INTERNET GAMING DISPUTE REFERRED TO BINDING ARBITRATION BY THE IOWA TRIBE OF OKLAHOMA AND THE STATE OF OKLAHOMA

In the Matter of the Referral to Binding Arbitration by the Iowa Tribe of Oklahoma and the State of Oklahoma of Disputes Under and/or Arising From the Iowa Tribe—State Gaming Compact

November 24, 2015

Oklahoma City, Oklahoma

ARBITRATION AWARD

Charles S. Chapel, Sole Arbitrator
Riggs, Abney, Neal, Turpen, Orbison & Lewis P.C.
528 NW 12th Street
Oklahoma City, OK 73103
405-843-9909 (o)
405-842-2913 (f)

EXHIBIT 1

TABLE OF CONTENTS

I.
INTRODUCTION

This Arbitration Award ("Award") is the final and binding Award resolving a Dispute referred to me on October 14, 2015, as Sole Arbitrator, by the Iowa Tribe of Oklahoma ("Tribe") and the State of Oklahoma ("State"), collectively referred to as the "Parties."[1] The Dispute[2] involves whether or not the use of the Internet to conduct a covered game with players physically located in international markets, where such gaming is not unlawful, is authorized under the Iowa Tribe of Oklahoma and State of Oklahoma Gaming Compact ("Compact" or "Tribal-State Compact," interchangeably),[3] as construed in light of controlling State and Federal law.

The Parties have agreed to the submission of this dispute on the basis of a paper Record and without a hearing or the taking of in-person testimony. I concur in the Parties' shared judgment that submission of this Dispute, and the necessarily-related issues regarding controlling extrinsic law, are susceptible to accurate resolution on the Record without personal testimony.

With consent of the Parties, I established a Scheduling Order for this Arbitration. In conformity with that Order, the Tribe timely submitted its Opening Brief with thirty-five Exhibits and all Joint Exhibits on October 27, 2015; the State timely submitted its Response Brief with ten Exhibits on November 5, 2015; and the Tribe submitted its Reply Brief with two Exhibits on November 9, 2015. All submitted Exhibits have been admitted into evidence and considered by me in this Arbitration.

In providing the Findings and Conclusions enumerated in Section V, I am mindful of the fact that subject only to the review contemplated by Part 12 ("Dispute Resolution") in Sections 2-3 of the Compact (and if and only if such is requested by a Party), the Parties intend that this Award be binding and promptly enforced.

---

[1] *See* Engagement Letter.
[2] *See* Statement of Dispute.
[3] Iowa Tribe-State Gaming Compact executed pursuant to the State-Tribal Gaming Act, 3A O.S. § 281.

II.
BACKGROUND

The Iowa Tribe of Oklahoma is a federally recognized Indian tribe that currently operates three casinos on its lands in the State of Oklahoma.[4] On September 23, 2015, the Tribe notified the State of Oklahoma's Gaming Compliance Unit of its intent to operate[5] Internet gaming from their tribal land consistent with the Compact.[6] On September 30, 2015, the State responded with a letter expressing its concern as to whether Internet gaming either expanded or restricted the rights of a tribe operating under the Model Tribal Gaming Compact, while also acknowledging that the State had previously entered into a settlement agreement with the Cheyenne & Arapaho Tribes ("C&A"), a federally recognized united tribe in Oklahoma acknowledging its right to conduct Internet gaming pursuant to their compact.[7] Pursuant to Part 12 ("Dispute Resolution") of the Compact, the Tribe and State agreed to refer this matter to arbitration to interpret the Compact[8] and applicable federal and state laws and to determine whether or not Internet gaming such as that intended by the Tribe is permissible.

A. Indian Gaming Regulatory Act, Tribal-State Gaming Act, Tribal Gaming Ordinance, and the Compact

In 1988, Congress enacted the Indian Gaming Regulatory Act ("IGRA") for the purpose of providing "a statutory basis for the operation of gaming by Indian tribes as a

---

[4] Cimarron Casino (821 W Freeman, Perkins, OK), Ioway Casino (338445 E. Highway, Chandler, OK 74834), and Iowa Travel Plaza (S.H. 177 south of Perkins, OK).

[5] The Indian Gaming Regulatory Act, the Oklahoma Tribal-State Gaming Act, and the Compact use the words "conduct" and "operate" in various places. The words are synonymous. *See* Merriam-Webster Thesaurus 111-12 and 396-97 (1989). Whenever they are used in this arbitration, I interpret both words to be verbs and both to mean the acts of controlling, managing, directing, or regulating an activity—in this case, Indian gaming.

[6] *See* Letter from Bobby Walkup, Chairman, Iowa Tribe of Oklahoma, to Jeffery Cartmell, Deputy Director and Counsel, State of Oklahoma's Gaming Compliance Unit (Sept. 23, 2015) (Joint Exhibit 9).

[7] *See* Letter from Jeffery Cartmell, Deputy Director and Counsel, State of Oklahoma's Gaming Compliance Unit, to Bobby Walkup, Chairman, Iowa Tribe of Oklahoma (Sept. 30, 2015) (Joint Exhibit 10).

[8] 3A O.S. § 281 Part 12 (Joint Exhibit 2).

means of promoting tribal economic development, self-sufficiency, and strong tribal governments."[9] IGRA categorized games into three classes: class I, class II, and class III. Class III games are "all forms of gaming that are not class I gaming or class II gaming,"[10] that are "authorized by an ordinance or resolution,"[11] and that conform with the tribe's Tribal-State Compact.[12]

On November 2, 2004, the people of the State of Oklahoma approved State Question No. 712, the State-Tribal Gaming Act ("Gaming Act"), a referendum,[13] which included a Model Tribal Gaming Compact ("Model Compact") in the form of an offer by the State to all federally recognized tribes within Oklahoma.[14] Acceptance of that offer by a Tribe results in a contract between the Tribe and the State.[15] Currently, thirty-four federally recognized tribes have executed a Model Compact with the State of Oklahoma and all have been either formally approved or considered deemed approved.[16] The Iowa Tribe of Oklahoma, therefore, conducts gaming in Oklahoma pursuant to an approved compact and an approved Tribal Gaming Ordinance, which are both currently in effect.

On December 18, 1995, the National Indian Gaming Commission ("NIGC") approved the Iowa Tribe's Gaming Ordinance.[17] This ordinance defined class III gaming to be "as defined in accordance with [IGRA], 25 U.S.C § 2703(8),"[18] and provided that "[a]ny Compact entered into between the Tribe and a State which is subsequently approved by the Secretary of the Interior and published in the Federal Register is

---

[9] 25 U.S.C § 2702.
[10] 25 U.S.C. § 2703(8).
[11] *Id.* § 2710(d)(1)(A).
[12] *Id.* § 2710(d)(1)(C).
[13] *See* Oklahoma State Senate Legislative Brief June 2004 (Tribe Exhibit 4).
[14] 3A O.S. § 281 Part 4(A) (Joint Exhibit 2).
[15] *Id.* at 280.
[16] *See* US Department of the Interior Indian Affairs, http://www.bia.gov/WhoWeAre/AS-IA/OIG/Compacts/index.htm#Oklahoma (last visited Nov. 18, 2015).
[17] *See* Letter from Harold A. Monteau, Chairman, NIGC, to Lawrence Murray, Chairman, Iowa Tribe of Oklahoma (Dec. 18, 1995) (Tribe Exhibit 3).
[18] *See* Iowa Tribe of Oklahoma Tribal Gaming, Ordinance § 3, (Nov. 12, 2006) (Tribe Exhibit 3).

