purposes of this compact, the terms "blackjack," "poker" and "slot machines" are defined in South Dakota Codified Laws 42-7B-4(3), (18), (21), respectively, except that the term "slot machines" does not include "video lottery machines" as defined by SDCL 42-7A-1(13).

4. Operation of Gaming

4.1 The Tribe shall operate its gaming activities pursuant to this compact and the ordinances and regulations enacted by the Tribe which ordinances and regulations shall be at least as stringent as those adopted by the State of South Dakota in SDCL ch. 42-7B and ARSD 20:18, et seq. All such ordinances and regulations shall be made available to the State.

4.2 The Tribe shall appoint a Tribal Gaming Commission which shall supervise the gaming activities, issue licenses as provided herein, inspect all premises where gaming is conducted and otherwise be responsible for enforcing the Tribe's Gaming Act and regulations.

The Rosebud Sioux Tribal Gaming Commission shall have primary responsibility for the supervision and regulation of gaming on the Rosebud Reservation in Todd County. This shall include, but not be limited to, the licensing of gaming employees and the inspection and regulation of all gaming devices. Any discrepancies in the gaming operation and any violation of Tribal Gaming Commission regulations and rules or this compact shall be immediately reported to the Tribal Gaming Commission and the South Dakota Commission on Gaming for appropriate action by the Tribal Gaming Commission pursuant to the terms of this compact.

4.3 Disciplinary action for misconduct by licensees

Any suspected violation of any law or rule, adopted in the State/Tribal compact, shall be reported to the Tribal Gaming Commission and the South Dakota Gaming Commission.

If either the State or the Tribe concludes that a violation has occurred, the violation will be addressed by the Tribe within five (5) days. If the executive director of the South Dakota Gaming Commission concludes that the disciplinary action undertaken by the Tribal Gaming Commission is inadequate, a more severe penalty shall be imposed by the Tribal Gaming Commission as requested by the executive director of the South Dakota Gaming Commission.

5. Law Enforcement

5.1 Criminal proceedings against defendants who are members of the Rosebud Sioux Tribe shall occur in tribal court. Criminal proceedings against defendants who are Indians but not members of the Rosebud Sioux Tribe will be prosecuted on a case-by-case basis in accordance with relevant constitutional provisions and relevant statutes and ordinances; this compact is not intended to define the proper jurisdiction of such cases. Criminal proceedings against defendants who are non-Indians shall occur in South Dakota state court except as consistent with State v. Larson (1990). Nothing contained in this provision shall deprive the federal courts of any jurisdiction which they might otherwise have.

It is understood by the parties that the provisions of this paragraph are limited to criminal cases arising from transactions related to or arising from gaming conducted pursuant to this compact.

5.2 The Tribe has adopted and agrees to adopt gaming ordinances and regulations to regulate gaming on the Rosebud Sioux Reservation in Todd County which ordinances and regulations are at least as stringent as those statutes and administrative rules adopted by the State of South Dakota to regulate gambling in Deadwood, South Dakota. The Tribe shall furnish the State with copies of such ordinances and regulations and shall advise the State of any amendment, revision or rescission of the gaming regulations. The Tribe agrees that in no event shall it amend, revise or rescind any gaming regulations which would result in the tribal regulations being less stringent than the statutes and rules adopted by the State of South Dakota.

6. Civil Jurisdiction (other than appeals from the commission)

Any case in which a tribal member or an Indian nonmember is a defendant shall be heard in tribal court. Any case in which a non-Indian is a defendant shall be heard in state court.

The parties may stipulate that an action may be heard in another court.

It is understood by the parties that the provisions of this paragraph are limited to civil cases arising from transactions related to or arising from gaming conducted in Todd County on the Rosebud Reservation pursuant to this compact. This provision shall not be construed to be a waiver of the sovereign immunity of the Rosebud Sioux Tribe.

7. Licensing of Gaming Operators and Employees

All individuals who operate or manage a gaming operation on the Rosebud Sioux Reservation shall be licensed by the commission. All individuals employed to work directly with the gaming operation shall be licensed by the commission.

