

# INDIAN GAMING

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**HEARING**  
BEFORE THE  
**COMMITTEE ON INDIAN AFFAIRS**  
**UNITED STATES SENATE**  
**ONE HUNDRED SIXTH CONGRESS**  
**SECOND SESSION**  
ON  
**TO PROVIDE INFORMATION ON THE ACTIVITIES OF THE NATIONAL**  
**INDIAN GAMING COMMISSION**

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**JULY 26, 2000**  
**WASHINGTON, DC**



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# INDIAN GAMING

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WEDNESDAY, JULY 26, 2000

U.S. SENATE,  
COMMITTEE ON INDIAN AFFAIRS,  
*Washington, DC.*

The committee met, pursuant to other business, at 1:35 p.m. in room 485, Russell Senate Building, Hon. Ben Nighthorse Campbell (chairman of the committee) presiding.

Present: Senators Campbell, Inouye, and Dorgan.

## **STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, CHAIRMAN COMMITTEE ON INDIAN AFFAIRS**

The CHAIRMAN. We have some limited time in here, because I have to attend a leadership meeting by 3 o'clock. And I have kind of an extensive opening statement for both of these hearings, particularly on the oversight hearing on Indian gaming, since in 1988 I was one of the House members that helped write and pass the Indian Gaming Regulatory Act [IGRA]. But in considering the limited time, I'm going to go ahead and include my written testimony for the record, and ask Senator Dorgan if he has an opening statement.

[Prepared statement of Senator Campbell appears in appendix.]

## **STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA**

Senator DORGAN. Mr. Chairman, let me also submit some comments for the record.

Let me say that I also have another engagement. I am on 4 committees and I think 12 subcommittees, and I know you face the same challenge. So there are a lot of things that are occurring at once.

But we're doing this hearing on the Indian health care issue today, and you have authorized a field hearing next week that I will hold, along with my colleague, Senator Conrad. And I think this will allow us to develop a substantial amount of information about these and related issues.

This is a very important topic. It's quite clear that we face a health care crisis in Indian Country and in America. We must be very aggressive to respond to it.

You and Senator Inouye, particularly, have been extraordinary in calling attention to these issues and providing leadership in the

Congress to respond to them. And I'm pleased to just be a small part of those efforts and to work with you on them.

The CHAIRMAN. Thank you.

Okay, we'll go ahead and start with our panel, dealing with this issue. And that will be Richard Hill, chairman of the National Indian Gaming Association. Rick, nice to see you here.

Delores Pigsley, chairman of the Confederated Tribes of Siletz Indians, Siletz, OR. And Tracy Burris, the chairman of the Oklahoma Indian Gaming Commission of Durant, OK. If you guests would take your seats, I would tell you that all of your written testimony will be included in the record, and if we could get you to abbreviate your comments to about 5 minutes, which we will remind you of with this light, we'd appreciate that, since we both have pretty tight schedules.

Oh, excuse me, I'm going to combine these two panels. The chairman of the National Indian Gaming Commission, Montie Deer is to testify on the first panel, if it's all right with everybody, just have all of you be up here at the same time. Montie, why don't you come on up here first. And in fact, if you'd go ahead and start out, Montie, I'd appreciate that.

Senator DORGAN. Mr. Chairman, if I might just say, my comments obviously were meant for the second portion dealing with Indian Health. I did not respond to the Indian gaming issues. But let me thank the witnesses for being with us at well.

The CHAIRMAN. Looking at the new NIGC structure since we've increased their budget, which is kind of hidden around here, Senator Dorgan, I think the health of the Indian Gaming Commission is improving too. [Laughter.]

Montie, why don't you go ahead and proceed.

**STATEMENT OF MONTIE DEER, CHAIRMAN, NATIONAL INDIAN GAMING COMMISSION, ACCOMPANIED BY TERESA POUST, COMMISSIONER AND ELIZABETH LOHAH HOMER, VICE CHAIR**

Mr. DEER. Thank you, Mr. Chairman and members of the committee.

My name is Montie Deer, and I'm chairman of the National Indian Gaming Commission [NIGC]. I, along with Vice Chairman Elizabeth Homer and Commissioner Terrie Poust, thank you for your ongoing support of the Commission and interest in the regulation of tribal government gaming.

We have just completed our first year together and we are pleased with the progress the Commission has made. We want to thank you for the opportunity to testify today on the activities in the NIGC.

You will recall that prior to Congress amending the Indian Gaming Regulatory Act [IGRA], which increased this agency's budget, the Commission struggled to carry out the mandate under the law. I am pleased to report that the Commission has come a long way in this past year. Today we are still a lean operation and we are staffed better and equipped better to carry out our important responsibilities.

I remember once during a previous hearing before this committee, a member commented, seven investigators working out of the

trunks of their cars was not the kind of oversight that Congress wanted when IGRA was passed. And that of course is no longer the case.

Let me share with you how we have focused our additional resources. First, because tribal gaming commissions increasingly request our assistance, we have brought the NIGC closer to Indian Country. In the past year, we have opened five field offices. These offices are in Portland, Sacramento, Phoenix, St. Paul, and Tulsa. They are strategically located near the largest concentrations of Indian gaming facilities.

Regional offices allow us to bring the Commission's resources closer to the tribal gaming commissions where they are needed. Each office is staffed with at least five gaming regulators. That includes investigators, auditors, professionals to conduct background checks. These field employees consult with the tribes on a daily basis.

In the past, our limited staff visited each tribal casino once a year at best. Today we strive to make quarterly visits to each facility. In 1999, we conducted over 1,500 site visits. I personally have received much positive feedback about our regional offices.

Tribal gaming commissioners and employees appreciate the ready access they have to our field staff and resources, so that they may consult more regularly. We have also focused our additional resources to improve the substantive rules of Indian gaming with tribal consultation on each set of regulations. In the past 18 months, we have finalized what's called the MICS, or the minimum internal control standards, which we consider to be the foundational rules of any gaming operation. This was done, of course, after a tribal advisory committee helped develop those rules and then we reviewed both public and tribal comments.

We finalized class II self-regulation rules after a public hearing and several tribal consultations. We proposed game classification procedural regulations that are not yet final, as we are still reviewing the comments received at a public hearing in Tulsa.

Most recently, we formed a tribal advisory committee that developed rules for the environment, public health and safety of tribal gaming facilities. We plan to hold a public hearing on these regulations in October and will offer a 6-month comment period. In our opinion at the Commission, each of these regulations strengthens the integrity of Indian gaming.

The Commission has also focused much of its resources to provide education, training and technical assistance as a means to secure regulatory compliance. We believe our efforts are paying off in dividends.

During the past year, the Commission provided over 20 training seminars on such topics as MICS, self-regulation and management contracts. These training seminars were free and attended by over 1,000 Indian gaming commissioners and personnel.

Tribal gaming commissioners tell us that they like these training sessions and have urged us to provide more. The Commission firmly believes in coordination and consultation with tribal governments. In addition to our other methods of consultation, the Commission has been holding quarterly consultations across the coun-

try in order to get input to the tribal gaming commissioners and leaders.

This past May 18, we held our first consultation in Sacramento, CA. We feel it was quite productive and consider it a success. Our next consultation will be in St. Paul in September.

The Commission also informs gaming tribes through our web site and our regular newsletter. These contain the latest Commission activity, including Congressional testimony and correspondence, public speeches and activity on regulations. At its core, IGRA represents a new kind of Federal-Indian relationship in which tribal governments and Federal agencies coordinate responsibilities. Effective regulation at the front line, the tribal level, and close coordination between the tribes and the Commission, increased regulatory efficiency and most importantly, the overall integrity of tribal gaming. Thus, one of the Commission's primary objectives is to promote strong, independent tribal gaming commissions.

Another important commission objective is to secure voluntary compliance with the law through consultation, education, training and technical assistance. This works well, because the vast majority of tribal games, gaming tribes, work hard to be in compliance with the law. When we identify a problem at a tribal gaming facility, the tribes are quick to respond. After all, voluntary compliance is the best kind of compliance.

Mr. Chairman, we are committed to making the Commission a stronger, more productive institution than ever before. We are situated to build on the foundation left by earlier commissions and look forward to the challenges. In addition to my testimony, the Commission is finalizing a comprehensive report on the activities of the NIGC. We look forward to providing you and the gaming tribes a copy of that report when it is published later this summer.

Thank you, sir, and I would entertain your questions.

[Prepared statement of Mr. Deer appears in appendix.]

The CHAIRMAN. Okay, thanks. I'll have a few at the conclusion and may followup with some written ones, too, from other members of the committee, Montie.

We'll go ahead with Rick Hill. I saw your ad, by the way, in the newspaper "The Hill", this morning. Did you see that, inviting Presidential candidates to a debate in Indian Country? You got a response?

Mr. HILL. Yes; they've been ignoring us.

The CHAIRMAN. Well, hopefully they won't continue to do that.

Mr. HILL. Mr. Gore did acknowledge our deal in Green Bay and he said he was willing to work with us. And then the next volley was to ask Mr. Bush if he would participate. And so it's kind of sitting right there for now. So we work the conventions and hopefully we can have a forum such as that. We'd be pleased to have you participate at some level if you want.

The CHAIRMAN. Good. I hope they do. Go ahead, Rick.

#### **STATEMENT OF RICHARD G. HILL, CHAIRMAN, NATIONAL INDIAN GAMING ASSOCIATION**

Mr. HILL. Thank you, Mr. Chairman. I'm Rick Hill, Chairman of the National Indian Gaming Association. I guess to limit my remarks here, we understand the growth of the industry to have

gained \$9.6 billion. And with the increased scrutiny about Indian governmental gaming, we kind of have the attitude that there should be zero tolerance as it reflects, you know, the governmental and the violations through legitimate authorities and what-not.

In 1997, the U.S. Congress passed legislation amending the Indian Gaming Regulatory Act to increase the total amount of fees that the National Indian Gaming Commission could collect from Indian nations. The new authorization allowed the National Indian Gaming Commission to collect fees not only for class II but also for class III operations.

At that time, I appeared before this committee and testified that NIGA would fully support the Commission's express intentions to raise the level of efficiency and independent integrity of the NIGC, even if it meant increasing fees imposed on our operations. I appear before you today, nearly two years later, and I must tell you that we are not at all comfortable with the actions taken by the National Indian Gaming Commission in that time span. NIGA remains supportive of the respected independent objective and the effective NIGC, yet no substantive communications have been shared regarding how the NIGC plans to meet those goals. Instead, we are faced with a number of new regulations, initiatives that infringe upon Indian nations, governmental authority, and are duplicative of existing regulatory structures.

I think the basic problem is, and as the Chairman recited, there's been a number of meetings. And I think our basic problem was that we wanted to get them to be more substantive on our issues. It seems like sometimes the cart is before the horse in that policy decisions would be made ahead of time, and then we're asked to come and consult about directions that they've already been faced. We believe that true consultation would be to define a need ahead of time on a sound government to government relationship, and then from there build a strategic plan and methodology and budgeting, and those kinds of things prior to the horse being let out of the barn.

So there's 100 percent increase in staff. The agency grew from a \$1.5 million budget, with an over 200 percent increase to about \$7 million. So we just want to make sure that the allocation of resources that the tribes pay 100 percent for, there's no Federal contribution, that the resources that the tribes are sending in for the Commission are being used in a more effective manner. And I know there have been attempts to do that.

I think it was our understanding at the last meeting, rather than having the NIGC to have the resource to adequately and thoroughly meet the responsibilities which it was already charged with, that was our understanding 2 years ago when we had the hearing and we supported the increase. But our position has been, and still has been, that we really agree to standards. That was our testimony 2 years ago, and we have held that philosophy ever since. And we believe in the oversight, and we believe that there should be some general oversight responsibilities.

But we weren't expecting to have on-ground regulators and auditors and things of that nature. And that can't go without saying that there is, you know, the idea that they had in terms of technical assistance to a number of tribes, well, that certainly is the

case, and there is a need for technical assistance. When I was chairman of NIDA back in 1988, we were saying the same thing way back then. There's going to be an ongoing need as things change and those kinds of things.

So I think on a true government to government consultation basis, you know, we wanted to evolve that to a more real and more substantive type of dialog, so that the policies, developing of the policy and allocation of resources would be, we'd be more comfortable with that type of process as opposed to how it's occurring presently.

The other thing that we would like to bring to the chairman's attention here is this new phrase that's being bantered about by the Commission, it's shared authorities. Our understanding of IGRA was that the tribes would have primacy in the class II area. And now we're coming up with the MICS, minimum internal control standards, we're coming toward these other things. And it seems like we've really kind of gone down this path of diluting tribal sovereignty by using these terms. And they're aggressive terms, when put in its true context, about shared authorities. And we just disagree that that's the case as it would reflect back to IGRA.

We think there's too much duplication and in some efforts, triplication. I mean, compacts are negotiated to set out a set of standards and a scope of games. And it seems like the tribal efforts and the State efforts are being thwarted in that area by having another overlay in that regard. It's going to cost the tribes more to be in compliance with the MICS than—we really don't know how much that cost is going to be. Some guesstimates are 10 percent of an annual tribal audit. In our case, in Oneida, that would be budgeted at a \$200,000 audit, 10 percent of that's \$20,000. Then if they had some findings, it continues to grow. So that's kind of a hidden cost in terms of the application of the NIGC MICS.

The other example I'd like to bring forward, and we've done this before, but the example I'm going to use is the Oneida Nation of Wisconsin cost for regulation. Back in 1996-97, we paid the Commission about \$17,638. This year it's going to cost our nation about \$145,000, a check to the National Indian Gaming Commission. But what we already have in place is a negotiated compact at about \$350,000, background checks at about \$800,000, observation cost at about \$2.4 million, the Gaming Commission, about \$800,000, security costs for personnel, about \$8,270,000, audit costs as I talked about around \$20,000, maybe higher. And then additional costs by Governor Tommy Thompson, an additional \$4.1 million on top.

The CHAIRMAN. Are these the numbers that are being asked by the Commission from the tribes?

Mr. HILL. This is what we have in place in terms of the Oneida budget, in terms of regulation and oversight. It relates back to primacy and the tribes having some commission in place with all of its parts. And this is what it costs the tribe.

And then, you know, it's been 10 years later then, the Commission comes along with additional requirements and costs. We're having to pay for another BIA, so to speak. But we want to negotiate what we think is important and really negotiate what the needs would be so we can make the proper budget allocations for purposes that we agree on. And I think that we're not agreeing on

some of the things that have been detailed out by the chairman this afternoon.

So we think there's a duplication and in some instances a triplication of services. What we want to recommend, Mr. Chairman, is that, and we respectfully bring to the committee here and to Chairman Deer that we want to recommend that the committee encourage the NIGC to resolve these issues by redefining class II regulatory definitions and seeking an intergovernmental resolution on class II Johnson Act definition controversy. And that relates back to the definition of class II and the definitions and that's been pretty problematic.

It seems a reasonable solution to the issue of determining the game classifications that the NIGC and the Indian nations engage in a negotiated rulemaking process. Such a process would be consistent with the government to government relationship that exists between the NIGC and Indian nations. It would also be consistent with the spirit of the Indian Gaming Regulatory Act, which clearly contemplates a continued development of more exciting, more profitable class II games and expressly identified the use of technology as the best way to achieve a better class II game.

Combining the negotiated rulemaking process with the intergovernmental memorandum of understanding between the National Indian Gaming Commission and the Department of Justice would achieve the most effective and fair outcome. Much of the controversy regarding game classification is derived from differing definitions between the DOJ and the NIGC. The impact of that difference of opinion has fallen directly on Indian nations. The results have been uneven and unfair prosecution of Indian nations.

A negotiated rulemaking would be a good start. However, to be successful, a successful process, would need to involve the commitment of the Department of Justice. NIGA would be very supportive of any efforts by this Committee to encourage the National Indian Gaming Commission and DOJ to work together to develop a process that would ensure fair and even-handed enforcement.

Our second recommendation would require the NIGC to follow GPRA. To ensure that the NIGC has incentive to search out most effective and least intrusive oversight or regulatory role for itself, NIGA respectfully suggests that the Committee should pursue legislation mandating that the NIGC comply with and adhere to the Governmental Performance and Results Act of 1993.

I found that interesting to read, and I'll just read the footnote at the end.

The CHAIRMAN. You're running quite a bit over time, Rick, so wind it down a little bit, would you?

Mr. HILL. Mr. Chairman, just a couple more minutes? Thank you.

It is interesting to note that the National Indian Gaming Commission is not covered in the Interior's strategic or performance plans. The Commission has requested authorization to spend \$8 million in fiscal year 1999. Given the sensitivities of Indian gaming issues and the potential for criminal activities related to gaming, it would seem that Indian gaming is an important area to develop performance goals and measures to explain what it plans to accomplish with these funds.

We think that's a reliable source and it's a good observation. It's the same observation that we've been observing.