hereby incorporated within and enacted as an integral part of this Ordinance with respect to all forms of Class III gaming."[19]

On January 28, 2005, the Iowa Tribe of Oklahoma executed the Model Compact and submitted it to the Department of the Interior ("DOI") for approval on February 2, 2005.[20] The Compact was deemed approved by the Secretary of the Interior.[21] On June 1, 2005, the Secretary published notice of the approved Tribal-State Compact between the Iowa Tribe of Oklahoma and the State of Oklahoma in the Federal Register.[22]

B. Previous Tribal Internet Gaming Proposals in Oklahoma

In June 2012, the C&A launched a website offering qualified individuals a forum to engage in free and money play for certain specified games. Upon notification from the State that it believed the website materially violated the C&A's Gaming Compact, the C&A and the State entered into negotiations over the issues, which resulted in a Settlement Agreement and then a subsequent Amended Settlement Agreement dated April 5, 2013 and September 13, 2013, respectively.[23]

On August 1, 2013, Kevin Washburn, the Assistant Secretary-Indian Affairs from the Department of the Interior, in a letter addressed to Honorable Chief Janice Prairie Chief-Boswell, stated that "the [Settlement] Agreement constitutes an amendment to the Tribe's existing Class III compact."[24] The letter also indicated that the C&A and State's revenue share increases from 10% to 20% paid to the State was not justified by any "meaningful concession" from the State.

---

[19] *Id.* § 4 (Joint Exhibit 3). *See* infra footnote 59.
[20] *See* Letter from George T. Skibine, Acting Deputy Assistant Secretary, US Department of Interior's Policy and Economic Development, to Emily Bernadette Huber, Chairperson, Iowa Tribe of Oklahoma (Jan. 6, 2005) (State Exhibit 3).
[21] 25 U.S.C. § 2710(d)(8)(C) (2012).
[22] 70 Fed. Reg. 31499 (June 1, 2005) (Joint Exhibit 4).
[23] *See* Settlement Agreement Between the State of Oklahoma and the Cheyenne-Arapaho Tribes (Joint Exhibit 5) and First Amended Settlement Agreement Between the State of Oklahoma and the Cheyenne-Arapaho Tribes (Joint Exhibit 6).
[24] *See* Letter from Kevin Washburn, Assistant Secretary-Indian Affairs, US Department of the Interior, to Janice Prairie Chief-Boswell, Governor, Cheyenne-Arapaho Tribes of Oklahoma (August 1, 2013) (Joint Exhibit 7).

On November 6, 2013, Washburn sent a subsequent letter to the C&A regarding the C&A and State's First Amended Settlement Agreement stating "we assume, without deciding, that the Tribes may operate [I]nternet gaming, and may include that gaming in the scope of the Compact, to the extent that [I]nternet gaming may be permitted under IGRA" but that "[t]he Agreement modifies the existing Compact by expanding the scope of games the Tribe is currently operating to include [I]nternet gaming as a part of the Compact's covered Games."[25] The letter further stated that "IGRA prohibits the imposition of a tax, fee, charge, or other assessment on Indian gaming except to defray the state's costs of regulating Class III gaming activities" and that the State cannot offer a "meaningful concession" because it cannot control or offer exclusive access to website's international patrons.[26] Washburn therefore concluded that the State's concession to the C&A is "illusory" making the revenue sharing requirement an "impermissible tax" in violation of IGRA.[27] It was this letter from Washburn dated November 6, 2013, raising the foregoing issues that resulted in the State seeking this Arbitration to resolve whether it could agree with the Tribe that Internet gaming could be conducted on tribal land or whether to do so would violate, expand, restrict, or amend the Compact.[28] Those issues now become the issues raised by the Dispute, which is the subject of this Arbitration.

On December 9, 2013, the C&A received a letter from the State[29] asserting that it disagreed with Assistant Secretary Washburn's position as set forth in his letter dated August 1, 2013, and stated that "the State Tribal Gaming Act of 2004 prescribing the terms of Class III Compact (Compact) between the Tribes and the State fully authorizes

---

[25] *See* Letter from Kevin Washburn, Assistant Secretary-Indian Affairs, US Department of the Interior, to Janice Prairie Chief-Bosswell, Governor, Cheyenne-Arapaho Tribes of Oklahoma (Nov. 6, 2013) (State Exhibit 7).

[26] *Id.*

[27] *Id.*

[28] *See* Letter from Jeffery Cartmell, Deputy Director and Counsel, State of Oklahoma's Gaming Compliance Unit, to Bobby Walkup, Chairman, Iowa Tribe of Oklahoma (Sept. 30, 2015) (Joint Exhibit 10).

[29] *See* Letter from Steven K. Mullins, General Counsel, Office of Governor Mary Fallin, to Janice Prairie-Chief Boswell, Governor, Cheyenne and Arapaho Tribes of Oklahoma (December 9, 2013) (Joint Exhibit 8).

the Amended Settlement and igaming directed to an international market contemplated by the parties."

On December 26, 2013, the C&A filed a Complaint in the United States District Court for the Western District of Oklahoma against Sally Jewell, Secretary of the Department of the Interior, and Kevin Washburn, Assistant Secretary—Indian Affairs, for declaratory and injunctive relief.[30] The Complaint requested the Court "[d]eclare, adjudge and decree that final agency action taken by the U.S. Department of the Interior to interfere with or obstruct operation of pokertribes.com and any similar online C&A website offered to qualified players outside the United States and its territories is arbitrary and capricious, an abuse of discretion and otherwise contrary to law."[31] However, on March 14, 2014, the C&A voluntarily dismissed the Complaint after a change in the tribe's leadership based on a "shift in business and tribal strategy and philosophy."[32] The C&A has, thereafter, not further pursued its efforts to conduct Internet gaming.

C. Iowa Tribe of Oklahoma's Intent to Conduct Internet Gaming

After the C&A ceased its efforts to conduct Internet gaming in Oklahoma, the Iowa Tribe of Oklahoma became interested in offering Internet gaming. The Tribe, aware of the C&A effort, approached the State's Gaming Compliance Unit to discuss the matter and the issues. No specific written agreement between the Tribe and the State has been provided to me. When I refer in this Award to the "agreement" between the Parties concerning Internet gaming pursuant to the Compact, I am referring to what they have expressly stated in their Briefs and Exhibits.

The Tribe states in its Brief[33] that it intends: (i) to use the Internet to conduct gaming on its lands pursuant to its Compact and the law; (ii) agrees that it would only

---

[30] *See* Complaint, Cheyenne Arapaho Tribes of Oklahoma v. Jewell, et al., Case No. CIV-13-1355 (W.D. OK) (Tribe Exhibit 13).
[31] *Id., at 20.*
[32] *See* Jennifer Palmer, *Oklahoma tribe folds poker website that cost $9.5 million*, News OK (2/15/2014), http://newsok.com/oklahoma-tribe-folds-poker-website-that-cost-9.5-million/article/3934330/?page=2 (Tribe Exhibit 15).
[33] *See* Claimant Iowa Tribe of Oklahoma's Opening Brief, p. 1.

offer to and allow players located outside the boundaries of the State of Oklahoma and the United States to play covered games; (iii) that the servers controlling the covered game would be located on its tribal lands.