The Rosebud Sioux Tribal Gaming Commission shall have primary responsibility for the licensing of individuals who operate or manage a gaming operation or who are employed in the tribal gaming operation. Any person seeking to be licensed hereunder shall first submit an application to the Tribal Commission which application shall include a written release by the applicant authorizing the State to conduct a background investigation of the applicant on behalf of the Tribal Gaming Commission. The State shall agree to conduct an investigation of the applicant on behalf of the Commission, upon receipt of the executed release and payment of the fee as provided in the South Dakota Commission on Gaming rules and regulations for such investigations. The State shall provide the Commission with a written report regarding each applicant within 30 days of the receipt of the request and fee or as soon thereafter as practical.

The Commission shall not issue a license to any unsuitable applicant. A suitable applicant is one who is determined suitable by the Tribal Gaming Commission according to tribal ordinance and by the South Dakota Gaming Commission pursuant to SDCL ch. 42-7B and the South Dakota Gaming Commission rules and regulations.

8. Regulatory Standards for Gaming on the Rosebud Sioux Reservation

In recognition of the valid public policy interests of the State, which are similarly appreciated as desirable by the Tribe, the following regulatory standards are established for gaming operated and played within the federally-recognized boundaries of the Reservation.

8.1 No Credit Extended

All gaming shall be conducted on a cash basis. Except as herein provided, no person shall be extended credit for gaming by the gaming facility operated with the Reservation, and no operation shall permit any person or organization to offer such credit for a fee. This restriction shall not apply to credits won by players who activate play on gaming machines after inserting coins or currency into the game, and shall not restrict the right of the Tribe 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 with the State.

8.2 Minimum Age for Players

No person under the age of 21 shall be permitted on the premises where gaming is conducted pursuant to this compact.

8.3 Technical Standards for Gaming Devices

All gaming machines operated and played within the Rosebud Reservation pursuant to this compact shall meet or exceed the hardware and software specifications set forth by the South Dakota Gaming Commission and SDCL 42-7B-43 prior to play. Gaming machine prototypes will be tested and approved prior to play by the State according to State procedures and by the Tribe according to Tribal procedures.

8.4 Approval of Gaming Devices

No gaming device shall be operated on the Rosebud Sioux Reservation unless:

1) The gaming device is purchased, leased or acquired from a manufacturer or distributor licensed to sell, lease or distribute gaming devices by the State, pursuant to SDCL ch. 42-7B and ARSD 20:18, and

2) The gaming device or a prototype thereof, has been tested, approved and certified by a gaming test laboratory as meeting the requirements and standards of this compact. For purposes of this compact, a gaming test laboratory shall be a laboratory agreed to and designated in writing by the South Dakota Gaming Commission and the Tribal Gaming Commission.

8.5 Number of Gaming Devices

The Tribe shall be authorized to operate 120 gaming devices in a tribal gaming establishment to be located within Todd County on the Rosebud Sioux Reservation. The legal description of the land on which the tribal gaming establishment may be established is as follows: Lots 3 and 4 of Section 23, T35N, R27W, 6th P.M., Todd County, South Dakota, less existing rights-of-way. The parties acknowledge that the land at issue is not now trust land and further acknowledge and agree that the tribal gaming establishment will not be opened for business until such time as the land described in this paragraph is accepted into trust by the Secretary of the Interior. It is further acknowledged between the parties hereto that 85 of the 120 gaming devices authorized here corresponds with the 90 gaming devices permitted per individual in state law. Any increase or decrease of this gaming device limitation contained in State law will automatically result in a proportional increase or decrease in the 85 gaming devices set forth in this agreement.

It is further understood and agreed that the remaining 35 approved gaming devices shall only continue to be authorized in the tribal gaming establishment if the following conditions are met:

a) Nine months have elapsed since the tribal gaming establishment was open for business; and

b) That within the last 60 consecutive business days from the day on which nine months have elapsed since the tribal gaming establishment was open for business, 75 percent of the projected adjusted gross revenue (as defined by the South Dakota Commission on Gaming rules and regulations) per device per day has been realized on the average on all 120 devices. The projected adjusted gross revenue, for purposes of this calculation, shall be $85.00 per device per day.

The Tribe shall be entitled to have up to five gaming devices to be used to replace gaming devices which are out of service as a result of mechanical problems. These additional devices are only to be used in such an event and shall not be operated in addition to the maximum number of devices authorized by this provision. Further, these additional devices shall meet the requirements of paragraph 8.3 of this compact.

8.6 Inspection Procedure

South Dakota Gaming Commission agents shall be authorized to inspect (not to include audits) the tribal gaming establishment in accordance with the laws and rules adopted in the compact.