So once again, I just want to reiterate the fact that we think more meaningful consultation, and I did attend several of the consultations, and I did recite some of these things to the chairman and the Commission. But it seemed like it was more like a listening conference, because we never got into a substantive dialogue about the issues, and that's what we are stressing and that's one thing that we really need to think about. A dialog would really build toward a trust situation that we've been trying to achieve for a number of years, throughout the numbers of chairmen, and the 12 years I've been coming up here and testifying before this Committee, is that we really would like to engage in that type of a forum. We think that's in the best interest of all concerned, that the GPRA and some of the other recommendations that we're bringing forward really come from our members and they're really views from the bottom up, people who really live in the trenches on a day to day basis.

The CHAIRMAN. Rick, we're going to have to move on.

[Prepared statement of Mr. Hill appears in appendix.]

The CHAIRMAN. Have you seen S. 2920 that I recently introduced?

Mr. HILL. No; I haven't, Mr. Chairman.

The CHAIRMAN. Okay, I want you to get a copy of that, or if you don't have, we'll get you a copy. That's a bill that I just introduced yesterday, in fact, to amend the act. I think a number of your concerns are in that. But if you would look at that bill and give us some input on how to make it a better bill through staff, I'd appreciate that. We can get you a copy of that today, I think.

Mr. HILL. I appreciate your work on this. And like I say, we don't want to pay for another BIA. We've been through welfare reform, we've been through reinventing government. We've been through watching other agencies scale down. And we're seeing the research being 100 percent for a bureaucracy that continues to swell. And we just would like to have a meaningful dialog and try to flatten this thing out.

The CHAIRMAN. We will also have staff ask Senator Inouye if we could send a letter to both the Department of Justice and the Commission to encourage them to do a little better job of working together. That might help a little.

Mr. HILL. Thank you, Mr. Chairman.

The CHAIRMAN. You bet. And we'll go on, and I apologize again for having such a short period of time today in the hearing.

But go ahead, Delores, if you'd proceed.

#### **STATEMENT OF DELORES PIGSLEY, CHAIRMAN, CONFEDERATED TRIBES OF SILETZ INDIANS**

Ms. PIGSLEY. Thank you. My name is Delores Pigsley and I'm the chairman of the Confederated Tribes of Siletz Indians of Oregon, and I'm also chairman of the board of directors for Chinook Winds Casino in Lincoln City.

Mr. Chairman, I appreciate the opportunity to provide testimony to the Committee on Indian Affairs for its oversight hearing on the

activities of the National Indian Gaming Commission. From the perspective of the Siletz Tribe, this hearing is very timely.

On June 15 of this year, the Commission issued a notice of violation to the Siletz Tribal Council. This notice of violation alleges that the Siletz Tribe and its individual members violated the provisions of the Indian Gaming Regulatory Act, the Commission's regulations, the Tribe's gaming ordinance and the class III tribal-State compact with the State of Oregon.

It's alleged that these violations occurred in the comping practices of the Siletz Tribal Gaming Enterprise. For the information of the committee, comping is the business practice of providing complementary benefits and services of the business as a marketing and advertising and public relations tool. Comping is particularly well accepted and widespread in the gaming industry. The costs of these benefits and services are accounted for by the gaming enterprise as part of its operating expense, in the Siletz case, for meals and entertainment.

Mr. Chairman, I'm not going into the details of the Commission NOV and our response to it. A copy of the notice and the tribe's response to the notice and related material are attached to my statement, and I ask that they be made part of the committee record.

The CHAIRMAN. They will be included in the record.

Ms. PIGSLEY. I only want to make the following short points. First, as more fully set out in our response, we observe that the Commission has exceeded the authority conferred upon it by the Indian Gaming Regulatory Act in issuing the notice. The Commission is attempting to substitute its business judgment in the operation of the Siletz Gaming Enterprise for that of the tribe, its board of directors and its casino management. This is an unacceptable assertion of power by the Commission, and if not challenged, would lead to the business management of tribal gaming enterprises by Commission regulation. We believe that this is not authorized by the act.

Second, Mr. Chairman, we most strongly protest the violation of basic fairness and procedural due process by the Commission in the issuance of this notice. Acting on a secret tip, the Commission requested information from the Siletz Tribal Gaming Commission. The Gaming Commission provided the NIGC with unaudited data. Without further investigation and without consulting with the tribe, the Commission prejudged the data and issued its notice of violation.

If this were not bad enough, Mr. Chairman, the Commission posted the notice on the internet. In a final insult and violation of basic fairness, the notice appeared on the internet before the formal notice was actually provided to the tribe.

In addition, NIGC representatives also made statement to the media accusing the tribal council and its members of stealing money from the Casino. It was disgusting to be subjected to news articles that labeled me personally as the recipient of freebies, cash and loans benefiting my family. As the news clippings I have provided to the committee show, we were condemned even before we were given an opportunity to explain the comps charge.

Mr. Chairman, the Siletz Tribe and its people are outraged by this action of the Commission. The least effort on the part of the Commission and its employees would have revealed the facts and the legitimate uses of comping. I believe that it's important to point out to the Committee that the Commission has hired an investigator in the Portland Area, a former employee of the Oregon State Police, who served as a resource person to the State's compact negotiating team. This individual was extremely critical of the Siletz Tribe and the tribe's gaming enterprise throughout our 3 year period of negotiating an amended compact.

The tribe has already raised with the Commission the inability of this individual to be objective with the tribe in his new capacity. We urge the committee to consider the conflict of interest inherent in the Commission's employment of this individual.

Mr. Chairman, the Siletz Tribe asks this committee to examine the Commission's action in light of provisions of section 17(a) of IGRA. This section provides that:

Except as provided in subsection (b), the Commission shall preserve any and all information received pursuant to this Act as confidential, pursuant to the provisions of paragraphs (4) and (7) of section 552(b) of Title 5, United States Code.

The Commission, at its request and with its knowledge, was provided with raw, unaudited data. Without any further investigation, it rushed to judgement and posted its unsupported allegations based upon that data on the internet. This is an outrageous violation of the statutory restrictions placed by Congress on the Commission in subsection 17(a).

This is not a matter of the Siletz Tribe trying to escape legitimate regulation and oversight of its gaming operations. Chinook Winds Casino is subject to comprehensive monitoring and regulation by the Tribe's gaming commission and the State of Oregon. The State negotiated an extensive role for itself in the operation of Indian gaming in Oregon. The issue is whether or not NIGC has exceeded its Congressional charter of authority.

Given the fact that Indian tribes, including the Siletz Tribe, now provide all funding for NIGC operations, we expect it to carry out its role in a responsible and professional manner.

Finally, Mr. Chairman, we hope the committee will recognize the fundamental unfairness of the Commission's practice of publishing on the internet notices of alleged violations that are based upon data that has not been audited or further investigated by the Commission. Not only is this practice unfair, but it also seems a violation of section 17(a) of IGRA.

Mr. Chairman, I want to thank you for allowing me to testify today, and I would be happy to answer any questions you might have.

[Prepared statement of Ms. Pigsley appears in appendix.]

The CHAIRMAN. I may have a couple for you.

Montie, are you listening very carefully to this?

Mr. DEER. Yes; and I really don't think that I should make any comments, since this is under litigation.

The CHAIRMAN. I didn't ask for comments, I just wanted to make sure you were listening.

Mr. DEER. We're aware of these allegations.

The CHAIRMAN. Okay.

Mr. Burris, why don't you conclude.

**STATEMENT OF TRACY BURRIS, CHAIRMAN, OKLAHOMA  
INDIAN GAMING ASSOCIATION**

Mr. BURRIS. Mr. Chairman, I'm Tracy Burris, a member of the Chickasaw Nation of Oklahoma and chairman of the Oklahoma Indian Gaming Association. I also serve as the Gaming Commissioner for the Chickasaw Nation. Thank you for the honor of appearing before this committee today.

And Mr. Chairman, I would also like to thank you for all of your hard work and support for Indian Country. Over the years you have been a true warrior, and we appreciate your efforts on our behalf.

For over 15 years, I have been involved in gaming in Oklahoma, starting as a floor worker at the Otoe-Missouri tribal gaming facility, and now as a regulator for the Chickasaw Nation and an advocate for tribal gaming in Oklahoma. As you know, many tribes in Oklahoma have worked hard to enter into meaningful class III gaming compacts with the State of Oklahoma, but to date we have not been unsuccessful.

As a result, the tribal gaming facilities in Oklahoma derive nearly all of their revenues from class II gaming, which is limited to bingo and other games similar to bingo that do not require a tribal/State compact. Tribal governments in Oklahoma, like many other tribal governments across the country, largely depend on these revenues to pay for education, housing, health care, and other tribal governmental programs. No other State in the country has as many class II gaming operations as Oklahoma. Absent compacts, our survival depends on making bingo profitable.

Unfortunately, the meaning and parameters of class II gaming has been a source of continuing controversy since the passage of the Indian Gaming Regulatory Act and the Commission's first issuance of regulations. The IGRA defines class II gaming as bingo and other similar games and certain non-banking card games permitted under State laws. It expressly permits the tribes to utilize technological aids to play bingo and other similar games. It also expressly prohibits the play of machines, facsimiles of any game without a compact. The NIGC has promulgated regulations that defined facsimiles exceedingly broadly, and as any game that meets the Johnson Act's definition of gambling devices. The difference between a bingo game that utilizes technological aids and a facsimile of a game has resulted in costly and ongoing litigation.

The confusion over the definition of class II gaming exists not only with the tribes and their gaming commissions, but also with the two Federal agencies with jurisdiction in Indian gaming, the National Indian Gaming Commission and the Justice Department. As you know, the Justice Department has brought on actions against the tribes and their property, even when the National Indian Gaming Commission had issued opinions stating that a game could be lawfully offered by tribes as a class II machine. The National Indian Gaming Commission would take one position in a game and the Justice Department would take another.

The National Indian Gaming Commission recognized the problem with its class II gaming definitions and on September 17, 1997 an-

nounced the initiation of a rulemaking process that would allow the Commission to amend its definitions. Unfortunately, a rider was placed on an appropriations bill to block the rulemaking process.

Because this issue has not been resolved, the tribes and their vendors have spent millions of dollars in legal fees to defend themselves in litigation. Currently, there are at least two cases that are proceeding through the Federal court system in which the heart of the question is whether the game utilizes technological aids and, therefore class II, or is a facsimile, and therefore class III. In the October 23, 1998 opinion of Chief Judge Terry Kern of the U.S. District Court for the Northern District of Oklahoma, the court stated that:

It [is an] absurd result that Congress would classify paper bingo as class II gaming, but classify electronic bingo as class III gaming. A clearer statement from Congress is required if all such games are to be termed illegal.

A Federal district court in California issued a similar decision over the same game. The tribes won in both Federal district courts and yet the United States continues to appeal this matter. This, of course, is creating even an greater confusion and requiring the tribes to spend much needed revenues on legal fees instead of on our people.

Mr. Chairman and members of the committee, this confusion and conflict over the definition and parameters of the class II gaming needs to be addressed immediately. We respectfully request that the committee pass legislation to resolve this issue or direct the National Indian Gaming Commission to enter into a rulemaking process to bring greater clarity to the class II definition.

Again, thank you for this opportunity to appear before you, and I would like to take this time to answer any questions you may have.

[Prepared statement of Mr. Burris appears in appendix.]

The CHAIRMAN. Thanks, Mr. Burris. I'd recommend you also get a copy of this new bill that we've worked up, S. 2920. We'll try to provide you with that, because this bill requires negotiated rulemaking to help fix this problem. So why don't you take a look at that.

I was involved in 1988 in helping write the original IGRA Act and also in upgrading the budget for the Commission in 1998. We have a saying around here, it's called the law of unintended consequences. We do things because based on input from people whose lives are going to be affected we pass a law, and then what do you know, after we do it sometimes we find it didn't work out the way we thought it was going to. And in fact sometimes what happens wasn't the original intent of the committee or Congress in general.

And I can tell you right now that my original feeling when I helped, and I think I can speak for Senator Inouye on this point, was that our belief was the Commission should help in training, it should deal with oversight through education, and certainly do, you know, rulemaking has to do that. And then a number of other things. But it never was the intent of Congress, to my knowledge, that it would be, that it would act as a punitive mechanism. And from what I hear, at least from some of the other people testifying,<sup>3</sup> that might be one of the unintended consequences.

But let me ask a couple of questions. I think maybe I'll start with you first, Mr. Burris, since you just did speak. I assume you support having negotiated rulemaking that would make the tribes and the agencies equal partners in clarifying the problem and the classification, is that correct?

Mr. BURRIS. That's correct, sir.

The CHAIRMAN. Under class II in Oklahoma now, what kind of games can you play?

Mr. BURRIS. Currently, electronic bingo.

The CHAIRMAN. You're pretty much limited to bingo?

Mr. BURRIS. Electronic bingo. And if we try to utilize pull tabs, which is a similar game, which is a popular game, this is where we face litigation, ongoing litigation on the Justice Department opposing us, or at least U.S. Attorneys opposing us.

The CHAIRMAN. Yes, that is pretty limited.

Rick, as I understand your testimony, the Commission is somewhat overzealous and intrusive, is that correct or not?

Mr. HILL. I think in terms of their philosophy, I think it's well intended. But that's not our take on IGRA, in terms of the primacy issue. And we think that the compacting process has worked very well. It's not cost effective for the tribes to pay for something three or four different times, or maybe two or three different times.

You know, we negotiate regulations and a set of standards for that, and a scope of games. And then the tribes dedicate a whole bunch of resources, IGRA reflects the primacy for the tribe, then work with the State on those particular issues. And we think that in terms of the activity of the National Indian Gaming Commission, they should be more set in terms of standards and oversight responsibility, rather than on the ground type of regulation.

The CHAIRMAN. When the Commission comes to talk to you about rules, for instance, who are they talking to? Just the tribal council or people who are involved in the gaming procedures?

Mr. HILL. Last January, we brought 70 nations engaged in gaming, our members, to try to bring some of these issues to light. A lot of things were said at that meeting by various representatives. But as time rolled on, you know, we ended up, instead of addressing those specific things on, we said, well, show us the beef kind of thing. We said, we've got all this money now, what specifically is going to be done and what are the specific needs.

So we felt like we were more complaining, but there was no substantive dialog on the issues of our concern. And subsequently, that's been my past experience when I went out to California. The statements I'm making today are, I think aside from the GPRA thing, is nothing that the Commission hasn't heard from NIGA in the past relative to, show us the strategic plan, show us the methodology, show us the budget allocations. And then, after not being, we felt like we hadn't been listened to or there isn't a strategic plan in place that can be shared with us.

So therefore, we'd advance the idea of GPRA, so that if we feel like to make it more credible, to build trust, that all these kinds of methods should be transparent. It's not just similar to the episodes that this Committee and other people have went through in terms of the BIA. You know, show us how you're spending these resources.

And we're more engaged in this because the tribes are footing the bill. Subsequently, we're sending them our audits, but we have yet to see their audit.

The CHAIRMAN. I've got several more questions for you, but since I've got a very short time here, I'm going to have to submit those to you in writing. But I would like to get back answers to those.

Mr. HILL. I'd be happy to answer those, Mr. Chairman.

The CHAIRMAN. Montie, let me ask you a couple, too. I don't want you to comment on Ms. Pigsley's testimony, because you probably shouldn't, but in a court of law. But you certainly heard some of the complaints about outrageous fees, things of that nature. Is there anything you would like to respond to, from what you've heard?

Mr. DEER. Oh, I would certainly like to respond. I just would point out that those are mere allegations. I think that facts will perhaps prove differently.

The CHAIRMAN. Okay. Senator Inouye, has just arrived. Did you have any opening statement, or anything you would like to ask of the panel?

Senator INOUE. Not at this time.

The CHAIRMAN. And I will submit additional written questions, and if you could get those back to the committee, I'd sure appreciate that.

With that, we appreciate your being here, and we'll go on to panel two that will deal with our second hearing.

[Whereupon, at 2:10 p.m., the committee proceeded to other business.]

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# APPENDIX

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## ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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PREPARED STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM  
COLORADO, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

In 1987 the United States Supreme Court handed down the now-famous decision in *California v. Cabazon Band of Mission Indians* holding that in States that do not criminally prohibit gaming activities, State law does not apply to gaming activities conducted on Indian lands. The decision sparked a furor among the States who clamored for a role in the conduct of Indian gaming. The Congress responded in 1988 by passing the Indian Gaming Regulatory Act [IGRA].

The IGRA has three fundamental purposes: First, to provide a basis in law for gaming as a means of tribal economic development; second, to provide a basis in law for the regulation of tribal gaming to shield it from organized crime; and third, to establish the Federal National Indian Gaming Commission [NIGC] as an independent regulatory body.

Of the 561 federally recognized tribes, approximately 190 tribes are now operating some form of gaming whether the games be bingo and related games [class II under the IGRA] or casino-style games [class III under the IGRA].