The State agrees in its Brief[34] that the Tribal-State Gaming Act and the Tribe's Compact permits the Tribe to use the Internet to offer covered games provided: (i) that the Tribe may permit a player physically located outside the boundaries of Oklahoma and the United States to play covered games in jurisdictions where it is lawful to do so; (ii) that the Tribe's computer server, which controls the covered game, must be physically located on the Tribe's lands; and (iii) that the Tribe will not allow a player physically located in Oklahoma to play covered games using the Internet unless such player is physically located on Indian lands as defined by IGRA.

This Arbitration involves only the question of whether or not the Tribe is permitted pursuant to IGRA, the Tribal-State Gaming Act, the Iowa Tribal Gaming Ordinance, and the Compact to offer and conduct covered games through the use of the Internet using computer servers located on Tribal lands to players located outside the boundaries of Oklahoma and the United States where such gaming is lawful. Both parties agree that the Tribe may do so. The Parties do not intend that their agreement shall change, amend, modify, or alter in any way any term or provision in the Compact. Rather, they agree that the Compact permits the Tribe to conduct Internet gaming of a covered game and that all provisions of the Compact are applicable to such gaming.

III.
THE DISPUTE

The Parties have submitted a joint Statement of Dispute setting forth the issue to be resolved:

> *Whether the use of the Internet (worldwide web) to conduct a "covered game" (for free and real money play), when the players are located outside the boundaries of*

[34] *See* Respondent's Response Brief to Claimant's Opening Brief, p.10.

the State of Oklahoma/United States and its territories during the entirety of the gaming transaction, is authorized under the Compact.[35]

I have been engaged to resolve the Dispute and the issues, which have arisen related to the statutes and contract in accordance with "controlling State and Federal law." Thus, I am required to use federal standards of statutory interpretation and Oklahoma standards of statutory and contract interpretation. I do so in all instances in my analysis set forth below in accordance with the principles set forth by the Untied States Supreme Court[36] in my interpretation of federal statutes and regulations; and as to state statutes and contracts, the Oklahoma Supreme Court's decisions and state statutes.[37]

In every instance, I have looked at the words of the statutes and the Compact involved in this mater. I have considered the intent of the legislation; and in the case of the Compact, the intent of the parties; and have attempted to interpret it so as to be lawful. In determining the intent of the legislation, I looked to the legislative history, the purpose of the legislation, and agency interpretation. In determining the intent of the parties to a contract, I looked at the words of the contract, the statutes involved, the Parties' interpretation of the contract, and its legality.

IV.
THE ISSUES

This Arbitration raises several issues, which raise ancillary legal and factual issues, all of which must be addressed in order to resolve the Dispute. Those issues are as follows: (i) Is the proposed Internet gaming permissible on tribal lands under IGRA; (ii) Is the proposed Internet gaming permissible under the State-Tribal Gaming Act, the Tribal Gaming Ordinance, and the Compact; (iii) Is Internet gaming as contemplated by the Tribe unlawful under State and Federal law?

---

[35] *See* Statement of Dispute, p.2.

[36] *See eg Consumer Product Safety Commission v. GTE Sylvania, Inc.,* 447 U.S. 102, 108 (1980); *Food and Drug Administration v. Brown & Williams Tobacco Corporation,* 529 U.S. 120, 133 (2000).

[37] *See eg Boston Avenue Management, Inc. v. Associated Resources, Inc.,* 2007 OK 5, 11, 152 P.3d 880, 885; 15 O.S. §§ 151-178; 25 O.S. § 1 et seq.

Is a game, which is expressly authorized by an approved tribal-state compact and an approved Tribal Gaming Ordinance being played by players physically located off Indian land on a computer connected via the Internet to a computer located on Indian land being conducted in accordance with IGRA, the State-Tribal Gaming Act, and the Compact? That question is the ultimate issue. As IGRA and the Internet (and Internet gaming) are central to the Dispute, it is necessary to set forth my understanding of the development of their history, purposes, limitations, and provisions in order to set the basis for my resolution of this Dispute.

It is likely that some form of gaming has been conducted on Indian lands for many years. Wagering on traditional games evolved into church fundraising bingo games, pull tabs, and then finally commercial gaming on tribal lands. As this evolution progressed, tension began to develop between the tribes and state governments as to who had authority to regulate such gaming. In the late 1980's California attempted to enforce its criminal laws, which prohibited the operation of bingo games offering prizes over two hundred fifty dollars against the Cabazon Band of Mission Indians, which was operating such bingo games on its Indian lands.

California's enforcement action resulted in the 1987 United States Supreme Court landmark decision in *California v. Cabazon Band of Mission Indians.*[38] There the Court held that a state cannot enforce its criminal laws related to gaming on Indian lands unless the gaming violates the state's public policy. Therefore, if gaming is regulated as opposed to prohibited, the state's criminal laws as to such gaming cannot be enforced on Indian lands. *Cabazon* was decided on sovereignty grounds with the Court reiterating that Indian tribes retain "attributes of sovereignty over both their members and their territory" and that "tribal sovereignty is dependent on and subordinate to only the Federal Government, not the States."[39]

The following year in 1988, Congress enacted IGRA in response to *Cabazon* and stated that "*Indian tribes have the exclusive right to regulate gaming activity on Indian*

---

[38] *California v. Cabazon Band of Mission Indians,* 480 U.S. 202 (1987).
[39] *Id.* at 206 citing *United States v. Mazurie,* 419 US 544, 557 (1975); *Washington v. Confederated Tribes of Colville Indian Reservation,* 447 US 134, 154 (1980).

lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a state which does not, as a matter of criminal law and public policy, prohibit such gaming activity."[40] IGRA establishes a framework for Indian gaming to "promote economic development, tribal self-sufficiency, and strong tribal government,"[41] governs the "conduct of gaming on Indian lands,"[42] and classifies gaming activity into three categories of games. Class I games are "social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as part of, or in connection with tribal ceremonies or celebrations." Class II games are bingo ("whether or not electronic, computer, or other technological aids are used") and card games, which are not banked by the house. Class III games are "all forms of gaming that are not class I or class II."[43] A tribe may only conduct class III gaming pursuant to both a compact that is in effect and an approved Tribal Gaming Ordinance.[44] IGRA is, therefore, game specific, which means that it limits the games the Tribe may conduct to those authorized by the Act.

Before beginning my analysis of IGRA and its provisions, what is meant by the terms "Internet" and "Internet gaming" must be addressed in order to determine whether its use is permitted under that Act. The Internet is a global "network of networks" comprised of government, academic, and business-related networks that

---

[40] 25 U.S.C. § 2701(5) (Emphasis added).

[41] *Id.* at (4).

[42] The term "Indian lands" means:

(A) All lands within the limits of any Indian reservation; and

(B) Any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

25 U.S.C. § 2703(4).

The Parties are in agreement that the proposed gaming will be conducted on Indian lands as defined by the Act.

[43] 25 U.S.C. § 2703(6)-(8).

[44] 25 U.S.C. § 2710(d).

allow users at various locations around the world to communicate,[45] which includes the use of electronic mail and the World Wide Web. Billions of devices are interconnected through the Internet's protocol suite (TCP/IP) allowing these devices to specify how data is transmitted and received at its destination.[46] In order to gain access to the Internet, users will typically subscribe to an Internet service provider (ISP) and connect through a phone line or broadband connection.[47] Since 2000, the number of Internet users has increased from 738 million to 3.2 billion in 2015,[48] primarily due to the fact that it has become more affordable. Most electronic devices that people use today are connected to the Internet including desktop computers, laptops, game consoles, cell phones, portable media players, and e-readers.

