

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

FILED

MAR 30 2004

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY , DEPUTY

1. FORT SILL APACHE TRIBE OF)
OKLAHOMA,)
)
Plaintiff,)
)
vs.)
)
1. UNITED STATES OF AMERICA;)
2. UNITED STATES DEPARTMENT OF)
THE INTERIOR;)
3. GALE NORTON, SECRETARY OF)
INTERIOR;)
4. DAVE ANDERSON, ASSISTANT)
SECRETARY OF INTERIOR FOR)
INDIAN AFFAIRS;)
5. PHILIP HOGEN, CHAIRMAN,)
NATIONAL INDIAN GAMING)
COMMISSION, all in their official)
capacity,)
)
Defendants.)

Case No. CIV-04-~~377~~-R
04-337-R

TEMPORARY RESTRAINING ORDER

Plaintiff Fort Sill Apache Tribe ("Tribe") has moved for a temporary restraining order to enjoin the publication of the Secretary's Notice of Approval of the Tribal-State Off Track Wagering Compact between the Chickasaw Nation and State of Oklahoma ("Compact") which was approved by the designee for the Secretary of the Interior on Wednesday, March 24, 2004.

The Tribe has filed a Complaint seeking declaratory and injunctive relief against the United States and officials within the United States Department of the Interior ("DOI") and the United States National Indian Gaming Commission ("NIGC"), acting in their official capacities, requiring the Defendants to comply with the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.* ("IGRA"), specifically, 25 U.S.C. § 2719, which prohibits, with exceptions, gaming

upon "Indian lands" acquired after October 17, 1988, and 25 U.S.C. § 2710(8)(b) which only authorizes the approval of Compacts for gaming on "Indian lands" and which provides for the disapproval by the Secretary of the Interior of any tribal-state gaming compact that violates the requirements of the IGRA.

The Court finds that it clearly appears from Plaintiff's evidence that the Tribe's business interests will be irreparably harmed by the publication of the Secretary's Notice of Approval of the Compact in the *Federal Register* upon which publication the Compact becomes legally effective and the contract rights of the State of Oklahoma and the Chickasaw Nation vest. Plaintiff has made a prima facie showing that the revenues from its Class II gaming operation ("Casino") in Lawton, Oklahoma, will be diminished by the close proximity of a Class III gaming facility and that Tribal members will be negatively impacted by the loss of funds for social, educational and welfare programs. Plaintiff has made a prima facie showing that once the Compact goes into effect and contractual rights vest in the parties to the Compact, any action by the Tribe for damages may be thwarted by the sovereign immunity of the parties to the Compact.

The Court finds that Plaintiff has demonstrated that the matter of determining what land in the state of Oklahoma constitutes "former reservation" land is sufficiently complex and important to the public interest to be deserving of further investigation, that the Defendants will not be harmed by the requested injunctive relief and that the public interest will not be harmed by the requested injunctive relief. The Court further finds that the Compact has no legal effect until the publication of the Secretary's Notice of Approval in the *Federal Register*.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Defendants are restrained from publication of the Secretary's Notice of Approval of Compact in the *Federal Register*. Such restraining order is to remain in full force and effect through the 9th day of April,

2004, at which time Defendants will be given an opportunity to show cause why the foregoing restraining order should not be made a Preliminary Injunction, in the courtroom of the undersigned judge.

THIS TEMPORARY RESTRAINING ORDER IS ISSUED on the 30th day of March, 2004.


UNITED STATES DISTRICT JUDGE