UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

8% Payments START AGAIN 6/30/99

KEWEENAW BAY INDIAN COMMUNITY,

Plaintiff/Counter-Defendant,

v.

UNITED STATES OF AMERICA, UNITED STATES DEPARTMENT OF THE INTERIOR, UNITED STATES DEPARTMENT OF JUSTICE,

Defendants/Counter-Plaintiffs,

STATE OF MICHIGAN,

Intervenor.

_____/

Case No. 2:94-CV-262

HON. DAVID W. McKEAGUE

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CONSENT JUDGMENT AND ORDER OF DISMISSAL

Plaintiff Keweenaw Bay Indian Community ("the Community") and Defendant-Intervenor the State of Michigan have entered into an Agreement and Stipulation for Entry of a Consent Judgment ("the Stipulation"). The Stipulation was signed by counsel for the Community and the Community's Tribal Council President on November 13, 2000, by counsel for the State on November 6, 2000, and by Governor John Engler on November 7, 2000. Defendants the United States of America, the United States Department of the Interior, and the United States Department of Justice ("the federal defendants") did not enter into the Stipulation.

The Stipulation was submitted to the Court for approval and

entry of consent judgment on December 1, 2000. The federal defendants filed their response to the motion for entry of consent judgment on December 22, 2000. The Community and the State filed their reply on January 5, 2001. On January 31, 2001, the Court conducted a hearing on the motion for entry of consent judgment.

The Court, having carefully considered the Stipulation and proposed consent judgment and having duly considered the federal defendants' objections and reservations, for the reasons stated from the Bench, **HEREBY ORDERS, ADJUDGES, AND DECREES** that:

1. The terms, provisions, and conditions of the Stipulation are hereby incorporated into this Consent Judgment as if fully set out herein and are hereby made an **ORDER** of the Court.

2. (a) Based upon the May 9, 2000, determination by the Assistant Secretary of the Interior that the continued operation of the Casino at the Marquette County Parcel is in the best interest of the Community and its members, and is not detrimental to the surrounding community, and Governor Engler's concurrence in that determination as set forth in paragraph 1, page 5 of the Stipulation, this Court has determined that all issues in this lawsuit regarding lawful operation of the Casino at the Marquette County Parcel are moot, except as discussed below.

(b) If the federal defendants wish to pursue their counterclaim for relief in the form of forfeiture, they shall so advise the Court in writing not later than February 28,

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2001.

(c) In the event the federal defendants notify the Court that they elect not to pursue their counterclaim, all counterclaims of the federal defendants will be dismissed by the Court with prejudice and without further proceedings.

(d) If the federal defendants elect to pursue the forfeiture claim, all parties shall contemporaneously, and not later than March 12, 2001, file their briefs, not to exceed 10 pages in length, outlining their positions on the continuing viability of the forfeiture claim in light of prior orders of this Court, and the form which further proceedings on such a claim should take. Responses to these briefs, not to exceed 10 pages, shall be filed not later than March 21, 2001.

3. All claims by all parties to these proceedings shall be and hereby are **DISMISSED WITH PREJUDICE**, with the exception of the federal defendants' counterclaim for forfeiture.

4. Except as provided in paragraph 8 of the Stipulation, the Stipulation and this Consent Judgment can be modified only by the mutual consent of all parties to the Stipulation and with the Court's concurrence, provided the federal defendants are given fair notice of any proposed modification and reasonable opportunity to be heard thereon before the Court approves such modification.

5. Nothing in the Stipulation or this Consent Judgment and Order

of Dismissal forecloses an interested third-party or the federal defendants from challenging all or part of the Stipulation or the plaintiff's gaming activities under applicable state and federal law, including the Indian Gaming Regulatory Act, or under existing or future gaming compacts or agreements.

6. Notwithstanding the dismissal of this action, the Court shall retain continuing jurisdiction for the purposes of enforcing the Stipulation and this Consent Judgment according to their terms and provisions.

IT IS SO ORDERED.