In the instance of Internet gaming, the qualified user will access the Tribe's gambling website through the World Wide Web. The Tribe's website will be hosted on a computer server on its Indian lands connected to the Internet. The user will be prompted to open an account so that he or she can play the games offered.[49] The user, wherever he or she may be physically located, will be prompted on his or her screen as to how to proceed. The user responds by clicking on keys on a keyboard. Such a response results in the users input information being sent from his or her computer to a server, which may be physically located anywhere in the world, which processes the information. The server, based on information received by it from the user, controls, processes, and records every aspect of the transaction and the game including: (i) the

---

[45] Odgers, Pattie and B. Lewis Keeling, Administrative Office Management 289 (12th ed. Cincinnati: South-Western Educational Publishing 2000); *See also* Oklahoma statutory definition of the Internet at 17 OS § 139.102(11), which is essentially the same.
[46] R. Braden, ed., *Requirements for Internet Hosts -- Communication Layers,* p. 6, https://tools.ietf.org/html/rfc1122.
[47] *What is an Internet Service Provider (ISP)?* http://windows.microsoft.com/en-us/windows/what-is-Internet-service-provider (last visited Nov. 20, 2015)
[48] *Here's How May Internet Users There Are* (May 26, 2015) http://time.com/money/3896219/Internet-users-worldwide/ (last visited Nov. 20, 2015); *see also* ICT Facts and Figures, *The World in 2015,* http://www.itu.int/en/ITU-D/Statistics/Pages/facts/default.aspx (last visited Nov. 20, 2015).
[49] GamblingSites.com, Depositing at Online Gambling Sites, http://www.gamblingsites.com/beginners/depositing/ (last visited Nov. 20, 2015).

language, location (and legality of play in that location), qualifications (age of player) to play the games, and the rules of the game; (ii) the opening of and funding an account; (iii) every aspect of the play of the game including the decision by a player to play, the placing of a bet, the win or loss decision, and resulting collection from or payout to a player's account. In Internet gaming, the server functions as the casino official who conducts games where the player is physically located at the place where the game is being played.[50] There, a player will offer to place a bet, the official will decide to accept it and the game will proceed with the official making decisions to the point of payout or collection.

The Internet is not a game. The Internet is modern technology used to play games. However, IGRA classifies two classes of gaming (class I and class II) by reference to specific games and includes descriptions as to how the games may or may not be played.[51] Class III gaming "means all forms of gaming that are not class I or class II."[52] Class III gaming would, therefore, include any game irrespective of how it is played or what devices are or are not used to play the game if it is authorized by a Tribal-State Compact. Thus, as the parties have agreed, the games the Tribe intends to conduct are class III games pursuant to IGRA and may be conducted if they are authorized under the Compact. That requires me to consider whether or not the intended Internet gaming is "conducted on Indian lands" as that term is used in IGRA as required by the Compact.

A. IGRA and Internet Gaming

The term "on Indian lands," as Justice Kagan pointed out in *Bay Mills,* appears in IGRA "some two dozen times."[53] IGRA defines "Indian lands,"[54] but it does not expressly

---

[50] The description of how the Internet is used as technology to play gambling games is taken from the Technical Standards for Internet Gaming Systems Utilized in International (non USA) Markets Where Gaming is Not Illegal (Nov. 4, 2015) (Tribe Exhibit 35-1).
[51] 25 USC §§ 2703 (6) & (8).
[52] *Id.* at (8).
[53] *Michigan v. Bay Mills Indian Community*, 572 U.S. __ 2014 and 134 S.Ct 2024, 2032 (2014) (language appears in the first paragraph).
[54] 25 U.S.C. § 2703(4).

state what is meant by the term "conducted on Indian lands."[55] This question was raised and considered in the very early stage of development of Internet gaming by several federal courts.[56] The question arises because in Internet gaming players (or a player) may be physically located off Indian lands while playing a game being operated by a computer server, which electronically controls the game, is located on Indian lands. To date this issue has never been finally resolved by the courts.

The DOI, the National Indian Gaming Commission ("NIGC"), the State of New Jersey, and other jurisdictions have considered the "conducted on Indian lands" issue, or in the case of New Jersey and other jurisdictions, variations of the same question. It is a difficult question involving complex issues of sovereignty, contract and statutory interpretation, and jurisdiction among others.

The DOI and the NIGC have struggled with the issue. Both have regulatory responsibilities under IGRA. The DOI approves Tribal-State Compacts and NIGC approves the Tribal Gaming Ordinances, both of which may permit a tribe to conduct Internet gaming on Indian lands if Internet gaming is legal in the state. The DOI to this date remains coy about the issue (in the case of the State of Oklahoma and the Cheyenne-Arapaho Tribe's effort to begin Internet gaming, the DOI "assume[d], without deciding that the Tribes may operate internet gaming, and may include that gaming in the scope of a Compact, to the extent that [I]nternet gaming may be permitted under IGRA."[57] However, it is clear that the DOI has approved Tribal-State Compacts with language in them permitting Internet gaming if it is lawful in the state.[58] In this case, the State agrees that Internet gaming of covered games where players are located outside

---

[55] 25 U.S.C. § 2701(3).

[56] *See AT&T Corporation v. Coeur D'Alene Tribe*, 295 F.3d 899 (9th Cir. 2002); *Missouri v. Coeur D'Alene Tribe*, 164 F.3d 1102 (8th Cir. 1999).

[57] *See* Letter from Kevin Washburn, Assistant Secretary Indian Affairs, Department of the Interior, to Janice Prairie Chief-Boswell, Governor, Cheyenne-Arapaho Tribes (Nov. 6, 2013) (State Exhibit 7).

[58] *See* US Department of the Interior Indian Affairs State of Massachusetts' compact with Mashpee Wampanoag Tribe, State of California's compact with Iipay Tribe, and State of Arizona's compacts with various tribes at http://www.indianaffairs.gov/WhoWeAre/AS-IA/OIG/Compacts/index.htm (last visited Nov. 20, 2015).

the United States is not unlawful in Oklahoma if it is conducted on a computer server located on tribal land.

Similarly, the NIGC in its early consideration of whether or not Internet gaming was permissible issued several letters on the subject of Internet gaming. First, in *Coeur d'Alene*,[59] the NIGC sent a letter saying the gaming in that case (Internet and telephonic gaming on Indian lands) was permitted and then in the same matter sent a letter saying it was not permitted. Further, the NIGC's general counsel's office has in the past issued several letters simply concluding with very little analysis that the "use of the Internet...would constitute off reservation gaming."[60]

It is impossible to know exactly why the DOI and NIGC were as inconsistent and reticent as they appear to have been on Internet gaming issues. However, it may be simply a matter of things evolving over time and advancements in computer science.[61] The Parties agree and the evidence in this Arbitration shows that a computer server located on Indian lands can control and operate all aspects of a covered game authorized by the Compact even though a person playing the game may physically be located off tribal lands.