In the 12 years since IGRA's enactment, Indian gaming gross revenues have grown from \$500 million to more than \$8.25 billion. These revenues have provided many tribes with the wherewithal to bring jobs, income, and a higher standard of living to not only their members but in many cases to non-Indians living in surrounding communities. For both Indian and non-Indian communities collectively, unemployment has dropped, welfare rolls have shriveled and tribes are in a position to supplement and in some instances supplant Federal funds for housing, health care, education, and other basic-services.

Many tribes are using these revenues to diversify their economic base to include non-gaming activities. Under the IGRA, the tribes are required to spend gaming revenues on physical infrastructure, general welfare and the overall betterment of their communities.

On the Federal side, since its establishment the Commission has faced scarce resources, congressional interference with its duties, and a significantly expanded regulated community.

Hearings conducted by this committee revealed that up to 1997, the Commission's skeleton staff had to cover huge geographic areas and often worked from their homes or the trunks of their cars. This kind of presence by the Commission staff was clearly insufficient to carry out its statutory duties and accordingly in 1997 Congress amended the IGRA to authorize the Commission to assess and collect fees against class III gaming operations. At the same time, Congress raised the ceiling on the total amount of fees assessable to \$8 million.

In the 2 years since the fee provisions were amended, the Commission has significantly expanded its staff with particular emphasis on the enforcement of the IGRA.

Yesterday I introduced the Indian Gaming Regulatory Improvement Act of 2000 to amend the IGRA in key respects, The bill would require that any fee assessments by the Commission be reasonably related to the services provided by the Commis-

sion and its duties under the IGRA. The bill also authorizes the Commission to reduce the fees it levies on tribal gaming operations based on a number of factors.

To help alleviate the concerns of the gaming tribes that fees will be used by the Commission for non-IGRA purposes or will be sent to the U.S. Treasury's General Fund, this bill also provides for the establishment of a segregated trust fund to hold all fees collected by the Commission for use by the Commission.

The bill also addresses the delicate matter of establishing minimum internal control standards [MICS] to provide a strong and consistent standard for the operation of Indian gaming nationwide. Section 23 of the bill authorizes the Commission to promulgate regulations to implement these standards.

To encourage the Commission to work with the tribes to develop regulatory regimes and determine the feasibility of other, non-gaming activities, the bill authorizes the Commission to use funds secured through civil forfeitures to provide technical assistance to Indian tribes for these purposes.

I believe that in the wake of the 1997 fee amendment it is important for the Commission to operate in a transparent basis and to achieve and maintain a legitimacy in its current and planned operations that it does not now have. For this reason the legislation I proposed will subject the Commission to the requirements of the Government Performance and Results Act [GPRA]. Under this provision the Commission would be required to develop objectives and goals and to submit strategic plans on how it will achieve those goals.

With that brief explanation of S. 2920, I look forward to hearing from our witnesses today and to an open and healthy debate on the proposed legislation.

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PREPARED STATEMENT OF TRACY BURRIS, CHAIRMAN, OKLAHOMA INDIAN GAMING ASSOCIATION

Mr. Chairman, I am Tracy Burris, a member of the Chickasaw Nation of Oklahoma and the chairman of the Oklahoma Indian Gaming Association. I also serve as the Gaming Commissioner for the Chickasaw Nation. Thank you for the honor of appearing before this committee today.

Mr. Chairman, I want to first of all thank you for all of your hard work and support for Indian Country. Over the years you have been a true warrior, and we appreciate your efforts on our behalf.

And Mr. Vice Chairman, on behalf of the 21 member tribes of the OIGA, we want to congratulate you on the long-deserved Congressional Medal of Honor that President Clinton recently bestowed upon you. We in Indian Country have always considered you a hero, and it was fitting to see you and your colleagues in your division get the recognition you so rightfully deserve. We are eternally grateful for all you have done for our country, and all that you continue to do.

For over 15 years, I have been involved in Indian gaming in Oklahoma, starting as a floor worker in a tribal gaming facility, and now as a regulator for the Chickasaw Nation and an advocate for the Tribal Gaming in Oklahoma. As you know, many of the tribes in Oklahoma have worked hard to enter into meaningful class III gaming compacts with the State of Oklahoma, but to date we have been unsuccessful.

As a result, the tribal gaming facilities in Oklahoma derive nearly all of their revenues from class II gaming, which is limited to bingo and other games similar bingo that do not require a tribal/State compact. Tribal governments in Oklahoma, like many other tribal governments across the country, largely depend on these revenues to pay for education, housing, health care, and other tribal governmental programs. No other State in the country has as many class II gaming operations as Oklahoma. Absent compacts, our survival is dependent on making bingo profitable.

Unfortunately, the meaning and parameters of class II gaming has been a source of continuing controversy since the passage of IGRA and the NIGC's first issuance of regulations.

The IGRA defines class II gaming as bingo and other similar games and certain non-banking card games permitted under stated laws. It expressly permits the tribes to utilize technologic aids to the play of bingo and similar games. It also expressly prohibits the play of machine facsimiles of any game without a compact. The NIGC then promulgated regulations that defined facsimiles exceedingly broadly, as any game that meets the Johnson Act's definition of gambling devices. The difference between a bingo game that utilizes technologic aids and a facsimile of a game has resulted in costly, ongoing litigation.

The confusion over the definition of class II gaming exists not only with the tribes and their gaming commissions, but also with two of the Federal agencies with jurisdiction in Indian gaming, the NIGC and the Justice Department. As you know, the

Justice Department has brought actions against the tribes and their property, even when the NIGC had issued opinions stating that a game could be lawfully offered by tribes as a class II machine. The NIGC would take one position in a game and the Justice Department would take another.

The NIGC recognized the problem with its class II gaming definitions and on September 17, 1997 announced the initiation of a rulemaking process that would allow the Commission to amend its definitions. Unfortunately, a rider was placed on an appropriations bill to block the rulemaking process.

Because this issue has not been resolved, the tribes and their vendors have spent millions of dollars in legal fees to defend themselves in litigation. Currently, there are at least two cases that are proceeding through the Federal court system in which the heart of the question is whether the game utilizes technologic aids and, therefore class II, or is a facsimile, and therefore class III. In the October 23, 1998 opinion of Chief Judge Terry Kern of the U.S. District Court for the Northern District of Oklahoma, the court stated that "it [is an] absurd result that Congress would classify paper bingo as class II gaming, but classify electronic bingo. . . as class III gaming . . . A clearer statement from Congress is required if all such games are to be termed illegal."<sup>1</sup> A Federal district court in California issued a similar decision over the same game. The tribes won in both Federal district courts and yet the United States continues to appeal this matter. This, of course, is creating even greater confusion and requiring the tribes to spend much needed revenues on legal fees—instead of on our people.

Mr. Chairman, and members of the committee, this confusion and conflict over the definition and parameters of class II gaming needs to be addressed immediately. We respectfully request that the committee pass legislation to resolve this issue or direct the NIGC to enter into a rulemaking process to bring greater clarity to class II definition.

Again, thank you for the opportunity to appear before you, and I would like to take this time to answer any questions you may have.

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<sup>1</sup>*United States v. 162 MeyaMania Gambling Devices* (No. 97-V-1140-K), 1998 U.S. LEXIS 17293, \*18.



TESTIMONY OF  
THE HONORABLE MONTIE R. DEER, CHAIRMAN  
NATIONAL INDIAN GAMING COMMISSION  
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS

**Oversight Hearing on the Activities of the National Indian Gaming Commission**

July 19, 2000

Mr. Chairman, Mr. Vice-Chairman, members of the Committee, my name is Montie Deer and I am the Chairman of the National Indian Gaming Commission (NIGC or Commission). Thank you for the opportunity to appear before you today to testify on the activities of the NIGC. I, along with Vice-Chair Elizabeth Homer and Commissioner Teresa Poust thank you for your on-going support and interest in tribal governmental gaming regulation and the NIGC.

Since I last testified before you, the NIGC has undergone a dramatic change in size and make-up. The current Commission is just completing its first year together. I took office in March of 1999 and was joined by Commissioners Homer and Poust last summer. Together, we form the first Commission to be comprised wholly of enrolled tribal members and possibly the first to enjoy nearly concurrent terms, providing a measure of continuity particularly welcome during this critical period of transformation.

The Indian gaming industry continues to grow at a rapid pace. From an annual total of \$500 million in annual gross revenue in 1988, the industry now garners over \$9.6 billion in annual gross gaming revenue. Currently, there are 195 tribes operating 309 gaming

operations in 28 states. These governmental gaming operations span from Connecticut to California and vary in size from small, one-room bingo operations to an operation that boasts the largest casino floor in North America. Regardless of size, I know we all agree that Indian gaming requires strong regulation and effective oversight. Under IGRA, it is our responsibility to ensure that gaming is conducted in a way that strengthens tribal economies and governments and that tribal gaming is conducted free from potential corrupting influences.

Quite frankly, until 1997 when Congress amended IGRA to permit the NIGC to assess fees on class III tribal gaming operations and increased the ceiling on assessments from \$3 to \$8 million annually, it was a real struggle for the Commission to carry out its mandate under IGRA even minimally. We have come a long way in the last year. I remember during a previous appearance before this Committee that one member commented that “seven investigators working out of the trunks of their cars” was not the kind of oversight that Congress contemplated when IGRA was enacted. Today, while we remain a lean operation, we are much better staffed and equipped to carry out the important responsibilities Congress has delegated to us.

We recognize, however, that even with the additional resources available, we will not be able to do the kind of job needed without effective regulation and enforcement at the tribal level --- the front line of gaming regulation. At its core, IGRA represents a new kind of federal-Indian relationship in which tribal governments and federal agencies share jurisdiction and coordinate responsibilities. Effective regulation at the tribal level,

combined with close coordination between tribes and NIGC, increases regulatory effectiveness, efficiency, and, most importantly, the overall integrity of tribal governmental gaming. These reasons underlie this Commission's primary policy objectives of promoting strong, independent tribal gaming regulatory agencies within tribal governments and securing compliance with the law through education, training, and technical assistance. Voluntary compliance is the best kind of compliance and we have found that the vast majority of gaming tribes strive to be in compliance with the law. That is, when we identify a regulatory problem at a tribal governmental gaming facility, the tribes are quick to respond. In addition to our policy of obtaining voluntary compliance through education, training and technical assistance, the Commission has worked hard to institute a series of reforms designed to strengthen its operational capacity and to better equip its staff.

### **Regional Offices and Staff**

The centerpiece of the NIGC's expansion plan was the establishment of regional field offices. Regional field offices allow the NIGC to locate its resources closer to Indian country, where the tribal government gaming occurs. More importantly, the regional offices allow NIGC personnel to more efficiently and readily offer technical training and assistance to tribal gaming regulators and operators.

In just the past year, five new field offices were opened in Portland, Sacramento, Phoenix, St. Paul and Tulsa. Each office is staffed with at least five (5) gaming regulators and include investigators, auditors and professionals certified in conducting

background checks. We have estimated the operational costs of each field office to be between \$500,000 and \$600,000 per year, or approximately \$3 million in total. This figure includes housekeeping costs, salaries, benefits and travel. Further, in the past the Commission's limited staff could only make it to each of the 309 gaming facilities once a year – currently we are able to make quarterly site visits to each facility -- approximately 1,500 site visits each year.

Importantly, 44 out of the Commission's current 77 employees are within the NIGC's Enforcement, Audit and Contract divisions. These divisions carry out the lion's share of the Commission's work. This is, no doubt, a far cry from just two years ago when, as you know, the NIGC had a handful of investigators, "working out of their cars." I am pleased to report to you that we have already received much positive feedback on the regional office concept. Both tribal gaming commissioners and tribal leaders have indicated to me that they appreciate ready access to our regional offices and staff.

### **Headquarters Expansion**

As the Commission has expanded its presence in the field, we have also found it necessary to expand the Washington D.C. offices. A majority of the support for our field offices occurs here in Washington. As a result, we have experienced an increase in staff in every division.

We were fortunate enough to locate some additional space on the 10<sup>th</sup> floor of our current building; accordingly, we were able to avoid expensive moving and relocation costs. The

majority of our staff still resides on the 9<sup>th</sup> floor and we are currently renovating that space. Our new offices on the 10<sup>th</sup> floor house the Commission, Chief of Staff, General Counsel and the offices of Congressional and Public Affairs. We are proud of our new offices and invite you to come by and visit us at your earliest opportunity.

Overall, the size of the NIGC staff more than doubled from 30 to 77 full-time positions, and two new organizational components were created -- the Audits division, and the Office of Self-Regulation. The Regional offices house 37 of those 77 employees. To further improve operations, each staff member was equipped with reliable hardware supported by a new central network system. The Commission also enhanced its data management capability with a new central database system. Work is now progressing on a new central records and document management system.

### **Current Fee Structure**

Despite the growing demands, pressures, and increased availability of resources, the Commission has taken a careful and disciplined approach to its expansion initiative. A conscious effort was made to institute change at a pace that the Commission could readily absorb. The Commission's FY 2000 budget of \$7.2 million remains well below the \$8.0 million dollar ceiling set by Congress. This money is collected by assessing a fee rate of .09% on tribal gross gaming revenues above the first \$1.5 million for each operation. Careful planning and cautious execution has enabled the Commission to keep the assessment of tribal fees below the permissible threshold while at the same time

increasing service effectiveness. Further, I must note that it is highly probable that the rate will be reduced based on the increase in tribal gross gaming revenues.

### **NIGC Regulations**

Let me also share with you what the increase in funding and staff has meant in terms of the substantive regulation of Indian gaming. In the past 18 months, the Commission embarked upon an ambitious regulatory and policy agenda that included, finalizing the Minimum Internal Control Standards regulations; finalizing Self-Regulation rules for Class II gaming; promulgating a proposed Gaming Classification regulation; and initiating a rulemaking addressing the Environment, Public Health, and Safety. These are summarized as follows:

1. Minimum Internal Control Standards (MICS) (Final Rule) – These rules are designed to protect the integrity of Indian gaming by setting standards for such critical areas as cash handling, game play, licensing documentation, auditing, security and surveillance. The NIGC formed a tribal advisory committee that assisted in the drafting of these regulations. In developing the MICS, the NIGC evaluated and considered control standards from other sources, including New Jersey, Nevada and the National Indian Gaming Association.
2. Self-Regulation (Final Rule) – These regulations afford tribes the opportunity to assume greater regulatory control over their Class II facilities and decrease

their fees owed to the NIGC. Tribes applying for a self-regulation certificate will undergo an on-site visit by a team of NIGC investigators and auditors and must satisfy rigorous approval requirements.

3. Environment, Public Health and Safety Regulations (Notice of Proposed Rule Making) – The NIGC has formed a tribal advisory committee which will soon submit a proposed rule. The rule will address the portion of IGRA that requires tribal gaming ordinances to provide for the protection of the environment, public health and safety.
  
4. Game Classification Regulations (Proposed Rule) – The NIGC has proposed a rule that establishes a formal process for the classification of games played on Indian land under IGRA. The regulation was proposed in response to a growing number of requests by tribal gaming commissions and the gaming industry for advice as to whether a particular game is Class II or Class III. The NIGC held a field hearing on the proposed rule in January in Tulsa, Oklahoma.

#### **Independent Tribal Gaming Commissions**

Among its highest policy priorities is the Commission's objective to encourage and support strong, effective and independent tribal gaming commissions. As governments, tribes, generally through a tribal gaming commission, provide front-line, day-to-day regulation of tribal governmental gaming activities. Akin to the diversity in tribal

governmental gaming operations, tribal gaming commissions vary in size and sophistication. Tribal gaming commissions that oversee large gaming operations have personnel and budgets nearly as large or larger than the NIGC's and have experienced personnel with expertise from New Jersey or Nevada. Other tribal gaming commissions are not as fortunate and rely heavily on the NIGC to provide expertise and assistance.

Regardless of the size of the operation or gaming commission, strong regulation and enforcement of the law at the local level is critical to the integrity of the operation and decreases the likelihood that federal enforcement will be warranted. To this end, the Commission issued a bulletin on the independence of tribal gaming commissions and embarked upon an aggressive training initiative for tribal gaming commissioners and regulators. With 309 gaming establishments operated by 195 tribal governments in 28 states, effective tribal regulation is vitally important from the Commission's perspective.

#### **Education, Training and Technical Assistance**

The NIGC has made a strong effort to provide education, training and technical assistance as a means to secure regulatory compliance. We believe our efforts are paying dividends. During the past year, the NIGC provided over 20 training seminars on topics such as the MICS, self-regulation, employee background checks, tribal gaming ordinances, management contracts and tribal gaming commissions. These training sessions were, of course, free and attended by over 1000 tribal gaming officials and leaders. The Commission has received much positive feedback on these training sessions and many tribal gaming officials have asked the NIGC to provide even more training.

I am also pleased to report that on July 31 to August 4, 2000, the National Judicial College at the University of Nevada in Reno, will offer a course entitled, "Essential Skills for Tribal Gaming Commissions." I am an adjunct faculty member of the judicial college and have taken the lead in creating this course. Along with former NIGC Chairman Tadd Johnson and former Vice-Chairman Phil Hogen, I sit on the curriculum committee. The National Judicial College has implemented its Department of Justice grant to provide full scholarships to 40 tribal gaming commissioners to attend this training session. This course has drawn the largest amount of applicants for any single course offered by the college.