Dated: February 2, 2001

David W. McKeague

DAVID W. McKEAGUE
UNITED STATES DISTRICT JUDGE

Certified as a True Copy
Ronald C. Weston, Sr., Clerk
By _____ Deputy Clerk
U.S. District Court
Western Dist. of Michigan
Date FEB - 2 2001

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

KEWEENAW BAY INDIAN COMMUNITY, Plaintiff/Counter-Defendant, v. UNITED STATES OF AMERICA, UNITED STATES DEPARTMENT OF THE INTERIOR, UNITED STATES DEPARTMENT OF JUSTICE, Defendants/Counter-Plaintiffs, STATE OF MICHIGAN, Intervenor.	Case No. 2:94-CV-262 Hon. David W. McKeague

AGREEMENT AND STIPULATION FOR ENTRY OF A CONSENT JUDGMENT

Plaintiff/Counter-Defendant, Keweenaw Bay Indian Community (the "Community"), by and through its undersigned counsel, and Intervenor, State of Michigan (the "State"), by and through its undersigned counsel and Governor John Engler, stipulate as follows:

FACTS

1. On October 14, 1988, the Community obtained title to the Marquette County Parcel at issue in this litigation (the "Marquette County Parcel"), more specifically described as:

> The South 732 feet of the Southeast Quarter of the Southeast Quarter of Section 12, Township 47 North, Range 24 West, Chocolay Township, Marquette County, Michigan, together with Outlot "C" of the plat of Kawbawgam Village No. 2 in the Southwest Quarter of Section 7, Township 47 North, Range 23 West, Chocolay Township, Marquette County, Michigan.

This land was placed into trust with the United States for the benefit of the Community in 1990. The Community opened a Class II bingo facility on this land on November 7, 1992. The bingo facility was in operation until September 27, 1993.

2. On August 20, 1993, the Community and the Governor of the State of Michigan (the "Governor") signed a tribal-state gaming compact (the "Compact") under the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et seq. ("IGRA"). The Compact was ratified by the Michigan House of Representatives on September 21, 1993, and by the Michigan Senate on September 30, 1993, and became effective on November 30, 1993, when the United States Secretary of the Interior (the "Secretary") published his approval of the Compact in the Federal Register as required by Section 11(d)(8)(D) of the IGRA; 25 U.S.C. § 2710(d)(8)(D). See 58 Fed. Reg. 63262 (1993). The Compact authorizes class III gaming as defined in Section 4(8) of the IGRA, 25 U.S.C. § 2703(4)(8), on the Community's "Indian lands" (as defined in the Section 2(B) of the Compact) within the state of Michigan.

3. Section 9 of the Compact states:

> An application to take land into trust for gaming purposes pursuant to §20 of IGRA (25 U.S.C. §2719) shall not be submitted to the Secretary of the Interior in the absence of a prior written agreement between the Tribe and the States' other federally recognized Indian Tribes that provides for each of the other Tribes to share in the revenue of the off-reservation gaming facility that is the subject of the §20 application.

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Section 9 was included in the Compact at the insistence of and for the benefit of the State in order to limit the proliferation of casinos in Michigan and not to prevent the relocation of an existing tribal gaming facility within Marquette County, Michigan. On May 9, 2000, the Department of Interior, through Kevin Gover, Assistant Secretary for Indian Affairs, agreed with the Community that Section 9 is not applicable to the existing tribal gaming facility within Marquette County.

4. On September 26, 1994, the Community commenced this lawsuit.

5. On September 28, 1994, the Community opened a class III gaming facility (the "Casino") on the Marquette County Parcel.

6. On February 5, 1996, this Court ruled that the Compact authorized class III gaming by the Community on land taken into trust by the Secretary for the Community after October 17, 1988, and prior to August 20, 1993, the date of execution of the Compact. See Keweenaw Bay Indian Community v. United States, 914 F. Supp. 1496 (W.D. Mich. 1996).

7. On February 10, 1998, the U.S. Court of Appeals for the Sixth Circuit, in Keweenaw Bay Indian Community v. United States, 136 F.3d 469 (6th Cir. 1998), reversed and remanded the case to this Court for proceedings consistent with its opinion.

8. On August 19, 1994, the Community submitted an application to the Secretary for a determination pursuant to Section 20(b)(1)(A) of the IGRA, 25 U.S.C. § 2719(b)(1)(A), that the continued operation of the Casino at the Marquette

County Parcel is "in the best interest of the [Community] and its members and would not be detrimental to the surrounding community." On May 9, 2000, the Assistant Secretary of the Interior, after thoroughly reviewing the Community's application and based on a complete administrative record, issued a determination that the continued operation of the Casino at the Marquette County Parcel is in the best interest of the Community and its members, and is not detrimental to the surrounding community.