New Jersey is one of three states that has enacted statutes authorizing intra-state Internet gaming. New Jersey legislators faced an issue very similar to the "conducted on Indian lands" issue. The New Jersey state constitution prohibits gaming outside of Atlantic City. Intrastate Internet gaming would involve players being physically located outside of Atlantic City. The state legislature determined that the constitutional prohibition would be not be violated if the gaming is conducted by computer servers

---

[59] *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261 (1997). I reiterate here that the Iowa Tribe's gaming ordinance incorporates and authorizes "all forms of class III gaming" authorized by the DOI in any approved tribal compact. *See* pp. 4 & 5 supra.

[60] *See* eg Letter from Kevin Washburn, General Counsel, NIGC, to Joseph M. Speck (March 13, 2001), p. 3 (on file at http://www.nigc.gov/images/uploads/game-opinions/WIN%20Sports%20Betting%20Game-Class%20III.pdf).

[61] For doing so, the Agency incurred the wrath of the 9th Circuit in its decision in *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261 (1997).

located in Atlantic City that controlled and operated the games.[62] In other words, the gaming is "conducted" where the computer server controlling the game is located.

While the Internet is not specifically mentioned in IGRA, as it was in the early stages of development in 1988, I am persuaded that the "conducted on Indian lands" language appearing in IGRA does not prohibit Internet gaming as I am convinced by the expressed legislative history that in enacting IGRA, Congress intended that tribes should and could by that Act take every opportunity to use and take advantage of modern technology to promote participation among players and thereby increase tribal revenues for their people.[63] The Internet is modern technology that does precisely that.[64]

Moreover, the recent *Bay Mills*[65] decision requires some consideration to sovereignty issues related to the "conducted off or on" Indian lands issue. The United States Supreme Court could not be any more clear on this issue. Indian tribes are sovereign nations and as such enjoy the right of self-governance, and immunity from suit by states for commercial activity occurring within a state off tribal lands.[66] Congress can abrogate tribal immunity, but if it does so the legislation must

---

[62] *See* New Jersey P.L. 2013, c27(5:12-95.17(1)(j)). Found online at: http://www.njleg.state.nj.us/2012/Bills/PL13/27_.HTM.

[63] *See* Rep. No. 100-446, 100th Cong., 2nd Sess., at 9. I am aware that the specific reference quoted refers to language relating to class II games. But the principles, ideas, and statements apply as well to class III games, especially since the use of similar technology converts what would otherwise be class II games to class III games. *See* also S.Rep. No. 446, 100th Cong., 2d Sess. 6 (1988), reprinted in 1988 U.S.C.C.A.N. 3071. Senator Evans, a sponsor of the Act, stated, "I wish to make it very clear that the committee has only provided for a mechanism to permit the transfer of limited State jurisdiction over Indian lands where an Indian tribe requests such a transfer as part of a tribal-State gaming compact for class III gaming. We intend that the two sovereigns—the tribes and the States—will sit down together in negotiations on equal terms and come up with a recommended methodology for regulating class III gaming on Indian lands. Permitting the States even in this limited say in matters that are usually in the exclusive domain of tribal government has been permitted only with extreme reluctance.

[64] *See* 25 C.F.R. §§ 502.4, 502.7 & 502.8.

[65] *Michigan v. Bay Mills Indian Community*, 572 U.S. __ 2014 and 134 S.Ct 2024 (2014).

[66] *Id.*

"unequivocally express" that intent.[67] IGRA by its words only partially abrogates tribal immunity for the conduct of gaming on Indian lands pursuant to a compact. IGRA does not abrogate a tribe's immunity for the conduct of commercial activities off of Indian lands.[68] Resolving where the intended Internet gaming involved in this Arbitration is to be conducted under IGRA allows three possibilities: (i) on Indian lands; (ii) off Indian lands; or (iii) partially on and partially off Indian lands. Only the first option eliminates the myriad of problems and issues that would result from either of the other two options.[69] The *Bay Mills* Court and IGRA[70] encourage states and tribes to resolve their differences about such issues as the one before me now through by negotiating a resolution.[71] That is exactly what the Tribe and State have done in this case.

B. The Compact and Internet Gaming

In Oklahoma, gaming is regulated pursuant to the Oklahoma Horse Racing Act,[72] the Interstate Compact on Licensure of Participants in Live Horse Racing with Pari-mutual Wagering,[73] and the State-Tribal Gaming Act.[74] Unregulated gaming is unlawful,[75] but subject to Tribal common-law sovereignty rights to the extent not abrogated by IGRA.[76]

The Tribe conducts gaming in Oklahoma pursuant to an approved Tribal-State Compact and its Tribal Gaming Ordinance. In Oklahoma, the State does not separately

---

[67] *Id.*, at 2034 citing *C&L Enterprises, Inc. v. Citizen Band Potawatomi Tribe of Oklahoma,* 532 U.S. 411, 418 (2001).
[68] *Id.,* at 2032
[69] The US District Judge in *California v. Iipay Nation of Santa Ysabel,* 2015 WL 2449527 (S.D.Cal.,2015) decided for preliminary injunction purposes only that the gaming at issue was conducted off of Indian lands because it allowed a player to play the game by use of the Internet while off Indian lands. That Judge is now faced with a pending Motion to Dismiss based on *Bay Hill's* holding that tribes retain tribal sovereignty for commercial activity conducted off tribal lands.
[70] 25 U.S.C. § 2710(d)(5).
[71] *See* footnote 63 supra.
[72] 3A O.S. § 200 et seq.
[73] *Id.* § 240 et seq.
[74] *Id.* § 281 et seq.
[75] 21 O.S. §§ 941-988.
[76] *See Michigan v. Bay Mills Indian Community*, 572 U.S. __ 2014 and 134 S.Ct 2024 (2014).

negotiate compacts with individual Tribes. Rather, the State adopted a Model Compact, which was included as an "offer" in legislation adopted by a referendum vote of the people on November 2, 2004, and which is codified as the "State-Tribal Gaming Act."[77] To date, thirty-four Oklahoma Tribes, including the Iowa Tribe of Oklahoma, have executed the compact offered in the State-Tribal Gaming Act.

The Oklahoma Tribal-State Compact is said to be "game specific"[78] meaning that a tribe may only conduct games, which are specifically authorized by the Tribal-State Gaming Act. Authorized games are referred to as "covered games" and are defined as follows:

> *An electronic bonanza-style bingo game, an electronic amusement game, an electronic instant bingo game, nonhouse-banked card games; any other game, if the operation of such game by a tribe would require a compact and if such game has been: (i) approved by the Oklahoma Horse Racing Commission for use by an organizational licensee, (ii) approved by state legislation for use by any person or entity, or (iii) approved by amendment of the State-Tribal Gaming Act; and upon election by the tribe by written supplement to this Compact, any Class II game in use by the tribe, provided that no exclusivity payments shall be required for the operation of such Class II game.*[79]

The Compact also provides that the Tribe is only authorized to conduct class III covered games in accordance with its terms.[80] The Tribal-State Gaming Act specifically exempts the conduct of and participation in such gaming from the application of state criminal

---

[77] 3A O.S. §§ 261-282.
[78] *Id.*, at § 262(H).
[79] 3A O.S. § 281 Part 3(5) (Joint Exhibit 2). I do note that the Iowa Tribe of Oklahoma's Compact at Part 3(5) and Part 3(23) refers to "the standards applicable, set forth in sections 10-17 of the State Tribal Gaming Act" where as the Act refers to standards set forth in "sections 10-18." It appears that this discrepancy is a scrivener type error as in the Act Section 18 relates to requirements for cashless transactions systems and the Compact at Part 3(23) specifically refers to requirements for cashless transaction systems.
[80] 3A O.S. § 281 Part 4(A) (Joint Exhibit 2).

laws prohibiting gambling.[81] The Tribal Gaming Ordinance authorizes gaming operations in accordance with the Compact.