#### **Consultation Policy**

In the spirit of the government-to-government relationship, respect for tribal sovereignty and the President's Executive Order on Coordination and Consultation with Indian Tribal Governments, we have adopted a policy of tribal consultation when we consider substantive regulations. As previously discussed, we formed tribal advisory committees for the formulation of the MICS and the environment, public health and safety rules. The advisory committees consisted of about 10 members and included a cross section of large to small gaming operations from the various regions of the United States.

Further, the Commission has begun holding quarterly consultations across the country in order to obtain input from tribal gaming representatives and leaders. On May 18, 2000, the NIGC held its first consultation in Sacramento, California. The Commission

discussed with tribal gaming commissions and industry representatives, the various concerns surrounding California Indian gaming. The Commission's next consultation will be held in St. Paul, Minnesota on September 27-28, 2000.

### **Increased Communications**

Still another aspect of our expansion has included updating and improving the ways we communicate with the regulated community. We have upgraded our computer and phone systems, created a website ([www.nigc.gov](http://www.nigc.gov)), and are publishing a regular newsletter.

In a simple, but perhaps more important way, we as a Commission have tried to visit as much of Indian country and as many Indian gaming establishments as possible. I know personally, I have toured over 40 reservations in the past year. In each instance I have made an effort to talk face-to-face with the gaming commissions and tribal leaders to explain the activities of the NIGC as well as what we believe to be our role in the regulation of their facilities. I know that my fellow Commissioners have made numerous visits as well.

### **Office of General Counsel**

The Office of General Counsel (OGC) is responsible for, among other things: providing legal support to the agency for enforcement actions initiated under IGRA; reviewing and recommending to the Chairman the approval or disapproval of tribal gaming ordinances and contracts; coordinating federal litigation with the Department of Justice; issuing game classification opinions; and providing all other necessary legal support.

The expansion of investigators and auditors in the field has increased the need for legal support. Eight attorneys, one paralegal and one legal clerk currently staff the OGC. Further, the office is now handling or assisting in seventeen (17) federal court cases, nine (9) administrative law cases and two (2) major rule makings.

### **Audit Division**

Another important substantive addition to the NIGC has been the creation of our Audit Division. We currently employ five auditors. These auditors have already assisted in numerous investigations and have conducted independent audits of several tribal gaming facilities. In several instances we came on-site at the invitation of the tribe, to assist in ferreting out irregularities, or to simply educate the gaming commission on gaming auditing functions. For example, recently, at the request of the tribe, the NIGC sent three auditors to a South Dakota gaming facility to perform a MICS compliance audit. We believe this is a valuable service we provide to the gaming tribes.

The Commission is confident that its efforts to improve communications, establish closer working relationships, and provide education and support, coupled with its enhanced operational capabilities, will result in high levels of voluntary compliance with federal Indian gaming laws and regulations throughout Indian Country. The Commission is taking advantage of its increased size, capability, and presence in Indian Country to fine-tune operations; provide more services to tribal gaming regulatory agencies; and focus on its regulatory and policy agendas.

We are committed to leaving the Commission an even stronger, more productive institution than ever before. The near concurrence of our terms leaves us well situated to build upon the foundation left by earlier Commissions and we look forward to the many new challenges that lie ahead.

I trust the forgoing has been responsive to your request. In addition to my testimony, we are finalizing a comprehensive report on the activities of the NIGC over the past two years that will be published later this summer. We look forward to providing you with a copy of the report in the very near future. Should you have additional questions, we stand ready to provide any information responsive to your concerns.

**NATIONAL  
INDIAN  
GAMING  
COMMISSION**

April 28, 2000

The Honorable Ben Nighthorse Campbell  
Chairman, Committee on Indian Affairs  
United States Senate  
838 Senate Hart Building  
Washington, DC 20510

Dear Senator Campbell:

Thank you for your letter of March 29, 2000, and your interest in the work of the National Indian Gaming Commission (NIGC). I, along with Vice Chairman Elizabeth Homer and Commissioner Teresa Poust, thank you for your on-going support of the NIGC and we appreciate this opportunity to update you on our recent expansion and activities.

The Indian gaming industry has grown, and continues to grow, at a rapid pace. The industry now garners approximately \$8.26 billion dollars in annual gross gaming revenues. Currently, there are 198 tribes operating 325 gaming operations in 28 states. The industry today is much larger than the \$500 million industry of 1988, the year that the Indian Gaming Regulatory Act (IGRA) was passed. The Indian gaming industry is cash-intensive and thus requires strong regulation and effective oversight in order to fulfill the goals of IGRA, which are, as you point out in your letter – ensuring that gaming is conducted in a way that strengthens tribal economies and governments and to ensure that tribal gaming is conducted free from the corrupting influences of organized crime.

Your letter also importantly points out that IGRA's former funding scheme and limits – assessing fees on Class II only and an overall budget cap of \$3 million – made it impossible for the NIGC to fulfill the mandates of the IGRA. We know that you, and other members of the Senate Committee on Indian Affairs and Congress, had this in mind when you amended the IGRA in 1997 to allow fees to be assessed on Class III gaming and to allow for fees to be collected up to \$8 million. Further, it was made clear to me last year during my confirmation hearing that the Congress expected the agency to use its larger funding base to increase its role and presence in Indian gaming. In short, I was told that seven NIGC field investigators working from the trunks of their cars was not the kind of oversight that Congress contemplated by the NIGC when IGRA was enacted. Accordingly, when I assumed the Chairmanship, I put as my number one priority, the completion of the NIGC expansion. We are happy to report that the expansion is nearly complete.

As you know, the current commission is relatively new. I was confirmed in March of 1999, and was joined in the summer of 1999 by Commissioners Homer and Poust. Since coming together as a commission, we have worked diligently to complete the NIGC expansion in an efficient and cost effective manner. Further, it has been our philosophy to provide regulation and oversight of the Indian gaming industry in a manner that respects tribal sovereignty and the government-to-government relationship that exists between the United States and the Indian Nations. Let us share with you how we are doing that.

***1998 Plan – Proposed Expansion of the NIGC***

On May 21, 1998, the NIGC submitted to you a letter and a document entitled, "Profile of the Proposed Expansion of the Resources and Services of the National Indian Gaming Commission." The document was essentially a proposed plan for the NIGC expansion. A copy of the letter and plan are attached hereto as "Attachment A." We have used this plan over the past year as our roadmap for expansion.

• **Projected Versus Actual Staff Expansion and Costs**

The 1998 plan also included a document entitled, "Staff Expansion Phase-In Estimated Costs – Fiscal Years 1998, 1999 and 2000." In order to aid you in comparing our actual expansion to the proposed 1998 plan, we have prepared an updated version of this document, which is attached hereto as "Attachment B." Additionally, we have reproduced the information below in Figure 1. In summary, you will see that the NIGC estimated that by the end of 1998 the agency would have 63 employees and that annual costs would be \$5.3 million. However, litigation over the Cochran amendment (exempting self-regulating Class III tribes from payment of fees) delayed the NIGC expansion and our actual numbers were lower than projected. The actual numbers for 1998 were – 42 employees and \$4.1 million in costs. For 1999, the NIGC had projected in its 1998 plan that the agency would employ 81 and would incur \$8 million in annual costs by the years end. Again, the actual numbers for 1999 were lower than we projected. The actual numbers were - 63 employees and \$6.9 million in costs.

Figure 1:

	1998		1999	
	Projected	Actual	Projected	Actual
Full Time Staff Employees	63	42	81	63
Costs in millions	\$5.3	\$4.1	\$8	\$6.9

- Regional Offices

The centerpiece of the NIGC's 1998 expansion plan was the establishment of regional field offices. Regional field offices allow the NIGC to be located closer to Indian country, where the gaming is actually occurring. The field offices also provide the NIGC with an increased presence at Indian gaming operations and gives us the capability to more comprehensively observe and monitor tribal gaming operations and to render technical assistance to tribal gaming regulators and operators where required.

We are very pleased to inform you that four regional offices are now open and operating in Portland, Sacramento, Phoenix and St. Paul. Further, our fifth regional office, located in Tulsa, will open any day. Each office is staffed with at least five (5) gaming regulators and include investigators, auditors and backgrounding professionals. We have estimated the operational costs of each field office to be between \$500,000 and \$600,000 per year, or approximately \$3 million in total. This figure includes housekeeping costs, including salaries, benefits and travel. Further, we estimate the agency is making approximately 1500 site visits each year from the regional offices and our offices here in Washington, D.C.

Importantly, 44 out of our current 69 employees are within the Enforcement, Audit and Contract divisions of the NIGC. This is, no doubt, a far cry from just two years ago when, as you point out in your letter, the NIGC had a handful of investigators, "working out of their cars." In order to assist you in reviewing our current staffing and agency structure we have enclosed a copy of our most recent organizational chart. It is attached hereto as "Attachment C."

Finally, on this issue let me add, that I recently visited 5 gaming tribes in the state of Arizona. I was very happy to hear, from both the tribal gaming commissioners and tribal leaders, that they were pleased to have ready access to our regional office and staff in Phoenix. From their comments, as well as comments I have received around the country, our regional office concept is accomplishing the goals that we had in mind when we first proposed it in 1998.

- Future Expansion

Under the IGRA's current budget cap, the NIGC expects no expansion past the year 2001. Referring again to Attachment B, you will see that for the year 2001, we project 78 employees and costs of \$7.3 million. Thus, we have essentially completed our expansion. In short, the NIGC of today – 70-75 employees, offices in Washington, D.C. and 5 regional offices – is what the current funding mechanism under IGRA will support.

### ***Activities of the NIGC***

Let us also share with you what the increase in funding and staff has meant in the substantive regulation of Indian gaming.

- Promulgation of Regulations

In the past 18 months the NIGC has finalized or proposed the following substantive regulations:

1. Minimum Internal Control Standards (MICS) (Final Rule) – Rules designed to protect the integrity of Indian gaming by setting standards for such critical areas such as cash handling, licensing documentation, auditing, security and surveillance. The NIGC formed a tribal advisory committee that assisted in the drafting of these regulations. In developing the MICS, the NIGC evaluated and considered control standards from other sources, including New Jersey, Nevada and the National Indian Gaming Association.
2. Self-Regulation (Final Rule) – Participation in the self-regulation program will afford tribes the opportunity to assume greater regulatory control over their Class II facilities and decrease their fees to the NIGC. Tribes applying for a self-regulation certificate will undergo an on-site visit by a team of NIGC investigators and auditors and must satisfy rigorous approval requirements.
3. Environment, Public Health and Safety Regulations (Notice of Proposed Rule Making) – The NIGC has formed a tribal advisory committee which will soon submit a proposed rule. The rule will address the portion of IGRA that requires tribal gaming ordinances to provide for the protection of the environment, public health and safety.
4. Classification Regulations (Proposed Rule) – The NIGC has proposed a rule that establishes a formal process for the classification of games played on Indian land under IGRA. The regulation was proposed in response to a growing number of requests by tribal gaming commissions and the gaming industry for advice as to whether a particular game is Class II or Class III. The NIGC held a field hearing on the proposed rule in January in Tulsa, Oklahoma.

- Training

The NIGC has made a strong effort to provide education, training and technical assistance as a means to secure regulatory compliance. We believe our efforts are paying dividends. During the past year, the NIGC provided over 20 training seminars on topics such as the MICS, self-regulation, employee backgrounding, tribal gaming ordinances, management contracts and tribal gaming commissions. These training sessions were, of course, free and attended by over 1000 tribal gaming officials and leaders. We have received a lot of positive feedback on these training sessions and many tribal gaming officials have asked the NIGC to provide even more training.

Additionally, I am pleased to report that on July 31 to August 4, 2000, the National Judicial College at the University of Nevada in Reno, will offer a course entitled, "Essential Skills for Tribal Gaming Commissions." I am a former faculty member of the judicial college and have taken the lead in creating this course. Along with former Chairman Tadd Johnson and former Vice-Chairman Phil Hogen, I sit on the curriculum committee. We have been successful in obtaining a grant from the Department of Justice and will be offering full scholarships to 40 tribal gaming commissioners to attend this training session.

### ***Consultation Policy***

In the spirit of the government-to-government relationship, respect for tribal sovereignty and the President's Executive Order on Consultation with Indian Tribal Governments, we have adopted a policy of tribal consultation when we consider substantive regulations. As previously discussed, we formed tribal advisory committees for the formulation of the MICS and the environment, public health and safety regulations. The advisory committees consisted of about 10 members and included a cross section of large to small gaming operations from the various regions of the United States.

Further, the Commission will begin holding quarterly consultations across the country in order to obtain input from tribal gaming representatives and leaders. On May 18, 2000, the NIGC will hold its first consultation meeting in Sacramento, California. The Commission expects to dialogue with tribal gaming commissions and industry representatives about the various concerns from each region.

### ***Increased Communications***

Still another aspect of our expansion has included updating and improving the ways we communicate with the regulated community. We have upgraded our computer and phone systems, created a website ([www.nigc.gov](http://www.nigc.gov)), and are publishing a regular newsletter, which I have enclosed.

In a more simple, but perhaps more important way, we as a Commission have tried to visit as much of Indian country and as many Indian gaming establishments as possible. I know personally, I have toured over 40 reservations in the past year. In each instance I have made an effort to talk face to face with the gaming commissions and tribal leaders to explain the activities of the NIGC as well as what we believe to be our role in the regulation of their facilities. I know that my fellow Commissioners have made numerous visits as well.

### ***Office of General Counsel***

Our 1998 plan made special note of the Office of General Counsel (OGC) and its role to provide legal advice and counsel to the Chairman and Commissioners that enables the NIGC to fulfill its statutory mandate under IGRA. The OGC is responsible for,

among other things: providing legal support to the agency for enforcement actions initiated under IGRA; reviewing and recommending to the Chairman the approval or disapproval of tribal gaming ordinances and contracts; coordinating federal litigation with the Department of Justice; issuing game classification opinions; and providing all other necessary legal support.

As our 1998 plan contemplated, the expansion of investigators and auditors in the field has increased the need for legal support. The OGC is currently staffed by eight attorneys, one paralegal and one legal clerk. Further, the office is now handling or assisting in seventeen (17) federal court cases, nine (9) administrative law cases and two (2) major rule makings.

#### ***Audit Division***

Another important substantive addition to the NIGC has been the creation of our Audit Division. We currently employ five auditors. These auditors have already assisted in numerous investigations and have conducted independent audits of several tribal gaming facilities. In several instances we came on-site at the invitation of the tribe, to assist in ferreting our irregularities, or to simply educate the gaming commission on gaming auditing functions. For example, recently, at the request of the tribe, the NIGC sent three auditors to a South Dakota gaming facility to perform a MICS compliance audit. Further, given that current requests from the regulated community for NIGC field auditors are greater than we can satisfy, I believe this is one division that needs additional staffing.

#### ***Expansion of Washington D.C. Offices***

As the agency has expanded in the field, we have also found it necessary to expand the Washington D.C. offices too. A majority of the support for our field offices occurs here in Washington. Additionally, we have experienced an increase in staff in every division.

We were fortunate enough to locate some additional space on the 10<sup>th</sup> floor of our current building, accordingly, we were able to avoid expensive moving and relocation costs. The majority of our staff still resides on the 9<sup>th</sup> floor and we are currently renovating that space. The new offices on the 10<sup>th</sup> floor house the Commission, Chief of Staff, General Counsel and the offices of Congressional/Public Affairs. We are proud of our new offices and invite you to come by and visit us at your earliest opportunity.

We trust the forgoing has been responsive to your request. Further, my staff is currently preparing a comprehensive report on the activities of the NIGC over the past two years. We look forward to providing you with a copy of the report in the near future. Should you require additional detail, we stand ready to provide any additional information.

Sincerely,

A handwritten signature in cursive script, appearing to read "Montie R. Deer".

Montie R. Deer  
Chairman

**Attachments**



Honorable Ben Nighthorse Campbell  
United States Senate  
Washington, D.C. 20510-6450

Dear Senator Campbell:

Thank you very much for your thoughtful letter of May 12, 1998, reflecting your views and concerns on the role of the National Indian Gaming Commission (NIGC).

As you know, IGRA as originally enacted permitted the NIGC to collect up to \$1.5 million annually in fees on only class II tribal gaming activities. In 1997, in recognition of the fact that class III gaming represented the vast majority of tribal gaming, and required the principal amount of NIGC's attention and resources, Congress expanded the base upon which fees could be assessed to include both classes II and III. At the same time, Congress increased the fee cap to \$8 million. The inclusion of the Cochran amendment has proven to be not only problematic in its implementation, but it is also potentially dangerous to the future of the NIGC.