9. On April 21, 1999 the Community submitted a new application to the Secretary pursuant to Section 20(b)(1)(A) of the IGRA, 25 U.S.C. § 2719(b)(1)(A), for the purpose of having a parcel of land at the site of the former Marquette County Airport (the "Airport Parcel") taken into trust for the Community for gaming purposes. The Airport Parcel is more specifically described as:

> A parcel of land located in the South Half of the Southwest Quarter of Section 22, and in the Northwest Quarter of the Northwest Quarter of Section 27, and in the East Half of the Northeast Quarter of Section 28, all in Township 48 North, Range 26 West, more particularly described as: Commencing at the South one-sixteenth corner common to Section 22 and Section 21 thereof; thence East 550.16 feet to the Point of Beginning; thence East to the Westerly right of way of County Road JJN; thence Southerly along said right of way to a point due East of the West one-sixteenth corner common to Section 27 and Section 22 thereof; thence West to the West one-sixteenth corner common to Section 27 and Section 22 thereof; thence 177°20'32" for a distance of 565.42 feet; thence 255°42'59" for a distance of 1,501.06 feet; thence 157°43'16" for a distance of 368.31 feet; thence 230°10'24" for a distance of 427.09 feet; thence 319°36'19" for a distance of 255.27 feet; thence 349°55'42" for a distance of 108.35 feet; thence 266°57'47" for a distance of 254.31 feet; thence 346°23'55" for a distance of 340.43 feet; thence 29°31'22" for a distance of 57.75 feet; thence 346°51'19" to the Southerly edge of Taxiway "E"; thence 76°51'19" to a point due South of the Point of Beginning; thence North back to the Point of Beginning; excepting therefrom County Road rights of way.

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This application expressly states the Community's intention that, upon a favorable determination by the Secretary, and a concurrence in that determination by the Governor of the State, the Community will relocate all gaming operations in Marquette County from the Marquette County Parcel to the Airport Parcel.

10. The Community's gaming market in the central and western regions of the Upper Peninsula of Michigan is heavily dependent on tourism in the area. The existence of electronic games of chance authorized pursuant to State law in the city of Detroit has little or no impact on this gaming market. Continuation of the limitation pursuant to State law that electronic games of chance are authorized only in the City of Detroit is of substantial economic value to all of the Community's Class III gaming facilities. Continuation of gaming by the Community in Marquette County is also of substantial economic value to the Community.

AGREEMENT

NOW, THEREFORE, the Community and the State, including specifically the Governor, stipulate and agree as follows:

1. The State, including specifically the Governor, concurs with the Secretary's determination that the continued operation of the Casino on the Marquette County Parcel is in the best interest of the Community and its members, and is not detrimental to the surrounding community. Based on a thorough understanding of the relevant facts, the Governor also believes that the proposed relocation of the Casino to the Airport Parcel likely is in the best interest of the

Community and is not detrimental to the surrounding community. In the event that the Secretary determines that relocation of the Community's gaming operation from the Marquette County Parcel to the Airport Parcel is in the best interest of the Community and its members and is not detrimental to the surrounding community, the State, including specifically the Governor, agrees to give due consideration to any such determination.

2. The State and the Community agree that termination of this litigation in a manner consistent with the terms of this Agreement is in the best interest of all parties.

3. The State and the Community agree that Section 9 of the Compact is not implicated by the continued operation of the Casino on the Marquette County Parcel, or by any future relocation of that Casino to the Airport Parcel. In the event that it might be determined that Section 9 of the Compact is implicated by the continued operation of the Casino at either location, the State, including specifically the Governor, hereby waives Section 9 of the Compact and agrees not to take any action to enforce, or aid in the enforcement of, Section 9 of the Compact.

4. The Community and the State agree as follows:

A. So long as there is a binding class III compact in effect between the State and the Community pursuant to IGRA, and no change in State law is enacted which is intended to permit or permits the operation of electronic games of chance by any other person or entity (except up to three persons

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or entities operating such games in the City of Detroit as permitted by the Initiated Law of 1996, as amended by MCL 432.201 et seq.), and no other person or entity (except a federally-recognized Indian Tribe operating pursuant to a valid Compact under the IGRA or up to three persons or entities operating in the City of Detroit pursuant to the Initiated Law of 1996, as amended by MCL 432.201, et seq.) within the State lawfully operates electronic games of chance, and a governor of the State does not concur, pursuant to Section 20(b)(1)(A) of the IGRA, 25 U.S.C. § 2719(b)(1)(A), in the operation of a class III gaming facility by another Indian tribe in Marquette County on lands not in trust as of October 17, 1988, the Community shall make payments as provided in subsection 4(B).