Thus, the Compact authorizes the Tribe to conduct four specific games on its lands in accordance with the standards set forth in Sections 10-18 of the State-Tribal Gaming Act. Those sections of the Act set forth the definitions of terms and requirements for "Player terminals" used for electronic amusement games, "Minimum standards for games" relating to electronic amusement games, standards for the play of "Bonanza-style games," standards for "Instant bingo games," and "standards for player terminals" used in connection with all electronic games, "Electronic accounting systems," and standards for cashless transaction systems.[82]

Before beginning to operate any one of the four specified authorized games, the Tribe must obtain certification from an independent testing laboratory that the game meets the standards set forth in the above-mentioned Sections 10-18.[83] The tribe must also certify that the games meet the standards. When these two steps are completed, the tribe is authorized to conduct such covered games on its lands.

The Tribe has adopted a Resolution approving technical standards for games it intends to operate through the use of the Internet.[84] The Technical Standards have not, as of the date of the filling of the Tribe's Reply Brief (November 9, 2015), been certified by an Independent Testing Laboratory that they meet the standards for the Tribe to conduct one or more of the four games authorized by the Compact. The Tribe expects that such certification will occur. Thereafter, the State has the right to object as provided by the Compact.

The Compact does not specifically reference Internet gaming. However, it is noted that the State-Tribal Gaming Act, which includes the Model Compact was enacted in 2004, a time when Internet gaming was being conducted throughout the world and

---

[81] *Id.*, at § 280.
[82] *Id.*, at §§ 269-277.
[83] *Id.*, at § 281 Part 4(B).
[84] *See* Iowa Tribe of Oklahoma Gaming Commission, Resolution ITOGC-15-03, approved November 4, 2015 (Tribe Exhibit 35).

that the Act does not prohibit Internet gaming. The State agrees with the Tribe that Internet gaming of covered games is permitted by the Compact, if the games are certified pursuant to the Compact as being complaint with the Act, and if the central computer server is located on tribal lands as the server is effectively where the gaming is conducted. The computer server, according to the State's Brief, is "where the actual conduct will take place" and if the server is located on Tribal lands the game is "compliant with the location requirement of the Compact."[85]

In Section IV(A) of this Award, I discussed and determined that gaming using Internet technology would meet the IGRA requirement that the games authorized by that Act be conducted on Indian lands provided that the computer server controlling the operation of the game is located on Tribal lands. Thus, I agree with the State and find that if the server that controls the authorized covered games the Tribe intends to conduct is located on Tribal lands, the games would meet any requirement of the compact as to the location of the gaming.

The Compact in Part 3 ("Definitions") sets forth definitions of words "as to their use" in that document, and there is a specific definition provided for the word "patron." The word "patron" appears in Parts 5, 6, and 7 and its specified definition applies to the use of the word in that context. That definition does not limit the operation of covered games through the use of the Internet if those games are authorized by the Compact and the games are operated "in facilities on Indian lands as defined by IGRA," and I so find.

---

[85] *See* Respondent's Brief, p. 7-8 It is noted that the State of Oklahoma's position in this respect is the same as the position adopted by the State of New Jersey. In solving the State Constitutional problem that limited gambling to Atlantic City in legislation permitting intrastate Internet gaming.

"Internet gaming in this State shall be subject to the provisions of, and preempted and superseded by, any applicable federal law. Internet gaming in this State shall be deemed to take place where a casino's computer server is located in Atlantic City regardless of the player's physical location within this State." *See* New Jersey P.L. 2013, c27(5:12-95.20). Found online at http://www.njleg.state.nj.us/2012/Bills/PL13/27_.HTM.

Does the agreement by the State and the Tribe to allow Internet gaming amend the Compact, thereby requiring the Tribe to seek the Department of Interior's approval to offer covered games over the Internet? I find it does not. Part 4 ("Authorization of Covered Games") of the Compact authorizes the Tribe to conduct covered class III games. The Compact specifically defines four class III games and indicates that an amendment to the Compact is required to offer any other class III games. Here the Tribe does not seek to offer any game not specifically authorized as a covered game; it seeks only to offer specific covered games by a modern method not specifically mentioned in the Compact.

The agreement of the parties contemplates that all provisions of the Compact will remain in force unamended and that their agreement relates only to the use of the Internet to conduct covered games involving only international players physically located outside Oklahoma and the United States and in a country where such gaming is lawful. The Compact does not change or alter the scope[86] of authorized games, nor does it change or alter the shared revenues authorized under my interpretation of the Compact. The use of the Internet is simply a method of offering authorized covered games.

The Compact provides that in the event they disagree as to the interpretation of the Compact, the Parties should attempt to meet and resolve the dispute among themselves.[87] The decision by the United States Supreme Court in *Bay Mills* suggests the same. That is precisely what the State and the Tribe did with respect to the issues involved in this Arbitration.

C. Is Internet gaming as contemplated by the Tribe unlawful under State or Federal law?

The stated Dispute was drafted narrowly by the Parties. However, the Briefs of both Parties addressed the lawfulness of the intended Internet gaming. Therefore, I deem the lawfulness of the proposed conduct of such gaming to be an issue that requires resolution. Both Parties contend the conduct would not be unlawful.

---

[86] 25 CFR 501.2 et seq.

[87] 3A O.S. § 281 Part 12(1) (Joint Exhibit 2).

1. Federal Law

Internet gaming, as such, is not expressly prohibited in the United States. Three states[88] have enacted statutes specifically permitting Internet gaming intrastate. Other states have enacted legislation permitting the use of the Internet in intrastate and interstate lotteries. Indeed, the persuasiveness of lotteries and how they are played today combined with modern technology, computer science, and the Internet results in Internet gaming in virtually every state whether or not it is recognized as such. That problem essentially explains the DOJ Memorandum reinterpreting the Wire Act discussed below. Gambling and gaming in the United States has historically been viewed as a state concern within the police power of the states and is for the most part authorized, prohibited, and regulated at the state and local level.[89] Federal laws affecting gambling, again for the most part, are designed to aid the states in the enforcement of their laws and usually require a predicate state offense for prosecution.[90]

I have identified four federal statutes that may in one way or another be affected by Internet gaming such as that contemplated by the Tribe and not specifically exempted by IGRA: (i) the Wire Act;[91] (ii) the Unlawful Internet Gaming Enforcement Act;[92] (iii) the Travel Act;[93] and (iv) the Illegal Gaming Business Act.[94]

---

[88] New Jersey, Delaware, and Nevada.
[89] I. Nelson & Rebecca Bolin, Game On for Internet Gambling: With Federal Approval, States Line Up to Place Their Bets, 44 ConnLR 653, 657. Found online at: http://connecticutlawreview.org/articles/game-on-for-internet-gambling-with-federal-approval-states-line-up-to-place-their-bets/.
[90] IGRA specifically exempts gaming by tribes pursuant to a compact from the federal anti-lottery states at 25 U.S.C. § 2720.
[91] 18 U.S.C. § 1084.
[92] 31 U.S.C. § 5361 et seq.
[93] 18 U.S.C. § 1952.
[94] 18 U.S.C. § 1955.