The NIGC concluded the most practical way to implement these amendments was to adopt regulations to effect the new fee structure, and propose regulations outlining a self-regulation application process. The NIGC could now assess fees on \$300 million of class II revenues, and on \$6.7 billion of class III revenues. The Commission also imposed a modest rate of .08% on revenues in excess of \$1.5 million per tribal gaming operation which was determined to be adequate to fund NIGC's activities in FY 1998, and to permit the commencement of a desperately needed expansion to fulfill NIGC's mandates under IGRA.

While the vast majority of tribes have now remitted fees under the new fee structure, the Oneida Tribe of New York has challenged the Commission's authority to collect these fees in federal court. The Tribe maintains it is one of the "self-regulating tribes" mentioned in the Cochran amendment, and is exempt from NIGC fee assessments. The Tribe further argues that until the NIGC determines which tribes are "self-regulated" it is unlawful to assess or collect fees from tribes which may be so classified. If the Tribe is successful in this case, the future of federal regulation of Indian gaming could be severely jeopardized.

First of all, an unfavorable ruling to the NIGC would interrupt the fee collection process and NIGC operations, as the agency may be forced to refund fees back to all tribes offering class III gaming, who claim to be self-regulated. As a result, the NIGC would have to shift the fee burden to class II gaming, at a much higher rate until it could complete the lengthy and costly process of determining which of the tribes in class III gaming are self-regulated. This would leave the often poorer tribes, which are limited to class II operations, in the position of funding the NIGC and, in effect, subsidizing NIGC oversight of the class III gaming industry.

The second concern is the long-term implications for Federal oversight of tribal gaming. The Commission believes that most tribes would seek self-regulated status, especially if the result was an exemption from payment of fees. The amendment exempting the "self-regulated" tribes from fee payment in no way lessened NIGC's regulatory or oversight responsibility, so there likely would be no corresponding decrease in the Commission's need for resources. That is why we are heartened to hear that you share our view that no tribe should be "completely exempt from paying any fees to the NIGC." If the courts rule against NIGC in the current Oneida litigation, it may be a long time before the Commission may be spending any of the "new" funding which the 1997 amendment attempted to make available, and in any event, the source of that funding is likely to diminish at a rapid rate once "self-regulated" standards are set.

With respect to the current timetable to implement the self-regulation process NIGC is currently drafting final regulations for the implementation of class II self-regulation certification. The NIGC expects to publish the final regulations in the federal register in the next few weeks. They will become effective 30 days after the date of publication. On class III self regulation, the NIGC published an Advance Notice of Proposed Rulemaking on March 12, 1998, which posed several questions for comment. The comment period ended May 11, 1998, and the NIGC will now move quickly to develop regulations and to publish a Notice of Proposed Rulemaking. We hope to move quickly and anticipate a final rule later this year.

The NIGC has formulated an expansion plan it would implement if the Commission is successful in court. The objective of an NIGC expansion plan is simple. In order to provide meaningful oversight of an industry that generates \$7 billion in annual revenue at over 300 gaming facilities in 28 states, the NIGC needs to expand at the field level.

The first-line regulation of this industry is, and always should be provided by the tribes which operate the gaming facilities. NIGC's oversight is not intended to, nor should it duplicate this primary regulation. NIGC's presence is mandated by IGRA, and is appropriate because while most gaming regulatory bodies oversee multiple commercial gaming facilities, tribal regulatory agencies are in effect overseeing their own sole operation. NIGC's presence and oversight role accentuates the objectivity required to achieve adequate regulation. As NIGC plays its role in this somewhat complex scheme, it must always be mindful that the regulatory requirements it imposes must be effective and efficient and must not place tribal gaming at competitive disadvantages with non-Indian gaming. This goal can be accomplished by closely communicating with tribes engaged in the gaming industry.

An aspect of gaming which compels intense regulation, is that it consists primarily of undocumented cash transactions. The close monitoring demanded of this activity requires constant observation, and certification of what is observed. Cognizance of this activity and its oversight, consequently, can only be achieved by recurrent physical presence where the gaming occurs, and having an understanding and appreciation of the cash flow from the time of the customer's wager, to the disbursement of the gaming profits for tribal purposes. It is the

intention of NIGC, as it expands its resources and services, to place more of its personnel in the field to visit, observe and assist tribal gaming operations, and to enhance the qualitative analysis of the enormous amount of information generated, maintained and provided to NIGC by the Indian gaming industry.

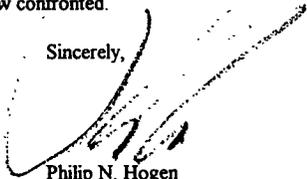
NIGC aspires to more than quadruple the number of its field investigators from seven to at least 30, dividing them into regional groups, with each group consisting of teams which include investigators with expertise in several areas, including accounting, gaming management, and health and public safety. Several field offices, of which NIGC now has none, will serve as the bases of operations for these teams.

Meaningful compilation and review of the information gathered by these teams will be performed by the Commission and staff with the training and skills to carefully analyze the data, alert the Commission to trends and instances which may call for specific assistance to particular tribes, and some instances enforcement action by the Commission.

Expanding to the optimum level to provide industry-wide coverage will, of course, be a gradual process, and NIGC has projected a plan whereby this growth can be completed in three years. The staff and costs required to compensate and equip them, and the schedule by which NIGC hopes to bring them on board are set forth in the accompanying charts. These charts attempt to display NIGC's staff and organization at the level required to provide for full oversight at a budget level of approximately \$8 million, as well as how the Commission would phase in the additional personnel and offices to grow to this level over a period of three years. Also included is a listing of NIGC statutory responsibilities, which are required notwithstanding tribal self-regulated status.

The Commission stands ready to provide you and the Senate Indian Affairs Committee any additional information you may require to further consider the difficult challenges with which Federal oversight of tribal gaming is now confronted.

Sincerely,



Philip N. Hogen  
Vice-Chairman  
National Indian Gaming Commission



## **PROFILE OF THE PROPOSED EXPANSION OF THE RESOURCES AND SERVICES OF THE NATIONAL INDIAN GAMING COMMISSION**

In 1997, Congress permitted the National Indian Gaming Commission (NIGC) to expand its fee assessments to the gross revenues from class III gaming as well as class II gaming. The Commission has formulated the following plans to increase its services to gaming tribes and to enhance its performance of the oversight of tribal gaming which IGRA mandates.

### **FIELD OPERATIONS--THE NEED FOR A GREATER FIELD PRESENCE**

The eyes and ears of any regulatory agency are primarily those of the staff available to go on-site to the regulated community, and that is true of the National Indian Gaming Commission. To date, too few staff to spend "quality" time at each of the more than 300 tribal gaming facilities has impeded the Commission's ability monitor tribal gaming activity. Thus, the centerpiece of NIGC's expansion plan is increasing its presence in the field, giving the Commission the capability to more comprehensively observe the tribal gaming activities, and to render technical assistance to tribal gaming regulators and operators where required.

Up until now, NIGC has never had more than seven staff members serving in the field to cover the 300 gaming facilities in 28 states. In all instances, these representatives worked out of their homes and vehicles, and were assigned territories or tribes which were scattered throughout vast geographical areas. While they were encouraged to establish regular schedules for their site visits, almost without exception, crisis situations requiring their immediate presence and attention elsewhere erupted so frequently that maintaining regular schedules or "routes" proved impossible.

The large number of tribal gaming facilities necessarily assigned to each field representative meant that the time spent at any single facility was extremely limited, and in-depth review of the various operational and regulatory aspects of those facilities was seldom achieved. Ordinarily when larger blocks of field representatives' time were dedicated to a particular facility, it was on account of some compliance violation or deficiency which monopolized the NIGC staffers' time, and not only did not permit a broad or thorough review of that facility's systems, but shortened the time available to perform reviews elsewhere.

## FIELD SERVICE TEAMS/SATELLITE OFFICES

To be of greater and more effective service, NIGC plans to develop regional field service teams, each serving regional areas from satellite NIGC offices. Tentatively such offices would be located in the Upper Midwest, the Northwest, California, and the Southwest. (Eastern tribes would be served by a team operating from the Commission's Washington, D.C. offices.)

Each of the regional teams/satellite offices would include staff members with experience, education, training and expertise in a variety of areas, including the following:

- ☛ auditing and accounting,
- ☛ security and investigations,
- ☛ gaming operations and internal controls,
- ☛ environment, health and public safety.

Likely, each satellite operation would have one or more particularly well qualified specialist in one of the several areas, who would be available to assist and provide training to not only staff and tribes in the region served by that office, but to the other satellite offices and regions as well.

The geographical territories, and the particular tribal gaming facilities located therein which would be served by each satellite operation is still under review, and would no doubt be influenced by the size and nature of the individual facilities, but also by the extent and nature of the tribal regulation of the particular facilities. As tribal gaming facilities are scattered over vast areas, the time and expense required for travel among them will need to be considered as the alignment of regional territories is developed.

Reason and resources dictate that formation of the field service teams and the implementation of the satellite office structure must be somewhat deliberate, and no doubt experience gained in establishing and staffing the first satellite office and serving its territory will help shape development of the balance of the system.

NIGC's Washington office will continue to coordinate the activities of the NIGC, and will serve as a clearinghouse for the data and information generated by the field operations. All tasks will be carefully analyzed to determine if they are most efficiently performed at the headquarters or satellite office level. Likely many Commission responsibilities will be best served by a sharing of aspects of those responsibilities.

An example of a current service now primarily performed at the headquarters level, but likely better performed by satellite operations, is the review NIGC makes of tribal suitability determinations for key employees and primary management officials in connection with tribal licensing of those individuals. NIGC is currently embarked on a pilot project which provides for retention of tribal license applications and background investigative reports at the tribal level. NIGC review of these records on a timely basis can best be done from satellite operations, which will not only speed the process and reduce the generation of paperwork, but will accommodate the dialog which is often entailed in this review. Employment of secure, computerized data bases for projects of this nature can similarly make needed information available at the headquarters, satellite office and tribal operations levels instantaneously, expediting the process and diminishing risks which occur when these processes are delayed.

Similarly, the process whereby NIGC reviews, and where appropriate approves, proposed management contracts providing for third parties to manage tribal gaming facilities, which has historically been performed in the Washington office, can be significantly supplemented by participation of the field service teams. The management contract review process, which has often been lengthy and frustrating for tribes and contractors anxious to commence operations, can be expedited when NIGC field representatives, with expertise in the particular areas of concern, are available to work locally with the proponents of the management proposals.

Further, an expanded field network, which includes specialists in the areas of auditing and gaming operations will provide the Commission with an opportunity on a broad scale, to carefully observe the on-site performance of those management contracts which have been given NIGC approval, and provide NIGC information which will be invaluable as it considers new contracts submitted for review and approval. Only from a perspective that is well informed as to the implementation and track record those contracts which it has already approved, can NIGC determine whether certain aspects of contractual provisions will practically meet the needs of the tribes and contractors, and provide the safeguards those contracts are required to include for the protection of tribal resources and the success of the operations.

#### **GATHERING & ANALYSIS OF DATA & INFORMATION**

While IGRA has always required tribal gaming operations to periodically provide NIGC with the results of independent audits, and while NIGC has given priority to tribal fulfillment of this important requirement, NIGC has lacked the staff to give meaningful scrutiny and review to those audits which tribal operations annually provide. NIGC auditors and accountants in the satellite offices, supported by their counterparts in the headquarters offices, will not only permit NIGC to attempt to correlate what is reported in the reports with what is observed at the facilities (which NIGC has seldom been able to do, to date), but will provide thorough analysis of the individual reports, and identify trends or concerns which may suggest enforcement actions.

For example, to date the reports which have been filed with NIGC are required to reflect the expenses as well as the profits or net earnings of the facilities. Scrutiny of this historical information on the basis of individual operations, individual tribes, geographical regions, as well as nationally, may well highlight individual situations which vary significantly from industry norms. If so identified, those instances could be further investigated to determine their causes, and if questionable, prompt discussions with tribal authorities and perhaps enforcement actions. Existing resources have not permitted even this basic analysis, which could prove invaluable to individual tribes, as well as to the industry as a whole.

As suggested with respect to fulfillment of NIGC's role in the review of tribal suitability determinations, to the greatest extent, the field service teams and satellites will employ cutting-edge technology, to maximize service and efficiency. Computer, Internet and telephonic communication will closely link the satellite offices with headquarters, as well as with NIGC's customers, the tribal operations.

#### **ENHANCED ADMINISTRATIVE, TECHNICAL AND LEGAL SUPPORT**

The strengthened and expanded field structure will require a modest increase in the administrative support required by the Commission. In all instances where it proves practical and efficient, NIGC will employ provisions of IGRA which permit it to contract with tribes, tribal organizations and others for administrative and technical services. As has historically been the case, a key component of NIGC's structure is the section which provides legal guidance to the Commission as it performs its enforcement and oversight, and a brief profile of that component, and anticipated increases is appropriate.

#### **OFFICE OF GENERAL COUNSEL**

The role of the Office of General Counsel (OGC) is to provide legal advice and counsel to the Chairman and Commissioners that enables the NIGC to fulfill its statutory mandate under the Indian Gaming Regulatory Act - to regulate and monitor gaming on Indian lands. The OGC is responsible for, among other things: providing legal support to the Chairman and Commission in connection with enforcement actions initiated under IGRA; reviewing and recommending to the Chairman the approval or disapproval of tribal gaming ordinances; reviewing and recommending the approval or disapproval of management contracts; reviewing transactional documents relating to gaming operations; providing opinions regarding the classification of games; and, providing other legal support necessary to further the work of the Commission.

In addition, the OGC provides general legal services to the Commission. These services include reviewing actions of the NIGC against legal authorities which apply generally to government operations such as - the Administrative Procedure Act, the Federal Advisory Committee Act, the National Environmental Policy Act, the Freedom of Information Act, the Privacy Act, executive orders, and principles of law developed in relevant cases.

The NIGC expansion contemplates that the number of field investigators will increase from current number of seven investigators to thirty. With the sizable increase of field investigators and the corresponding ability of this larger staff to provide more in-depth review of the various operational and regulatory aspects of the facilities the NIGC also anticipates that there will be an increase of legal activity, including enforcement proceedings, associated with the expanding field work.

Currently the Office of General Counsel is staffed by six lawyers and two paralegals. The OGC, will at a minimum, need four additional attorneys to provide the legal services to support the expansion of the NIGC.

#### **PROJECTED COSTS & EXPENDITURES**

With this general profile of an NIGC, expanded to include field service teams/satellite offices, the Commission has projected the costs and scheduled implementation of such an operation as set forth in the accompanying charts.

**The National Indian Gaming Commission  
May 21, 1998.**

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NATIONAL INDIAN GAMING COMMISSION  
STAFF EXPANSION PHASE - IN  
ESTIMATED COSTS  
FISCAL YEARS 1998, 1999 AND 2000

<u>1998</u>	Gross Comp. and Benefits Added	Number of People Added	<u>1998</u>	Estimated Costs <u>1999</u>	<u>2000</u>
1st Quarter	\$2,527,964	37 *	\$2,527,964	\$2,527,964	\$2,527,964
2nd Quarter	107,571	1	80,678	107,571	107,571
3rd Quarter	1,222,038	16	611,019	1,222,038	1,222,038
4th Quarter	510,000	9	127,500	510,000	510,000
<u>1999</u>					
1st Quarter	310,000	6		310,000	310,000
2nd Quarter	311,000	5		233,250	311,000
3rd Quarter	263,000	5		131,500	263,000
4th Quarter	<u>85,000</u>	<u>2</u>		<u>21,250</u>	<u>85,000</u>
Totals	<u>\$5,336,573</u>	<u>81</u>	<u>\$3,347,161</u>	<u>\$5,063,573</u>	<u>\$5,336,573</u>
Totals rounded	<u>\$5,500,000</u>		<u>\$3,350,000</u>	<u>\$5,100,000</u>	<u>\$5,500,000</u>
Other costs (estimated)					
Travel and transportation			\$450,000	\$675,000	\$700,000
Rent and communications			350,000	500,000	520,000
Printing and reproduction			50,000	65,000	75,000
Other services			800,000	1,175,000	1,200,000
Supplies			50,000	70,000	75,000
Equipment			125,000	240,000	250,000
Other unallocated			<u>125,000</u>	<u>175,000</u>	<u>180,000</u>
Total other costs			<u>\$1,950,000</u>	<u>\$2,900,000</u>	<u>\$3,000,000</u>
Total projected costs			<u>\$5,300,000</u>	<u>\$8,000,000</u>	<u>\$8,500,000</u>

\* Existing staff.