Any periodic inspection of gaming machines shall only occur if the state inspector is accompanied by a member of the tribal gaming commission, the executive secretary of the tribal gaming commission, or a designee. Any such testing shall be carried out in a manner and at a time which will cause minimal disruption of the gaming operation. The Tribal Gaming Commission and the South Dakota Gaming Commission shall be notified of all such testing and the results of such testing.

In addition to the gaming machine inspections authorized above, any inspections of other gaming devices and the tribal gaming establishment by state inspectors shall be limited to a maximum of 100 hours per year plus travel. These inspections are specifically authorized to be unannounced and may be in the nature of an undercover inspection. The Tribal Gaming Commission and the South Dakota Gaming Commission shall be notified of the results of such inspections. Any violations detected pursuant to this paragraph shall be enforced consistent with the procedure contained in the above section entitled Disciplinary Action for Misconduct by Licensees.

8.7 Remedies for Non-Complying Gaming Devices

Upon inspection pursuant to paragraph 8.6, the State may designate gaming devices which it believes do not comply with tribal gaming laws. The machine shall immediately be removed temporarily from play or sealed. Within five days of receipt of such written designation, the Tribe shall either:

1) accept the finding of non-compliance, remove the gaming devices from play, and take appropriate action to ensure that the Tribe, manufacturer, distributor or other responsible party cures the problem; or

2) contest the finding of non-compliance before the Arbitration Board as provided in paragraph 8.7 3) below. In the event the Arbitration Board finds that the gaming device is noncomplying, such device shall be removed from play. If permitted by law, either the State or Tribe may appeal the decision of the Arbitration Board to federal district court.

Gaming devices removed from play pursuant to this section may be returned to play only after such gaming device comes into compliance with the provisions of 8.3 and 8.4 herein.

3) There is hereby created a three-person binding Arbitration Board. One member of the Board shall be selected by the Tribal Gaming Commission, one member shall be selected by the State Gaming Commission, and one member shall be jointly selected by the State Gaming Commission and the Tribal Gaming Commission. Within thirty (30) days of the signing of this Agreement, the parties hereto shall appoint the members to the Arbitration Board for a three-year term. In the event of death, resignation, or expiration of a term, new members shall be appointed on the same basis as the original members.

Nothing in this section shall limit the rights or remedies available to the parties under any other provision of this compact or under the IGRA.

8.8 Limit on Wagers

The amount of a bet may not be more than five dollars on the initial bet or subsequent bet subject to rules promulgated by the Tribal Gaming Commission. Gaming operations on the Rosebud Reservation may offer such higher bet limits as are consistent with the acts of the South Dakota legislature and the regulations of the South Dakota Gaming Commission and authorized by the Tribal Gaming Commission.

9. Accounting and Audit Procedures

The Tribe shall adopt accounting standards which meet or exceed those standards established in Chapter 20:18:22 of the South Dakota Rules and Regulations for Limited Gaming.

The Tribe shall conduct independent audits of the gaming operation and provide copies to the State. At the request of the Tribe and at the Tribe's expense, the State may at its discretion audit the tribal operation.

The Tribe shall engage in an independent certified public accountant to audit the books and records of all gaming operations conducted pursuant to this compact and shall make copies of the audit and all current internal accounting and audit procedures available to the State upon written request. The Tribe shall permit the State to consult with the auditors

before or after any audits or periodic checks on procedures which may be conducted by the auditors, and shall allow the State to submit written or oral comments or suggestions for improvements regarding the accounting and audit procedures. Within 30 days of receipt of any written or oral comments, the Tribe shall: (a) accept the comments and modify the procedures accordingly; or (b) respond to the comments with counterproposals or amendments.

10. Duration

This compact shall become effective upon execution by the Governor of the State and the President of the Tribe, approval by the Secretary of the Interior and publication of that approval in the Federal Register pursuant to the IGRA.

The terms of this compact shall be subject to review at two-year intervals dating from the effective date of the compact as set in the previous paragraph. At least 180 days prior to the expiration of the two-year period, either party to the compact may give notice to the other party of provisions they believe require review or amendment. Such notice shall be in writing and shall be sent by certified mail to the Governor of the State or President of the Tribe at the appropriate governmental office. If no notice is given by either party at least 180 days prior to the expiration of the two-year period or any subsequent two-year period, the compact shall automatically be extended for an additional two years.