B. From and after the effective date of this Consent Judgment, and so long as the conditions set forth in section 4(A) remain in effect, the Community will make semi-annual payments as follows:

(i) Payment to the Michigan Economic Development Corporation ("MEDC"), a Michigan public body corporate created by an interlocal agreement effective April 5, 1999, pursuant to the Urban Cooperation Act of 1967, Act No. 7 of 1967, Ex. Sess., as amended, being sections 124.501 et seq., of the Michigan Compiled Laws, and having its principal office at 201 N. Washington Square, Lansing, Michigan, 48913, or at such other

location or locations as the MEDC determines, in an amount equal to 8% of the net win derived from all Class III electronic games of chance, as those games are defined in the Compact, which are operated at the Marquette County Parcel, or at the Airport Parcel provided that the Community's application described in paragraph 9 of the statement of facts above is approved, or at any other successor site of the Casino currently located on the Marquette County Parcel.

(ii) As used in this subsection, "net win" means the total amount wagered on each electronic game of chance, minus the total amount paid to players for winning wagers at such machines.

(iii) For purposes of these payments, all calculations of amounts due shall be based upon a fiscal year beginning October 1 and ending September 30 of the following calendar year, unless the parties agree on a different fiscal year, and all payments due pursuant to the terms of this Section shall be paid no later than sixty days (60) days after October 1 and March 31 of each year. Any such payments due and owing from the Community in the final year the tribal-state Compact is in force, shall reflect the actual net win but only for the portion of the year the Compact is in effect.

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(iv) The initial payment from the Community shall include the equivalent of 8% of the net win from the Casino located on the Marquette County Parcel dating from June 30, 1999, to the date of execution of this consent judgment. Such payment will be made no later than sixty (60) days after the effective date of this Consent Judgment.

C. The payments contemplated by this section are made in consideration for exclusivity in the Community's gaming activities consistent with Section 4(B) above and in consideration for the other agreements contained in this Agreement and Stipulation.

5. The Community and the State agree as follows:

A. So long as there is a binding Class III compact in effect between the State and the Community pursuant to IGRA, and no change in State law is enacted which is intended to permit or permits the operation of electronic games of chance by any other person or entity (except up to three persons or entities operating such games in the City of Detroit pursuant to the Initiated Law of 1996, as amended by MCL 432.201 et seq.), and no other person or entity (except a federally-recognized Indian Tribe operating pursuant to a valid Compact under the IGRA or up to three persons or entities operating in the City of Detroit pursuant to the Initiated Law of 1996, as amended by MCL

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432.201, et seq.) within the State lawfully operates electronic games of chance, and a governor of the State does not concur, pursuant to Section 20(b)(1)(A) of the IGRA, 25 U.S.C. § 2719(b)(1)(A), in the operation of a class III gaming facility by another Indian tribe within the Counties of Baraga, Gogebic, Keweenaw, Houghton, Iron, or Ontonagon, on lands not in trust as of October 17, 1988, the Community shall make payments as provided in subsection 5(B).

B. From and after the effective date of this Consent Judgment, and so long as the conditions set forth in section 5(A) remain in effect, the Community will make semi-annual payments as follows:

(i) Payment to the MEDC in an amount equal to 8% of the net win derived from all Class III electronic games of chance, as those games are defined in the Compact, which are not subject to section 4 above.

(ii) As used in this subsection, "net win" means the total amount wagered on each electronic game of chance, minus the total amount paid to players for winning wagers at such machines.

(iii) For purposes of these payments, all calculations of amounts due shall be based upon a fiscal year beginning October 1 and ending September 30 of the following calendar year, unless the parties agree on a different fiscal year, and all payments due

pursuant to the terms of this Section shall be paid no later than sixty days (60) days after October 1 and March 31 of each year. Any payments due and owing from the Community in the final year the tribal-state Compact is in force, shall reflect the actual net win but only for the portion of the year the Compact is in effect.

(iv) The initial payment from the Community shall include the equivalent of 8% of the net win from facilities not subject to section 4 above, dating from June 30, 1999, to the date of execution of this consent judgment. Such payment will be made no later than sixty (60) days after the effective date of this Consent Judgment.

(v) If at any time while the Compact and this Consent Judgment are in effect, the governor of the State concurs, pursuant to Section 20(b)(1)(A) of the IGRA, 25 U.S.C. § 2719(b)(1)(A), in the operation of a class III gaming facility by another Indian tribe, and, in the exercise of such concurrence, negotiates for payments by such tribe of less than 8% of its net win derived from any and all Class III electronic games of chance, the percentage of net win specified in subsection 5(B)(i) above shall no longer be 8%, but shall be the lesser percentage negotiated by the governor

with the other Indian tribe (presuming the governor's concurrence does not terminate the Community's obligation to pay as defined in subsection 5(A)).