a. Wire Act

The Wire Act, adopted in 1961, was the first federal attempt to regulate gambling since late in the 19th century.[95] The Act prohibits the use of wire communication to transmit bets or wagers in interstate and foreign commerce.[96] Bets across state lines are prohibited and the Act would apply to Internet gaming as that technology would most certainly come within its definitions of "wire communications."[97] The Act was interpreted from 1961 to 2011 to cover and include all forms of gambling. A split developed in the federal courts as to the scope of the Act, with most courts concluding that the Act covered only betting on sporting events or contests, and others concluding it applied to all forms of gambling.[98] In addition, Congress enacted the Unlawful Internet Gaming Enforcement Act[99] in 2006 and that Act in several ways conflicted with the Wire Act. As a result of this confusion, in 2011 the US Department of Justice issued a Memorandum styled "Whether Proposals By Illinois and New York to use the Internet and Out of State Transaction Processors to Sell Lottery Tickets to In-State Adults Violate the Wire Act."[100] In that Memorandum, the DOJ concluded that "interstate transmissions of wire communications that do not relate to a sporting event or contest....fall outside the reach of the Wire Act." Since 2012, the Wire Act has been so interpreted.

---

[95] I. Nelson & Rebecca Bolin, Game On for Internet Gambling: With Federal Approval, States Line Up to Place Their Bets, 44 ConnLR 653. Found online at: law review article: http://connecticutlawreview.org/articles/game-on-for-internet-gambling-with-federal-approval-states-line-up-to-place-their-bets/.

[96] 18 U.S.C. § 1084.

[97] I. Nelson & Rebecca Bolin, Game On for Internet Gambling: With Federal Approval, States Line Up to Place Their Bets, 44 ConnLR 653. Found online at: http://cyber.law.harvard.edu/media/uploads/72/2/KERR-78_N_Y_U_L_Rev_1596-edit.pdf.

[98] *See United States v. Lyons,* 740 F.3d 249 (1st Cir. 2014) (holding that the Wire Act prohibits sports betting) and United States v. Lombardo, 639 F. Supp.2d 1271, 1281 (D. Utah 2007) (holding that the Wire Act applies to sports and other forms of gambling).

[99] 31 U.S.C. § 5361 et seq.

[100] Whether Proposals By Illinois And New York To Use The Internet And Out-Of-State Transaction Processors To Sell Lottery Tickets To In-State Adults Violate The Wire Act, 35 Op. Att'y Gen (2011), found online at: http://www.justice.gov/sites/default/files/olc/opinions/2011/09/31/state-lotteries-opinion.pdf (last visited 11/19/2015).

The class III covered games, which the Tribe intend to conduct, do not involve gambling on a sporting event or contest. Therefore, I conclude the Wire Act does not prohibit Internet gaming on Tribal lands conducted pursuant to a Tribal-State compact.

b. The Unlawful Internet Gaming Enforcement Act

The Unlawful Internet Gaming Enforcement Act ("UIGEA") was enacted in 2006. UIGEA was not intended, nor does it regulate gambling, but rather, it prohibits certain financial transactions related to unlawful gambling. UIGEA specifically provides that "unlawful Internet gambling does not include a bet or wager where the bet or wager does not violate any provision of...the Indian Gaming Regulatory Act."[101] UIGEA also provides that "[n]o provision of that Act shall be construed as altering, limiting, or extending any Federal or State Law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States."[102] I, therefore, conclude that UIGEA does not prohibit lawful Internet gaming conducted on Tribal lands pursuant to a Tribal-State compact.

c. Travel Act & Illegal Gaming Business Act

The Travel Act[103] and Illegal Gaming Business Act[104] were both enacted to address organized crimes and both require a violation of an underlying state law as a predicate offense. I therefore conclude that the Acts would not be applicable to Internet gaming conducted on Tribal lands pursuant to a Tribal-State compact, which does not violate state law.

2. Tribal Law

The Tribe has adopted a comprehensive Tribal Gaming Ordinance[105] governing its gaming operations, which authorizes the conduct of covered games pursuant to the Compact, and has adopted a specific resolution "Approving Technical Standards for Internet Gaming Systems Utilized in International (Non USA) Markets Where Internet

---

[101] 31 U.S.C. § 5362(10)(B)(iii).
[102] *Id.* at § 5361(b).
[103] 18 U.S.C. § 1952.
[104] 18 U.S.C. § 1955.
[105] *See* Iowa Tribe of Oklahoma Tribal Gaming Ordinance, Approved Nov. 12, 2006 (Tribe Exhibit 3).

Gaming is Not Illegal." Therefore, I conclude that Tribal law authorizes the conduct of such gaming.

3. State Law

The Constitution of the State of Oklahoma does not mention gambling. The State legislature has enacted statutes prohibiting virtually all forms of gambling and activities related to gambling.[106] However, the State-Tribal Gaming Act exempts Tribal gaming on Indian lands and gaming conducted by "Organizational Licensees" off Tribal lands from the application of state statutes that would otherwise make such conduct a criminal offense. Thus, Oklahoma does not prohibit gambling, rather, it regulates gambling off Indian lands, and Tribes regulate gaming on Indian lands pursuant to compacts, which specify that Tribes may conduct any game authorized by their compact.[107] Therefore, I conclude that the laws of the State of Oklahoma do not prohibit or make unlawful the conduct of Internet gaming such as that the Tribe and the State contemplate as described in these proceedings.

V.
FINDINGS AND CONCLUSIONS

A. Summary of Findings and Conclusions

IGRA, as previously noted, is game specific, meaning that it limits the games that a Tribe may conduct to those authorized by the Act. This Arbitration involves only class III games. As to such games IGRA provides:

(1) Class III gaming activities shall be lawful on Indian lands only if such activities are—

(A) authorized by an ordinance or resolution that—

(i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands,

(ii) meets the requirements of subsection (b), and

---

[106] 21 O.S. §§ 941-988.
[107] 3A O.S. § 280 (Joint Exhibit 1).

(iii) is approved by the Chairman,

(B) located in a State that permits such gaming for any purpose by any person, organization, or entity, and

(C) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) is in effect[108]

and that the Tribal-State Compact may include "standards for the operation of such...activity."[109]

The evidence in this proceeding proves that the Tribe has: (i) adopted a Tribal Gaming Ordinance authorizing the conduct on its lands class III gaming activities, which meets the requirements of IGRA, and which has been approved by the Chairman of the NIGC;[110] (ii) Oklahoma permits such gaming activities to be conducted by other entities (Organizational Licensees) under regulations, which are no less stringent or inconsistent than those regulations imposed upon the Tribe by the Compact; (iii) such gaming is conducted pursuant to an approved Compact entered into by the Tribe and the State of Oklahoma that is in effect.[111] The evidence also proves that the Compact includes detailed standards, which must be met by the games the Tribe desires to offer and those standards include player terminals, electronic player devices, and cashless transaction systems, among other and all of which is used in Internet gaming. Before the Tribe begins to operate any game, the Compact requires the Tribe to obtain from an independent qualified testing laboratory a certification hat the game meets all of the standards set forth in the Compact.[112] After a lab certifies that the game meets all

---

[108] 25 U.S.C. § 2710(d).
[109] 25 U.S.C. § 2710(d)(3)(C)(6).
[110] *See* Letter from Harold A. Monteau, Chairman, NIGC, to Lawrence Murray, Chairman, Iowa Tribe of Oklahoma (Dec. 18, 1995) (Tribe Exhibit 3).
[111] *See* 25 U.S.C § 2710(d)(4) and State-Tribal Gaming Act, 3A O.S. § 261, et seq.
[112] *See* Letter from George T. Skibine, Acting Deputy Assistant Secretary, US Department of Interior's Policy and Economic Development, to Emily Bernadette Huber, Chairperson, Iowa Tribe of Oklahoma (Jan. 6, 2005) (State Exhibit 3), which approves Compact.

standards required, the Tribe must certify that the game meets the standards. Only then may the Tribe begin to conduct a class III game authorized by the Compact.[113]

Under the Oklahoma State-Tribal Compact statutory scheme, nothing more is required for the Tribe to conduct gaming. If an authorized "covered game"[114] is properly certified for operation as an Internet game the Tribe may conduct the game on its lands, and I so find.