Upon receipt of notice of provisions that a party believes require review or amendment as set forth in the paragraph immediately above, the parties shall engage in good faith efforts to resolve issues arising relating to such provisions and to any other provisions of the compact.

The parties shall have until the expiration of the two-year term of the compact to negotiate and remedies available under the Indian Gaming Regulatory Act shall apply. The State and the Tribe may agree in writing to extend the negotiating period without prejudice to the rights of either party.

In the event the parties are unable to resolve their differences prior to expiration of the two-year term of the compact or to the extension of the negotiating period, whichever comes later, this compact shall terminate and the parties shall be subject to the procedures provided for in the IGRA. If the parties are able to resolve their differences, they shall sign a new compact incorporating any revisions they believe necessary and appropriate.

Either party may terminate this compact upon a substantial breach by the other party regardless of any other provision of

this compact. Upon identification of what either party believes to be a substantial breach of the terms of this compact, such party shall notify the other party in writing, via certified mail, return receipt requested, as to the nature of the substantial breach. The party issuing the notice of noncompliance shall refrain from terminating this compact until 30 days have elapsed from receipt of notice of noncompliance by the other party.

11. General Provisions

The following conditions shall be applicable throughout the term of this Agreement:

11.1 The parties hereto agree that in the event that a dispute arises as to an interpretation of the provisions of this compact, in any of the rights, responsibilities or obligations attaching to the parties hereto, either party may commence an action in federal district court for the purpose of resolving such dispute.

11.2 The parties hereto agree that the Tribe will be responsible for the costs incurred by the State and associated with the State's performance of its responsibilities as provided for herein. The intent of this compact is to provide for the reimbursement of the costs and expenses of the State in performing its responsibilities as provided herein. Attached hereto is a schedule of costs marked Attachment A which is incorporated herein by reference as though fully set forth.

11.3 Unless otherwise indicated differently, all notices, payments, requests, reports, information or demand which any party hereto may desire or may be required to give to the other party hereto, shall be in writing and shall be personally delivered or sent by telegram or first class certified or registered United States Mail, postage prepaid, return receipt requested, and sent to the other party at its address appearing below or such other address as any party shall hereinafter inform the other party hereto by written notice given as aforesaid:

Notice to the Tribe shall be sent to:

Rosebud Sioux Tribe
Rosebud, SD 57570

Notice to the State shall be sent to:

Office of the Governor
500 East Capitol
Pierre, SD 57501-5070

All notices, payments, requests, reports, information or demand so given shall be deemed effective upon receipt or if mailed, upon receipt or the expiration of the third day following the day of mailing, whichever occurs first, except that any notice of change of address shall be effective only upon receipt by the party to whom said notice is addressed.

11.4 This agreement is the entire Agreement between the parties and supersedes all prior agreements whether written or oral, with respect to the subject matter hereof. Neither this Agreement nor any provision herein may be changed, waived, discharged, or terminated orally, but only by an instrument in writing.

11.5 This Agreement may be executed by the parties hereto in any number of separate counterparts with the same effect as if the signatures hereto and hereby were upon the same instrument. All such counterparts shall together constitute but one and the same documents.

11.6 The State and/or the Tribe may not assign any of its respective right, title, or interest in this Agreement, nor may the State and/or the Tribe delegate any of its respective obligations and duties under this Agreement, except as expressly provided herein. Any attempted assignment or delegation in contravention of the foregoing shall be null and void.

11.7 Nothing in this compact shall be construed to limit the rights or remedies available to the parties hereto under the Indian Gaming Regulatory Act except that the Tribe agrees not to bring suit during the life of this compact for failure of the State to compact for gaming other than as specified in this compact.

11.8 This compact shall not be construed to waive or diminish the sovereignty of the Rosebud Sioux Tribe or the State of South Dakota, except as specifically provided by the terms of the compact set forth above.

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

ROSEBUD SIOUX TRIBE

12-29-92
(DATE)

BY: Alex J Funderman Sr.

STATE OF SOUTH DAKOTA

2-4-93
(DATE)

BY: _____
GOVERNOR

d-game2.jpg
12/16/92

4/6/93
(DATE)

BY: _____
Acting ASSISTANT SECRETARY - INDIAN AFFAIRS