NATIONAL INDIAN GAMING COMMISSION  
PROJECTED STAFFING AND COMPENSATION

Function	Comp. and Benefits (in thousands)	Total	Number of Staff FTEs			
			Wash. Office	DC Field Office	Field Office	Field Office
Commission						
Chairman	190	2	2			
Commissioner	175	2	2			
Commissioner	175	2	2			
General Counsel, including Ordinances NEPA R Contracts FOIA/Privacy	940	12	12			
Chief of Staff	195	2	2			
Public/Congressional Affairs	135	2	2			
Contracts/audits	420	5	5			
Financial, including Administrative support Executive Secretariat	470	9	9			
Enforcement	225	3	3			
Background Investigations	170	2	2			
Tribal background investigations	270	8	4	1	1	1
Field Coordinator	125	2	2			
Field Offices	1,845					
Regional supervisor and auditor/accountant/investigator		4		1	1	1
Supervisory auditor/accountant		5	1	1	1	1
Auditor/accountant		4		1	1	1
Gaming systems technician		2		1	1	1
Health and safety specialist		2		1	1	1
Lead investigator		5	1	1	1	1
Investigator/background specialist		4	4	1	1	1
Administrative support		4		1	1	1
Other unallocated	165					
Totals	5,500	81	47	2	8	8

**National Indian Gaming Commission  
Staff Expansion Phase - In Estimated Costs  
Fiscal Years 1998, 1999, 2000 and 2001**

	<u>1998</u>	<u>1999</u>	<u>Estimated Costs 2000</u>	<u>Estimated Costs 2001</u>
<b>Employee Count</b>	42	93	71	73
<b>Gross Compensation and Benefits</b>	2,522,544.00	3,484,645.00	5,181,000.00	5,491,860.00
<b>Travel and Transportation</b>	421,111.00	564,031.00	600,000.00	618,000.00
<b>Rent and Communications</b>	347,585.00	563,094.00	682,937.00	708,205.67
<b>Printing and Reproduction</b>	30,555.00	17,511.00	18,000.00	18,540.00
<b>Other Services</b>	698,375.00	*1,981,030.00	432,288.00	445,256.64
<b>Supplies</b>	37,866.00	78,848.00	50,000.00	51,500.00
<b>Equipment</b>	30,444.00	*220,844.00	40,000.00	41,200.00
<b>Total</b>	<u>4,088,480.00</u>	<u>6,910,003.00</u>	<u>7,004,225.00</u>	<u>7,374,562.31</u>

\*INCLUDES TECHNOLOGY INITIATIVE: Y2K; TELEPHONE SYSTEM; COMPUTERS; DATABASE CONVERSION





## National Indian Gaming Association

224 Second Street SE • Washington DC 20003  
 (202) 546-7711 • FAX (202) 546-1755 • www.indiangaming.org

**Testimony of Richard G. Hill,  
 Chairman of the National Indian Gaming Association  
 before the United States Senate Committee on Indian Affairs  
 on July 19, 2000**

### I. Introduction.

Good afternoon Mr. Chairman, Mr. Vice-Chairman, and members of the Committee. My name is Richard Hill and I am the Chairman of the National Indian Gaming Association ("NIGA"). Thank you for inviting me to testify before you today. I request that my written testimony be made a part of the record as well.

Please allow me to preface my comments with a few observations. Indian nation governmental gaming is now a 9.6 billion dollar industry. Keeping in mind our rapid growth, we acknowledge that with such success comes increased scrutiny. Therefore Mr. Chairman and members of the Committee, it is in our own best interest to have a zero tolerance policy when it comes to the violation of Indian nation governmental gaming regulations which are promulgated by legitimate authority.

In 1997 the United States Congress passed legislation amending the Indian Gaming Regulatory Act ("IGRA") to increase the total amount of fees that the National Indian Gaming Commission ("NIGC") could collect from Indian nations. The new authorization allowed the NIGC to collect fees from not only "Class II," but also from "Class III" operations. At that time I appeared before this same Committee and testified that NIGA was fully supportive of the Committee's expressed intentions to raise the level of efficiency and independent integrity of the NIGC, even if that meant increasing the fees imposed on our operations.

I appear before you today, nearly two years later, and I must tell you that we are not at all comfortable with the actions taken by the NIGC in that time span. NIGA remains supportive of a respected, independent, objective and efficient NIGC, yet no communications have been shared with us regarding how the NIGC plans to meet those goals. Instead we face a number of new regulatory initiatives that infringe upon Indian nations' governmental authority and are duplicative of existing regulatory structures.

The failure to communicate has not resulted from inaction from NIGA or its Member Indian nations. We have made repeated requests for budget projections and work plans, with no response. In January of this year NIGA facilitated a meeting between the NIGC and over 70 Indian nation leaders, the sole purpose of which was to promote communication between the NIGC and NIGA's Member Indian nations. Specifically our Member Indian nations sought some insight regarding the NIGC's recent actions and its plans to implement the new resources at its disposal. To date no satisfactory explanation has been given.

II. Physical expansion of NIGC.

A. 100% increase in personnel; increase of five field offices.

Within approximately the last two years the NIGC has expanded its personnel by over 100%. It has opened five field offices, and leased an additional floor at its offices on 1441 L Street, N.W., Washington, D.C. In commencing this expansion the NIGC quickly increased its annual budget by nearly 200% to over \$7 Million, very near the new ceiling on fees it could collect from Indian nations. However, as everyone who has been involved with the federal government can tell you, bigger does not necessarily mean better, and all too often does not translate into an efficient allocation of resources.

B. No apparent strategic planning.

What has greatly concerned many of NIGA's Member Indian nations, is that this lightning quick increase has apparently taken place without the benefit of any strategic planning. When this Committee indicated that it wanted the NIGC to have greater resources to fulfill its responsibilities, it did not indicate that it wanted the NIGC to take on new additional responsibilities. Rather it wanted the NIGC to have the resources to adequately and thoroughly meet the responsibilities with which it was already charged.

After numerous requests for a strategic plan or work plan, the NIGC finally disgorged a document entitled "Profile of the Proposed Expansion of the Resources and Services of the National Indian Gaming Commission." Unfortunately this document did not contain the type of information sought by NIGA's Member Indian nations. Rather it merely described the various staff positions, the intent of the NIGC to expand personnel and field offices, and a very brief budget projecting costs to meet the expansion.

C. No "government-to-government" consultation.

At no time did the NIGC meet with Indian nation leaders to consult regarding its plans to make use of the additional resources it was receiving. NIGA and its individual Member Indian nations have made numerous requests for information regarding the NIGC's budget priorities, forecasts, and plans, as well as strategic plans, needs analysis, and work plans, goals and objectives. To date those requests have gone unheeded. We can only surmise that they do not exist.

III. Attempted expansion of NIGC legal jurisdiction.

A. New regulatory initiatives.

Instead of the budgets and work plans requested, the NIGC has begun work promulgating new regulations with the stated purpose of protecting the integrity of Indian gaming from those special interests who falsely claim Indian gaming is unregulated. However, these regulatory initiatives are beyond the authority of the NIGC to pursue, and worse, do little to address the

attacks on the integrity of Indian gaming. In particular the attempts to regulate Minimum Internal Control Standards (“MICS”), Class II game classifications and health and safety standards illustrate these misguided attempts.

B. NIGC wanting “shared authorities.”

Indian nation governmental gaming is already the most highly regulated gaming in the United States—with regulatory authority shared between the Indian nations and the individual states through the compacting process, and federal oversight provided by the Department of Justice (“DOJ”), Department of Treasury and the NIGC—all as dictated by IGRA. Recently, however, the NIGC has begun speaking of its “shared authorities,” which we take to mean concurrent jurisdiction. It is apparent that these “shared authorities” will come at the expense of infringing on Indian nation governmental jurisdiction.

The primary regulatory authority for Indian gaming has always been accepted as residing within the Indian nations, as a matter of their inherent sovereign governmental powers. This legal concept was codified by IGRA. There has not been any legislation amending IGRA to grant greater regulatory authority to the NIGC, and without such authority it is unclear how the NIGC can legitimately usurp such authority to itself. Yet the MICS, the Class II gaming regulations, and the health and safety standard regulations strike at the very heart of this authority by setting standards for internal controls, pursuing a preemptive role in determining the classification of games, and seeking to control health and safety issues at Indian nation gaming facilities. These initiatives amount to an intrusion upon Indian nation governmental powers which a federal agency would never attempt to impose on a state government.

C Duplication of Indian nations’ regulatory efforts

Not only do the regulatory initiatives that I have referenced exceed the NIGC’s statutorily granted authority, but they would also result in a great deal of duplication, and even triplication, of existing regulatory efforts. Indian nations would have to exponentially increase their bureaucracies to meet the new regulatory demands, resulting in increased regulatory costs and compliance work. Many Indian nations already spend several hundred thousand dollars, or even millions, every year for regulatory costs. Every extra dollar that must be spent on regulatory costs, is a dollar that Indian nations cannot spend on healthcare, education, housing or elder care for their people.

IV NIGA Recommendations

A. Class II gaming issues

The issue of what classification particular games fall under, and thus whether tribal/state compacting is required, is a difficult one. The determination is made even more difficult due to advances in technology. However, rather than the NIGC continue to pursue its proposed Class II Game Classification Regulations, NIGA respectfully recommends that the Committee encourage

the NIGC to resolve these issues by redefining the Class II regulatory definitions and seeking an interdepartmental resolution to the Class II/Johnson Act definition controversy.

It seems a reasonable solution to the issue of determining a game classification that the NIGC and the Indian nations engage in a “negotiated rulemaking” process. Such a process would be consistent with the government-to-government relationship that exists between the NIGC and the Indian nations. It would also be consistent with the spirit of IGRA, which clearly contemplated the continued development of more exciting and profitable Class II games, and expressly identified the use of technology as the best way to achieve better Class II games.

Combining a negotiated rulemaking process with an interdepartmental Memorandum of Understanding between the NIGC and the DOJ would achieve the most efficient and fair outcome. Much of the controversy regarding game classification has derived in differing definitions between the DOJ and the NIGC. The impact of that difference of opinion has fallen directly on Indian nations. The result has been uneven and unfair prosecution of Indian nations.

**B. Require NIGC to follow GPRA .**

To insure that the NIGC has the incentive to search out the most efficient, and least intrusive oversight and regulatory role for itself, NIGA respectfully suggests that this Committee should pursue legislation mandating that the NIGC comply and adhere to the Government Performance and Results Act of 1993 (“GPRA”). This law was passed to insure that federal agencies were pursuing their legislative mandates in an efficient and cost-effective manner. GPRA requires federal agencies to produce annual performance plans to clearly inform Congress and the public of the annual performance goals for the agencies’ major programs and activities, the measures that will be used to gauge performance, the strategies and resources required to achieve the performance goals, and the procedures that will be used to verify and validate performance information.

NIGA is not alone in its belief that an agency charged with the unique responsibilities, like the NIGC, should be subject to GPRA. In a letter to Majority Leader Dick Armey, Chairman Dan Burton, House Committee on Government Reform, and Chairman Fred Thompson, Senate Committee on Governmental Affairs, dated July 20, 1999, the United States General Accounting Office addressed the GAO’s review of the Department of Interior’s performance plan for FY2000. Among the recommendations made by the GAO, on page 10 it recommended that the NIGC be subjected to GPRA.

- C. Encourage the NIGC to institute meaningful government-to-government consultations.

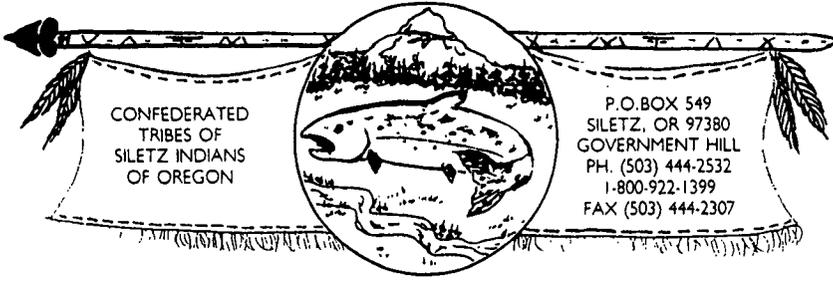
In conjunction with following the requirements of GPRA, NIGA respectfully suggests that this Committee encourage the NIGC to institute regular, meaningful government-to-government consultations regarding the NIGC's goals and budgetary priorities. Government-to-government consultations between all federal agencies and Indian nations was specifically encouraged by President Clinton in his Executive Order No. 13084, dated May 14, 1998. It would seem highly appropriate for the one federal commission in which every commissioner, and nearly one-third of its staff, is American Indian, to have a substantial government-to-government relationship with Indian nations. NIGA and its Member Indian nations stand ready to assist the NIGC to identify and meet the political challenges presented by the opponents of Indian nations' sovereign rights to pursue economic development through gaming. However that can only occur with constructive dialogue.

- V. Conclusion.

While some of my comments may appear critical of the NIGC, I will temper those comments by stating that NIGA remains firmly committed to working with the NIGC and this Committee to develop the NIGC into a respected, efficient agency. We also firmly believe that the NIGC Commissioners and staff truly seek the same ultimate goals which NIGA seeks—the continued development of the Indian gaming industry and the achievement of greater self-sufficiency by Indian nations.

In essence we really only seek transparency in the NIGC's mode of operation, because without transparency it is difficult to develop trust. We provide all of the operating funds for the NIGC. We seek input into the process of a dialogue on NIGC priorities, goals and plans that will affect all Indian nations. After all it is in both our self interests to do so.

Thank you for the opportunity to present NIGA's views. I stand ready to answer any questions the Committee may have regarding my testimony.



**STATEMENT OF DELORES PIGSLEY**  
**CHAIRMAN**  
**CONFEDERATED TRIBES OF SILETZ INDIANS**  
**for an**  
**OVERSIGHT HEARING ON THE**  
**ACTIVITIES OF THE NATIONAL INDIAN GAMING**  
**COMMISSION**  
  
**Before the**  
**SENATE COMMITTEE ON INDIAN AFFAIRS**  
  
**July 18, 2000**

Mr. Chairman, I appreciate the opportunity to provide testimony to the Committee on Indian Affairs for its oversight hearing on the activities of the National Indian Gaming Commission. From the perspective of the Siletz Tribe, this hearing is very timely.

On June 15<sup>th</sup> of this year, the Commission issued a Notice of Violation to the Siletz Tribal Council. This NOV alleges that the Siletz Tribal Council and its individual members violated the provisions of the Indian Gaming Regulatory Act, the Commission's regulations, the Tribe's gaming ordinance, and the class III Tribal-State Compact with the State of Oregon. It is alleged that these violations occurred in the "comping" practices of the Siletz Tribal gaming enterprise.

For the information of the Committee, "comping" is the business practice of providing complimentary benefits and services of the business as a marketing, advertising and public relations tool. "Comping" is particularly well accepted and widespread in the gaming industry. The cost of these benefits and services are accounted for by the gaming enterprise as a part of its operating expenses, in the Siletz case, for meals and entertainment.

Mr. Chairman, I am not going to go into the details of the Commission NOV and our response to it. A copy of the NOV, the Tribe's response to the NOV, and related material are attached to my statement and I ask that they be made a part of the Committee record. I only want to make the following short points.

First, as more fully set out in our response, we assert that the Commission has exceeded the authority conferred upon it by the Indian Gaming Regulatory Act in issuing the NOV. The Commission is attempting to substitute its business judgment in the operation of the Siletz gaming enterprise for that of the Tribe, its Board of Directors, and its casino management. This is an unacceptable assertion of power by the Commission and, if not challenged, would lead to the business management of tribal gaming enterprises by Commission regulation. We believe this is not authorized by the Act.

Second, Mr. Chairman, we most strongly protest the violation of basic fairness and procedural due process by the Commission in the issuance of this NOV. Acting on a "secret tip", the Commission requested information from the Siletz Tribal Gaming Commission. The STGC provided the Commission with unaudited data. Without further investigation and without consulting with the Tribe, the Commission prejudged the data and issued its notice of violation. If this were not bad enough, Mr. Chairman, the Commission posted the NOV on the Internet. In a final insult and violation of basic fairness, the NOV appeared on the Internet before the formal notice was provided to the Tribe.

In addition, NIGC representatives also made statements to the media accusing the Tribal Council and its members of stealing money from the Casino. It was disgusting to be subject to news articles that labeled me personally as the recipient of freebies, cash, and loans benefiting my family. As the news clippings I have provided to the Committee show, we were condemned even before we were given an opportunity to explain the

comps charged. Mr. Chairman, the Siletz Tribe and the people are outraged by this action of the Commission. The least effort on the part of the Commission and its employees would have revealed the facts and the more than legitimate uses of comping.

I believe that it is important to point out to the Committee that the Commission has hired, as an investigator in the Portland Area, a former employee of the Oregon State Police who served as a resource person to the State's compact negotiating team. This individual was extremely critical of the Siletz Tribe and the Tribe's gaming enterprise throughout our negotiations. The Tribe has already raised with the Commission the inability of this individual to be objective with the Tribe in his new capacity. We urge the Committee to consider the conflict of interest inherent in the Commission's employment of this individual.

Mr. Chairman, the Siletz Tribe asks this Committee to examine the Commission's action in light of the provisions of sections 17 (a) of IGRA. This subsection provides that:

"Except as provided in subsection (b), the Commission shall preserve any and all information received pursuant to this Act as confidential pursuant to the provisions of paragraphs (4) and (7) of section 552(b) of title 5, United States Code.