To be clear, my interpretation and findings do not mean that I am approving the specific games the Tribe intends to conduct. The Tribe has yet to obtain all of the necessary certifications of the standards necessary under the Compact. My interpretations and findings do mean that if such certifications are received, filed, and if the State does not object pursuant to its right under the Compact, the Tribe would be authorized to conduct the Internet games.[115]

The rationale for my findings is that IGRA plainly and clearly sets forth the procedures States and Tribes are to follow in regulating class III gaming. The Tribal Gaming Ordinance and Compact was submitted to the NIGC and DOI for approval, and the Tribe complied with those procedures. The DOI and the NIGC by those procedures were put on notice that gaming authorized by IGRA would be conducted on tribal lands consisting of "covered games," which included standards that can be interpreted to expressly permit Internet gaming. As a result of the NIGC's approval, there currently exists a final agency order. The NIGC approved the Tribe's Gaming Ordinance and its

---

[113] If the State disagrees and believes the game is not authorized by the Compact, it has the right to object to its operation. *See* Compact Part 8 (Joint Exhibit 3).

[114] Under the Oklahoma Compact, an authorized game is referred to as a "covered game." *See* 3A O.S. 281 Part4 (B) (Joint Exhibit 2).

[115] I have read the Technical Standards for Internet Gaming Systems Utilized in International (Non USA) Markets Where Internet Gaming is Not Illegal (dated November 4, 2015) prepared by Eclipse Compliance Testing, a game-testing laboratory (Tribe's Exhibit 35-1). After reading it, I have no idea as to whether they meet the standards required by the State-Tribal Gaming Act. The Standards and the Tribe's Exhibit are extremely complex and quite simply far beyond my knowledge and expertise. Only an expert in computer science could possibly understand these Standards. The Tribe has the responsibility to assure that they meet the requirements set forth in the Compact. If they do not meet the standards for the conduct of the games, the State has the right to object to the conducted games.

final order authorizing the conduct of covered games on its lands, which effectively means that such gaming complies with IGRA.

In making my findings as set forth above, I am aware that the Compact in its definitions section contains definitions of the words "patron" and "Facility" that can be construed out of context in such a way as to limit the Tribe's right to conduct covered games over the Internet. I find that they do not, as I find that the definition section of the Compact defines words only in relation to the context of their use in the Compact.

IGRA authorizes the "conduct of gaming on Indian lands," but does not define that term and as a result there has been some controversy as to its meaning, which has reached the courts with respect to compacts in other states. The courts have never resolved that issue. My resolution of this issue as it arises in the context of this Dispute over the interpretation of the Oklahoma Tribal-State Compact does the following: (i) it gives effect to the words of IGRA, its expressed purpose, and its legislative history; (ii) it eliminates complex sovereignty issues that would result from any alternative resolutions; (iii) it gives effect to the words of the state statute and is consistent with the intent and purposes of state law; (iv) it is consistent with the words of the compact and the way the Parties interpret it; (v) it eliminates issues related to the legality of Internet gaming on Tribal lands.

B. Specific Findings and Conclusions

1. To the extent that Sections I, II, III, and IV of this document reflect findings and/or conclusions not repeated in this Section V, Sections I, II, III, and IV are incorporated into this Section V.
2. The Iowa Tribe of Oklahoma is a federally recognized Indian tribe.
3. The Tribe conducts gaming on its lands in the State of Oklahoma pursuant to an approved Tribal-State Class III gaming compact and an approved Tribal Gaming Ordinance, both of which are in effect.
4. Pursuant to the Compact, the Tribe partially ceded its sovereign immunity as to the conduct of class III gaming on its lands in exchange for specified exclusivity rights defined therein.

5. The Compact is game specific and allows the Tribe to conduct four types of games in accordance with its terms as "covered games."
6. The words "Patron" and "Facility" as defined in Part 3 (Definitions) of the Compact do not limit or prohibit the play of covered games through the use of the Internet to conduct covered games if the computer server controlling the game is located on Tribal lands.
7. Prior to operating any covered game, the Tribe must obtain from an independent testing laboratory certification that the game meets the standards set forth in 3A O.S. §§ 11-18, and the Tribe must certify that the game meets those standards.
8. IGRA defines the term "Indian Lands"[116] by reference to a location but does not define the term "conducted on Indian Lands."
9. The Internet is not a game, rather it is a way or method of playing a game through the use of modern technology. The use of the Internet to conduct covered games is permissible under IGRA and the Compact.
10. If a covered game is certified by an independent laboratory and by the Tribe as meeting the standards as set forth in the Compact and if the game while being played is controlled and operated by a computer server located on Indian lands of the Tribe that game is conducted on Indian lands pursuant to IGRA and the Compact.
11. The use of Internet to play properly authorized covered games as agreed by the Parties does not violate IGRA, the Tribal Gaming Ordinance, or the Compact, nor does the use of the Internet to conduct covered games extend or restrict the scope of the games authorized by the Compact. The scope of the games was agreed upon as provided in the Compact and approved by the DOI. The use of the Internet is merely using technology to play covered games as a way to increase Tribal revenues. It does not extend or restrict the scope of the games and does not amend the Compact in any way. The Compact and all its terms shall remain in force. Using the Internet to conduct authorized covered games under the

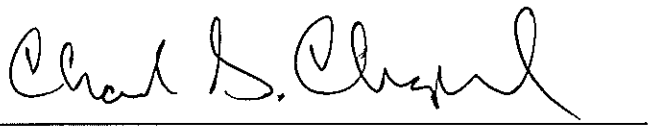
[116] 25 U.S.C. § 2703(4).

Compact is permitted as it currently exists. Therefore, no amendment is necessary or required.

12. The conduct of authorized covered games by the Tribe pursuant to the Compact through the use of the internet with players located outside of Oklahoma is not unlawful under Federal, State, or Tribal law.

Therefore, I conclude that the conduct by the Tribe of authorized covered games pursuant to the Compact whereby a player or players of those games is, or are, physically located outside the boundaries of the State of Oklahoma and the United States and in a place where Internet gaming is lawful when his or her computer is connected to a computer server which operates the games is located on Tribal lands is authorized by the Compact, the Tribal Gaming Ordinance, IGRA, and the State Tribal Gaming Act.

The foregoing resolution of the Dispute as set forth herein shall be binding upon the Parties immediately upon the issuance of this award.



Charles S. Chapel, Sole Arbitrator
Riggs, Abney, Neal, Turpen, Orbison & Lewis P.C.
528 NW 12th Street
Oklahoma City, OK 73103
405-843-9909 (o)
405-842-2913 (f)