C. The payments contemplated by this section are made in consideration for exclusivity in the Community's gaming activities consistent with Section 5(B) above and in consideration for the other agreements contained in this Agreement and Stipulation.

6. The Community agrees that its gaming operations in Michigan shall be limited to the L'Anse Federal Indian Reservation in Baraga County, and to one facility in Marquette County. The Community agrees that, if the Secretary determines pursuant to the application described in paragraph 10 of the statement of facts above that relocation of the Casino from the Marquette County Parcel to the Airport Parcel is in the best interest of the Community and its members and is not detrimental to the surrounding community, and if the State, including specifically the Governor, concurs in that determination, the Community will cease gaming operations on the Marquette County Parcel as soon as gaming commences on the Airport Parcel. In the event that any Indian tribe which obtains federal recognition in the future gains the right to operate more than two facilities on its Indian lands pursuant to a tribal-state compact under IGRA, the Community shall be afforded the same right subject to the same terms and conditions imposed on such tribe. This limitation will cease if a governor of the State concurs, pursuant to Section

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20(b)(1)(A) of the IGRA, 25 U.S.C. § 2719(b)(1)(A), in the operation of a class III gaming facility by another Indian tribe in Marquette County on lands not in trust as of October 17, 1988.

7. Prior to November 30, 2022, the State will forbear from exercising its unilateral right to renegotiate or terminate the Compact pursuant to Section 12(C) of the Compact.

8. This Agreement and Stipulation, along with the associated Consent Judgment, constitutes the entire agreement among and between the parties and recognizes the importance to the Community of its continued gaming in Marquette County. All rights and benefits provided herein by each party are conferred in exchange solely for the rights and benefits conferred by the other party in each section of this agreement. If any section or provision of this Agreement and Stipulation is held invalid by any court of competent jurisdiction, it is the intent of the parties that the remaining sections or provisions shall continue in full force and effect. Unless this Agreement is superseded by a subsequent tribal-state compact in accordance with IGRA, no modification of this Agreement is binding on either party unless the modification is in writing, and a) signed by the Governor, or his delegee, b) approved by a Resolution of the Community's Tribal Council, and c) approved by the Court.

9. The Community agrees that, should the Community bring a legal or administrative challenge to the payments specified in sections 4 or 5 of this

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Agreement, the Community will cease gaming activities in Marquette County. Should a suit challenging the legality or validity of the payments specified in sections 4 or 5 of this Agreement be brought by any person or entity other than the Community, the Community agrees that it will take the following actions at the request of the State:

a. If the Community is not already a party to the action, it will move to intervene on the side of the party or parties who are defending the validity of the payments specified in sections 4 or 5 of this Agreement. Upon becoming a party, the Community will participate as a party in the defense of the validity of those payments.

b. If the Community is denied intervention, the Community shall seek to participate in such an action as an amicus and, if permitted, will file memoranda or briefs to support the validity of the payments.

The Community reserves the right to take actions consistent with subsections a and b above even if not requested to do so by the State. The Community agrees that, if it fails to take the actions specified in this section, it will cease gaming activities in Marquette County. Absent an order of this Court to the contrary, during the pendency of any challenge to the payments specified in sections 4 or 5 of this Agreement, all such payments shall continue to be made by the Community.

10. Nothing in this Agreement and Stipulation, or in the associated Consent Judgment, is intended to or does alter any terms or provisions of either the

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Compact or the August 20, 1993, Consent Judgment and Order in Sault Ste. Marie Tribe, et al v. John M. Engler, (W.D. Mich., No. 1:90-CV-611).

11. The State and the Community agree and consent to entry of the accompanying Consent Judgment, consistent with the terms and conditions of this Agreement and Stipulation.

By the signatures below, Governor Engler, the State and the Community, by and through their counsel, signify their understanding and acceptance of this Agreement and Stipulation.

On behalf of the State of Michigan:

_____ November 7, 2000
John M. Engler, Governor

_____ November 6, 2000
Keith D. Roberts
Assistant Attorney General
Office of Attorney General Jennifer M. Granholm

On behalf of the Keweenaw Bay Indian Community:

_____ November 13, 2000
Richard Shalifoe, Tribal Council President

_____ November 13, 2000
Joseph P. O'Leary
Tribal Attorney, Keweenaw Bay Indian Community

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