The Commission, at its request and with its knowledge, was provided with raw, unaudited data. Without any further investigation, it rushed to judgment and posted its unsupported allegations based upon that data on the Internet. This is an outrageous violation of the statutory restrictions placed by Congress on the Commission in subsection 17(a).

This is not a matter, Mr. Chairman, of the Siletz Tribe trying to escape legitimate regulation and oversight of its gaming operation. Chinook Winds Casino is subject to comprehensive monitoring and regulation by the Tribe's Gaming Commission and by the Oregon State Police. The State negotiated an extensive role for itself in the operation of Indian gaming in Oregon. The issue is whether or not NIGC has exceeded its congressional charter of authority. Given the fact that Indian tribes, including the Siletz Tribe, now provide all of funding for NIGC operations, we expect it to carry out its role in a responsible and professional manner.

Finally, Mr. Chairman, we hope the Committee will recognize the fundamental unfairness of the Commission's practice of publishing on the Internet notices of alleged violation that are based upon data that have not been audited or further investigated by the Commission. Not only is this practice unfair, but it also seems a violation of section 17(a) of IGRA.

Thank you, Mr. Chairman. I would be happy to respond to any questions the members of the Committee may have.

## National Indian Gaming Commission

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### NOTICE OF VIOLATION

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NO. 00-09

To: Delores Pigsley, Chairman  
Confederated Tribes of Siletz Indians of Oregon  
P.O. Box 549  
Siletz, Oregon 97380

Agent for Service of Process:

Brenda Bremner, General Manager  
Confederated Tribes of Siletz Indians of Oregon  
P.O. Box 549  
Siletz, Oregon 97380

### NOTICE

1. Pursuant to the Indian Gaming Regulatory Act ("IGRA" or "Act"), and by virtue of authority vested in the Chairman of the National Indian Gaming Commission ("NIGC"), the Chairman hereby gives notice that the Confederated Tribes of Siletz Indians of Oregon ("Tribe" or "Respondent") is in violation of the Act, the Siletz Tribal Gaming Ordinance ("Ordinance"),<sup>1</sup> the Tribal-State Compact for Regulation of Class III Gaming between the Confederated Tribes of Siletz Indians of Oregon ("Tribal-State Compact"), and NIGC regulations.

2. Violations stem from the following circumstances:

A. Since approximately May 25, 1995, the Tribe has operated a Class II and III gaming operation called Chinook Winds at Siletz, Oregon.

B. Section 6.21 of the Ordinance authorizes Class II and Class III gaming, as defined in IGRA and the NIGC's implementing regulations. Under IGRA, Respondent is required to conduct Class III gaming only in conformance with a Tribal-State compact.

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<sup>1</sup>On August 20, 1994, the Tribe adopted the Siletz Tribal Gaming Ordinance Number 6.20, by Resolution 94-188. The Chairman of the NIGC approved the Ordinance on December 15, 1994.

25 U.S.C. § 2710 (d)(1)(C). The Tribe and the State of Oregon entered into such a compact on November 10, 1994, with subsequent amendments.<sup>2</sup>

C. According to NIGC regulations, the acceptable uses for net gaming revenues are as follows:

- to fund tribal government operations or programs;
- to provide for the general welfare of the tribe and its members;
- to promote tribal economic development;
- to donate to charitable organizations; or
- to help fund operations of local government agencies.

25 C.F.R. § 522.4 (b)(2).<sup>3</sup> Throughout 1999, the Tribal Council awarded Complimentary Items (also known as "comps") to individual Tribal Council members and to the Tribal Council itself. Awarding Complimentary Items to Tribal Council members for personal use does not fall within the authorized uses of net revenues.

D. Section 8 of the Tribal-State Compact requires the Tribe to conduct all Class III gaming in accordance with the compact, the Tribe's gaming ordinance, and the Minimum Internal Control Standards (MICS) attached to and incorporated by reference into the compact. Under the MICS, the Tribe is required to safeguard its gaming assets by ensuring that the gaming operation has a system of internal controls that will provide for

- the segregation of incompatible functions so that no employee is in a position to perpetrate and conceal errors or irregularities in the normal course of his or her duties.

Tribal-State Compact, Appendix A, Section I (A)(2)(b): In addition, under Section II (Accounting Standards), the Tribe has agreed to adopt procedures that will reasonably ensure that

- functions, duties, and responsibilities are appropriately segregated in accordance with sound practices by competent, qualified personnel.

Tribal-State Compact, Appendix A, Section II (C)(1)(g).

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<sup>2</sup>The most recent Tribal-State Compact between the Siletz Tribe and the State of Oregon was executed on September 14, 1999, and published in the Federal Register by the Assistant Secretary for Indian Affairs on November 12, 1999.

<sup>3</sup>See also 25 U.S.C. § 2701 (b)(2)(B) (authorized use of net gaming revenues); 25 C.F.R. § 502.16, 25 U.S.C. § 2703 (9) ("net gaming" defined); Confederated Tribes of Siletz Indians of Oregon Distribution of Net Gaming Revenues Ordinance, Section 6.80 (authorized uses of net gaming revenues); Tribal-State Compact, Section 8 (required adherence to tribal gaming ordinance, compact, IGRA, NIGC regulations, and MICS).

Throughout 1999, by granting Tribal Council members the authority to award Complimentary Items to themselves, and to award Complimentary Items to other Tribal Council members and family members, the Tribe has failed to adhere to the requirement of segregation of incompatible functions, duties and responsibilities. Granting Tribal Council members broad authority to award Complimentary Items does not adequately safeguard the assets of the gaming operation.

3. The measures required to correct the past and ongoing violations are:

A. Each Tribal Council Member must repay the gaming operation for all Complimentary Items taken for personal use. The amounts each Tribal Council member owes to the gaming operation are as follows:

1. Delores Pigsley	\$2,840.31
2. Gerald Ben	\$2,526.74
3. Mike Darcy	\$2,868.23
4. Jessie Davis	\$2,802.72
5. Mary Fisher	\$1,153.95
6. Jane John	\$1,043.46
7. Rosemary Landis	\$1,713.39
8. JoAnn Miller	\$2,141.69
9. Bonnie Peterson	\$1,107.39

B. The Tribe must repay the gaming operation, from Tribal Council funds, the sum of \$120,366.41 for Complimentary Items issued to "Tribal Council."

C. The Tribe must adopt regulations establishing procedures for an accounting system and internal controls which ensure compliance with the required use of net gaming revenues, all to be submitted to the NIGC for review and approval within 30 days of receipt of this Notice of Violation.

D. The Tribe must adopt regulations governing "Comp" procedures and submit such regulations to the NIGC for its review and approval within 30 days of receipt of this Notice of Violation. These procedures shall include a requirement that the name, date, amount, and authorized signature shall appear on every authorization for issuance of a Complimentary Item, and shall include a sufficient segregation of functions to safeguard the assets of the Tribe.

4. The Respondent must immediately take appropriate action to comply with IGRA and notify the NIGC of the measures taken to correct this violation within 30 days of the issuance of this Notice of Violation. The required information must be submitted to the Chairman, National Indian Gaming Commission, 1441 L Street, NW, Suite 9100, Washington, DC 20005.

5. Fine - Submission of Information. The violations cited above may additionally result in the assessment of civil fines against Respondent in an amount not to exceed \$25,000 per violation per day. Under 25 C.F.R. § 575.5(a), Respondent may submit written information about the violation to the Chairman within 15 days after service of this Notice of Violation (or such longer period as the Chairman of the Commission may grant for good cause). The Chairman shall consider any information submitted in determining the facts surrounding the violation and the amount of the civil fine, if any. Such information is to be submitted to the address set forth in the preceding paragraph.

6. Appeal.

A. The Respondent may appeal the allegations contained in this Notice of Violation to the NIGC within 30 days after service of this Notice of Violation. 25 C.F.R. Part 577. The Respondent may appeal the allegations by submitting a Notice of Appeal to the NIGC at the address set forth in paragraph 4 above. The Respondent has a right to be represented by counsel in such an appeal. A Notice of Appeal must reference this Notice of Violation. Within ten (10) days after filing a Notice of Appeal, the Respondent must file with the NIGC a supplemental statement that states with particularity the relief desired and the grounds therefore and includes, when available, supporting evidence in the form of affidavits.

B. If the Respondent wishes to present oral testimony or witnesses at a hearing, the Respondent must include a request to do so with the supplemental statement. The request to present oral testimony must specify the names of the proposed witnesses and the general nature of their expected testimony, and whether a closed hearing is requested and why. The Respondent may waive the right to an oral hearing and instead elect to have the matter determined by the NIGC solely on the basis of the written submissions.

C. A copy of the regulations cited in this Notice of Violation is attached for your information. For additional information or other communication with the Commission regarding this matter, contact Deputy General Counsel Penny J. Coleman at (202) 632-7003, or by facsimile at (202) 632-7066.

Dated this 15th day of June, 2000.

  
 \_\_\_\_\_  
 Monte R. Deer, Chairman  
 National Indian Gaming Commission

**CRAIG J. DORSAY**  
ATTORNEY AT LAW  
2121 S.W. BROADWAY  
SUITE 100  
PORTLAND, OREGON 97201

Jennifer K. De Wald  
Associate Attorney  
Admitted in Oregon and Washington

Admitted in Oregon, Washington  
and New Mexico

July 14, 2000

**VIA FACSIMILE: (202) 632-7066  
& CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Chairman  
National Indian Gaming Commission  
1441 L Street, N.W.  
Suite 9100  
Washington, D.C. 20005

Re: **National Indian Gaming Commission Notice of Violation  
No. 00-09.  
Confederated Tribes of Siletz Indians of Oregon  
Notice of Appeal (25 C.F.R. § 577.3(a)(1)  
Statement of Relief Desired (25 C.F.R. § 577.3(c))**

Dear Chairman Deer:

I am the attorney for the Confederated Tribes of Siletz Indians of Oregon. By this letter I am submitting an appeal of Notice of Violation No. 00-09, issued against the Confederated Tribes of Siletz Indians of Oregon on June 15, 2000. I am also submitting a statement of the relief desired by the Siletz Tribe and the grounds therefor, with supporting evidence, as provided for by 25 C.F.R. § 577.3(c). This notice is being sent by facsimile to comply with applicable time lines; the supporting documentation, because of its volume, is being sent by mail.

Pursuant to 25 C.F.R. § 577.6(d), I am entering my appearance on behalf of the Confederated Tribes of Siletz Indians by this letter.

This appeal complies with the time line for appeal set out in federal regulations of 30 days after service of a notice of violation. 25 C.F.R. § 577.3(a). The date of the NOV is June 15, 2000. The Siletz Tribe has already requested clarification of the date this NOV was received by the Tribe. The Tribe received the NOV by facsimile on June 15, 2000, but that facsimile transmission did not include all of the attachments referenced in the cover letter. The Tribe as of this date has not received a hard copy of the NOV with all attachments.

Telephone: (503) 790-9060; Facsimile: (503) 242-9001; Cellular: (503) 939-8022; E-mail: cdorsay@involved.com

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My reading of 25 CFR § 577.3(a) is that by submitting a notice of appeal, the Tribe automatically requests a hearing on the appeal. If this understanding is not correct, the Tribe hereby requests a hearing.

The Siletz Tribe does not wish to provide oral testimony or witnesses at the hearing. However, depending upon NIGC's response to the Siletz Tribe's FOIA request (submitted contemporaneously with this Statement of Reasons), the Tribe will wish to orally examine NIGC representatives on the basis for the Commission's conclusion that the comp entries that are the basis for NOV 00-09 were improper or illegal. The Siletz Tribe elects to have this matter determined, except as set out herein, by the Commission (read presiding official) solely on the basis of written submissions, although tribal representatives will attend the hearing when it is scheduled.

NOV 00-09 is based on information provided by the Siletz Tribal Gaming Commission to the NIGC - a printout of specific comps issued. A copy of that printout, consisting of 24 pages, was provided to the Tribe, after request, by Deputy General Counsel Penny Coleman. To simplify the Siletz Tribe's appeal and statement of reasons, I have numbered the alleged specific comp entry violations within these 24 pages. The alleged violations total 385 specific comp authorizations. My numbering of the comp entries in the 24 pages is attached. For ease of reference, I will refer when appropriate to the specific entries by number.

#### **1. Introduction.**

Before addressing the substance of the NOV, a few preliminary issues must be addressed.

NOV 00-09 is based on incomplete and unaudited information. The NOV is based on information provided by the Siletz Tribal Gaming Commission (STGC) to an NIGC representative in response to a request for information. Aff. of Brad Darcy, attached. The STGC did not formally audit this information before forwarding it to the NIGC. Affidavit of Brad Darcy, Chairman, STGC, attached. STGC provided raw data to the NIGC. When Deputy Counsel Coleman provided the information to me, her cover letter refers to the information attached as an STGC audit; this is incorrect.

I want to make clear the status of this information, since various documents and affidavits do refer to STGC's action as an "audit." STGC did not investigate, review or analyze the

July 14, 2000  
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information it provided to NIGC, and it reached no conclusions about the propriety of the comp entries in question. STGC made a point of informing NIGC representatives when the information was turned over that STGC had not reviewed it or reached any conclusions, and that NIGC needed to perform further analysis and review before it reached any conclusions. Aff. of Brad Darcy.

NIGC, when it received the information, apparently performed no further investigation or review of the data to determine for what purpose the comps had been issued and during what activity, and assumed that all of the comps issued to individuals were for personal rather than authorized use and that all Tribal Council comps had been issued for tribal purposes and not gaming or Board of Directors' related purposes.

NIGC's assumptions were erroneous. NIGC investigators did not seek to clarify any of the information it had received with the Tribe or the Gaming Operation. NIGC took no action to determine whether each individual comp entry had been issued or authorized for official purposes or not; it improperly concluded, without any specific basis, that the charges had been improperly authorized. If the Tribe, Board or Gaming Operation had been consulted or contacted, the NOV would not have been issued because the Tribe would have been given an opportunity to explain the comp entries at issue and would have avoided the NOV. No such opportunity for consultation was afforded.

I know this is true because when the comp issue was first raised by NIGC and information was forwarded by STGC, I specifically asked Ms. Coleman what the Commission's issues of concern were and also for the opportunity to discuss any issues of concern that might arise. I was never thereafter contacted and never received any communication in response to my request; the next action from NIGC was the issuance of the NOV and its posting on the Internet. Based on statements that NIGC representatives made to the press about the NOV (AP wire, attached), NIGC appears to have already tried and convicted the Siletz Tribe of stealing money from its Gaming Operation and appears uninterested in any response or explanation the Tribe might make.

As a result of the failure of NIGC to investigate and review the information provided to it, many of the entries noted in the NOV are incorrect, incomplete or inaccurate. If the entries had been properly reviewed and analyzed, or if the Tribe had been contacted to explain and respond to the listed entries before

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NIGC issued its NOV, the need for issuance of the NOV would have been eliminated.

Instead, NIGC has abrogated its burden to show the comp authorizations in question were improper, assumes without evidence that the entries were violations, and has switched the burden to the Siletz Tribe to do the NIGC's work and prove that each cited comp was proper. The comp entries themselves and supporting documentation are neutral on the issue; they do not indicate on their face whether a given comp was for personal or official use or was a valid operating expense of Chinook Winds Casino. It was up to NIGC to meet this burden and it has not done so, as far as the Siletz Tribe can tell.

The Siletz Tribe objects to the issuance of NOV 00-09 and its posting on the internet before a complete investigation was conducted to determine how accurate the raw data provided to the NIGC by the STGC was. NIGC has already tried and convicted the Siletz Tribe in the press; statements by NIGC representatives state that the Tribal Council and its members stole money from the Gaming operation in the form of gifts, free personal meals, and show tickets. The Tribe's reputation has been besmirched and, as will be shown below, NIGC's allegations are unjustified and incorrect.

Comp expenses are either sufficiently gaming related to be included as an operational expense of the Gaming Operation under federal law or they are not, and mere labeling of comps under the category "Tribal Council" or under individual names does not alter the authorized issuance of such comps. The internal accounting procedures of the Casino in assigning comp charges to a particular category line item does not resolve their character. Comps are not net revenues of a Gaming Operation; they are operational costs to the extent they have a connection with the business purposes of that Operation.

NIGC's media statements conclude that free meals and free show tickets as comps are not valid operating expenses of Chinook Winds Casino or any other tribal casino. The Siletz Tribe is mystified as to NIGC's authority to impose this business judgment on Indian casinos. Comps are a regular and accepted part of the gaming business around the world and are a justified method of acquiring customer loyalty and increasing revenues. NIGC has no business questioning this practice. To the extent NIGC alleges that the Siletz Tribe issued or authorized comps for personal use rather than to further the interests of the Gaming Operation, it must prove that personal connection. It cannot do so here.

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NIGC has interfered with the internal operational and business decisions of the Siletz Tribe's gaming operation by arbitrarily concluding that all comps issued by the Siletz Gaming Enterprise Board of Directors and individual Board members and listed in certain Casino line item categories were for personal use or non-gaming purposes. NIGC has not looked at the purposes for which each comp was authorized and issued. The Siletz Tribe has now done NIGC's work and looked at these comps and documented why they were authorized; those results are set out below. The raw data on which NIGC relied for its NOV did not say one way or the other for what purpose each comp was issued.

The second preliminary issue which merits mention has to do with NIGC's intrusion into business decisions of the Siletz Tribe's Gaming Operation. The Tribe and Board had an existing comp policy which was well understood by Board members and the Board and which governed the issuance of comps at the Casino. NIGC's conclusion ignores this policy and avoids NIGC's responsibility to examine each comp authorization against that policy. Instead, NIGC has prohibited by fiat the Gaming Operation's business judgment as to when and where comps will advance the Tribe's gaming business.

.... One example of this arbitrary exercise of NIGC power is the entertainment comps that are issued by the Casino to the Board of Directors to distribute and use for each entertainment event. These "comps" have been used to increase patronage and revenues at the Casino through the strategy of fostering personal loyalty to Chinook Winds Casino and strong personal identification of the Siletz Tribe with Chinook Winds Casino. Board members attend entertainment events at the Casino and distribute tickets from their assigned block to patrons and other persons. Board members circulate at the events to meet and greet guests. These tickets are not issued for the personal benefit of Tribal Council members as a substitute money payment, and the Tribe, Tribal Council and Board of Directors are outraged at the Commission's suggestion that they are.

The Casino and Tribe also encourage tribal programs to hold events from time to time at Chinook Winds as a method to increase the visibility of tribal members with gaming patrons and identification of the Casino with the Siletz Tribe. As the evidence below shows, this is a small - even minuscule - part of the Casino's marketing strategy, comprising only several hundred dollars a month of a multi-million dollar marketing budget.

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An even more cogent example of NIGC's business interference with the Siletz Gaming Operation is the Siletz Tribe's Restoration Pow Wow, which takes place each November on or around November 18 on the anniversary of the Siletz Tribe's restoration as a federally recognized Tribe. This event was traditionally held in the City of Siletz at tribal headquarters. Because the week before Thanksgiving is an extremely low revenue period at the Casino, however, the Tribe and Casino made a joint decision to move the Pow Wow to Chinook Winds. This strategy has been remarkably successful, increasing revenues dramatically at a time when the Casino generally loses money. The cost of holding the Pow Wow at the Casino is justified as a business decision of the Gaming Operation, and it is appropriate for the Casino to absorb the cost of the Pow Wow as an operational expense because of the increased revenue the event generates. This business decision is not and should not be subject to NIGC scrutiny.

However successful this strategy has been (and it has been extremely successful from the Tribe's viewpoint), it is inappropriate for the NIGC to question a Tribe and Gaming Operation's business strategy and to label Casino expenditures as a violation when the comps authorized, in the business judgment of the Board and the Casino, have a legitimate business purpose. IGRA does not give NIGC power to second guess tribal gaming business decisions or to insert itself into management of the Tribe's gaming operation. Unless NIGC can affirmatively show that the alleged actions are a violation, an NOV should never have been issued. NIGC did not do the work necessary to sustain its burden of proof.

## **2. Legal Authority of NIGC.**

The Siletz Tribe challenges the authority of the NIGC as a legal matter to involve itself with regulation of the Siletz Tribe's gaming operation and the issue of comps. The Indian Gaming Regulatory Act (IGRA) makes it clear that NIGC was vested with limited authority, and no authority to enact the MICS or to regulate tribal gaming operations. Regulation is primarily a responsibility of the Tribe for class II gaming and for the State and Tribe for class III gaming. The NIGC's authority is limited to oversight involvement with class II gaming, and to the authority to approve ordinances and fine violations. NIGC's interference in tribal gaming business decisions is beyond the authority granted NIGC by Congress in the IGRA.

Regulation of class III gaming is left to the exclusive province of the State-Tribal Compacting process. NIGC's issuance

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of Minimum Internal Controls (MICS), and specifically its enactment of regulations on the subject of comps, is in excess of the authority granted to the agency by Congress in IGRA. Nothing in IGRA authorizes NIGC to regulate a Compact for Class III gaming between a State and a Tribe, or to enforce the terms of that Compact. NIGC's NOV is based upon alleged violations of the State MICS that are attached as an Appendix to the Siletz Tribe's Gaming Compact. No mention of any other authority is made. The Siletz Tribe challenges as a legal matter the authority of the NIGC to issue NOV 00-09.

This conclusion is buttressed by the fact that the State of Oregon expressly rejected application of the NIGC MICS as part of negotiations on the Siletz Tribe's recently amended and reenacted Compact, despite the Tribe's request in negotiations that the NIGC MICS control and be applied in the Compact. The Siletz Tribe did not want to be subject to multiple and potentially conflicting sets of MICS - tribal, state and federal. When the Tribe made this point, then Lt. Sitton challenged the Tribe to point out any conflicts between the State's MICS and the NIGC MICS. He also stated that the State's MICS were better than NIGC's and more on point for gaming in Oregon. The State refused to budge on this issue and it is the State MICS that are incorporated in the current State-Tribal Compact.

The MICS drafted and demanded by the State in this negotiation process do not include any standards on comps, indicating that this was not an area of concern for the State of Oregon in the conduct of class III gaming. Monitoring and auditing of comps can take place through the auditing and accounting procedures generally in place, and through tribal regulation by the Gaming Commission. The Compact itself states that it is for the exclusive benefit of the parties - the State and Tribe - and confers no rights on any third parties.

### **3. Response to Specific Entries**

Even assuming that NIGC had authority over comps and tribes were required to justify their business decisions to the Commission, the detailed explanation provided in this section shows that NIGC did not do its work in adequate fashion and reached erroneous conclusions about the comp entries which the Commission concluded were violations of IGRA and the Tribe's Compact with the State of Oregon.

The 385 comp entries listed as violations by NIGC in the NOV were all valid operational expenses of the Siletz Tribe's Gaming

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Operation, as set forth below. These entries can be divided into three categories: duplicate entries, Board expenses, and Tribal Council or Tribe expenses. I will address each in turn.

**a. Duplicate Entries:**

There are two categories of duplicate entries in the records used by NIGC. By duplicate I mean that one comp authorization was entered twice in the comp reports, resulting in double counting of many comps. This occurred in two instances. First, the Casino had a computer problem on November 26, 1999, resulting in some comp authorizations being entered a second time after the computer problem was fixed. Second, data entry personnel made some errors in entering entertainment authorizations, entering some of them twice - once when the tickets were sent to the Board for distribution and a second time on the day of the concert - for the same tickets, as well as other data entry errors. These two errors will be discussed separately.

**(1) Computer Breakdown Comp Errors.**

The STGC informed NIGC representatives when they met to turn over the raw comp data, and particularly Dan Catchpole, that the information provided had not been analyzed or reviewed to determine the accuracy of the data provided. Aff. of Brad Darcy. This fact is apparent more so than anything else from the fact that there are \$22,723.02 in duplicate entries in the background information on which the NIGC relied for its NOV which are the result of computer error. See Affidavit of Roland Cunningham, attached. These duplicate entries occur in both the Tribal Council and in the individual Board of Director member categories. The duplicate entries and amounts are set out in Mr. Cunningham's affidavit (Mr. Cunningham cites the reference numbers in the right hand column of the comp list relied upon by the NIGC rather than my numbering system).

The Casino's computer had problems on November 26, 1999. When the problem was fixed, a number of entries into the monthly comp report were re-inputted on the assumption that the prior input had been lost. As Mr. Cunningham's affidavit shows, these entries were included twice in the monthly comp report, but were only recorded once (as they should have been) in the Casino's general ledger. These duplicate entries are not real comp expenses, and they should not have been included in NIGC's NOV. If NIGC had done its work properly, they would not have been.

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Mr. Cunningham's affidavit also states that the Casino lumped Board of Directors' expenses into one category with Tribal Council and tribal expenses, for internal purposes; this shows that NIGC cannot rely on the mere labeling of comps as evidence that the comps were improper.

When the STGC provided the comp information to the NIGC, the Tribal Gaming Commission noted by asterisk (\*) the occurrence of duplicate entries. This fact and the amount of the duplications is also noted on page 24 of the comp report listings provided to the Tribe by NIGC deputy counsel. NIGC ignored this information completely in issuing its NOV and clearly conducted no review of the information provided to it. The STGC undertook no independent investigation to determine whether the referenced listings were indeed duplicates. If NIGC relied on the accuracy of STGC's data, this reliance was misplaced.

**Running Total: Validated Comp Entries - \$22,723.02**

**(2) Comp Report Data Entry Errors.**

I asked Terry Russell, Guest Services Director at Chinook Winds, to review the three pages of comp listings for the Tribal Council to look at the accuracy of the ticket block comps allocated to the Board of Directors. Mr. Russell is in charge of distributing entertainment comp tickets to the Board of Directors. As his affidavit shows, there is a regular process for distributing the Board's block, with the number always constant at 88 and issuing and obtaining a receipt each time a block of tickets is given to the Board for distribution.

Mr. Russell reviewed his own records and determined that a number of the comp entries on pages 22 to 24 of the comp listing are duplicates, where a comp charge was entered twice for the same block of tickets. Comp entries 17 and 29 are one example of this duplication. Again, only one block of tickets was allocated to the Board for marketing purposes, but the comp entries charge the Board twice for the same tickets.

Another example of error is comp entry 77, the distribution of tickets to the Board for the boxing event. Mr. Russell reports from his records that only 18 tickets were issued to the Board, because General Manager Dickie wanted the Board in attendance in a location where they would appear on the HBO broadcast - another marketing strategy. The comp entry shows that 28 tickets were distributed to the Board for this event (comp entry 76, immediately above, was a computer error duplicate

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entry). Mr. Russell reports that the remaining 10 tickets were comps held by General Manager Dickie for patrons of the Casino, but somehow when the entry was made the Board was charged for all 28 tickets and not just the 18 that were distributed to them. Again, if NIGC had done any investigation of its own, it would have found this fact out also. Duplicate and erroneous entries are not real comp expenses that can be charged.

Mr. Russell is still documenting the exact duplicate entries that occurred as this Statement is finalized, and is checking those duplicate entries with the accounting records of the Tribe. The total number of duplicate entries under this category will be provided when it is completed, in a supplementary submission.

**b. Board Expenses.**

The second category of comps are expenses which were properly assigned to the Siletz Tribal Gaming Enterprise Board of Directors as a cost of operating the Casino, but which were internally assigned by the Casino to the Tribal Council or individual Board members. See Aff. Of Roland Cunningham. I will break this category into two subcategories: comps issued to the Board as an entity and comps issued to the nine individual Board members (the two categories of comps in the NIGC's background information).

**(1) Board of Directors Comps.**

First, let me address comps which are charged in the comp listing to the Tribal Council category. Most of the comp entries in this subcategory were issued to the Board of Directors - not the Tribal Council - for entertainment events and as a Board duty. As set out in the affidavit of Chinook Winds Casino General Manager Gordon Dickie, attendance of Board members at entertainment events is a job responsibility of Board members and an important marketing strategy of the Casino. The Board is issued a regular entertainment allotment of 88 tickets per entertainment or special event, to be used for attendance of the Board member to circulate and meet and greet patrons and/or for distribution to patrons, dignitaries and others. Internally, these tickets were charged to the Tribal Council although they were authorized for and issued to the Board of Directors. These tickets were issued pursuant to the comp policy in existence from the time the Siletz Tribe's permanent casino opened in June 1996.

The Board always received the same number of tickets - 88 - for comp use for each entertainment event. The number of tickets

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never varied, and were issued to the comp policy in existence and understood by both the Board and Casino. Tickets were distributed to the Board at different times before a performance. As also shown by the affidavits of each Board member, in 1999 entertainment tickets were never issued for personal use or gain; they were all issued to the Board for use for comping purposes and as part of the responsibilities of the Board. In all cases, the entertainment comps were issued to the Board for business purposes of the Casino.

All such blocks of tickets were issued to the Board to use as comps. The Tribal Council was never issued entertainment tickets as comps in 1999, for any purpose or under any scenario. Therefore all the box office (in one or two cases listed as entertainment instead) comps listed on pages 22-24 were entertainment tickets issued to the Board for valid business purposes of the Tribe's gaming operation. When Mr. Russell completes his detailed report, the value for each entertainment event (for each block of 88 tickets) will be provided in a supplemental submission (this will also eliminate the duplicate entries Mr. Russell has located). It is clear, however, that the total amount of box office listings in the Tribal Council category listed here was a valid comp expense of the Board of Directors as part of the marketing strategy of the Tribe's Gaming Operation. That total is \$74,790.00, based on my addition of such comps and eliminating the duplicate box office comps set out in Mr. Cunningham's affidavit.

No entertainment tickets were ever issued to the Tribal Council or to individual Tribal Council members, as shown by the attached affidavits. All entertainment tickets were issued to the Board of Directors for appropriate use, and they were all valid operational expenses. In all cases, the understood comp policy of the Board was followed.

The Casino assigned these ticket comps internally to the Tribal Council line item. This classification is an historical anomaly only - the Tribal Council oversaw the Tribe's Gaming Operation directly until early 1997 when the Gaming Enterprise Charter was enacted and the Board of Directors established, with gaming responsibilities of the Tribal Council delegated to the Board. The category was not changed at that time to the Board, but it is Board comps that are listed thereunder.

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**Running Total: Validated Comps - \$97,513.02**

**(2) Restoration Pow Wow.**

As pointed out in General Manager Gordon Dickie's affidavit and Board of Director Chairman Delores Pigsley's affidavit, the Siletz Restoration Pow-Wow, charged internally by the Casino to the Tribal Council category as a comp on 11/26/99, Entry #67, was a Gaming Operation cost in the amount of \$19,262.50. The Casino generated revenue by absorbing the cost of this event as an operating cost of the Casino. This expense will be assigned to a different category.

There can be no dispute that absorbing this cost is a legitimate and reasonable business decision of the Gaming Operation. NIGC has no business itself to second guess this decision.

**Running Total: Validated Comps - \$116,775.52**

**(3) Other Board Comps.**

Other comps listed under the Tribal Council category, for banquets or other items, were for Board of Directors meetings, such as food trays brought in during meetings and are supported by the affidavit of Kelley Ellis, Board of Directors' Executive Secretary, in the amount of \$1118.45 (entries 1, 5, 6, 14, 15, 33, 48, 49, 79, 80)

**Running Total: Validated Comps - \$117,893.97**

**b. Individual Board of Directors Comps.**

For individual Board of Directors members, most of the entries charged against individual's names are Board related, such as when Board members were attending a Board of Directors' meeting and ate their meals at the Casino, when a Board member issued comps to someone else for entertainment or meals, or when the Board member was involved in Board related activities or functions at the Casino. These activities are listed in the attached affidavits.

When a Board member comped a meal at the Casino, that Board member took that comp in lieu of claiming per diem or meal

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reimbursement during that time. All such expenses are valid, Board related business expenses.

One particular comp charge made to each individual Board member, but which NIGC has concluded was an individual Tribal Council member comp, must be specifically noted. As pointed out in the affidavit of General Manager Gordon Dickie, he specifically requested the attendance of Board members at the Casino's Millennium New Year's Eve event in their official role as Board members. Each Board member was given four tickets to use or comp, as a marketing expense, at a value of \$800 for the four tickets. Some Board members did not attend this event and gave all of their tickets away as comps. These tickets should have been charged internally by the Casino to the Board as a whole rather than to individual Board members. These tickets were a gaming operation expense, and were specifically requested and authorized by Casino management for marketing. They appear at entries 128, 158, 219, 270, 280, 285, 320, 376, 385, in the total amount of \$7200.00.

**Running Total: Validated Comps - \$125,093.97**

I have taken the entries noted as alleged violations for each individual Board member and matched those entries with documentation of Board related and gaming related activities at the Casino. Affidavit of Craig Dorsay. It would be too voluminous and time-consuming to document each entry in this response, and this work should have been performed by the NIGC in any event before the NOV was issued. By showing that the NIGC did not do its work properly, the burden is now on the Commission to prove that any of these entries were improper, and otherwise we are justified relying on the affidavit. The affidavits of each Board member are sufficient evidence that the comps were properly authorized, especially in the absence of any NIGC evidence that they were improperly authorized.

Of the total of \$10,997.88 in alleged "personal" comps issued to the nine Board members and listed as a violation in the NIGC NOV, \$4,566.38 have specific documentation of a Board relationship to the comp issued.

**Running Total: Validated Comps - \$129,660.35**

**c. Tribal Council Comps.**

The third category of comp expenses for 1999 were those incurred by the Tribal Council as a body, by Tribal Council

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members while attending tribal functions, and by tribal administration while attending tribal events held at the Casino. The Siletz Tribe sometimes holds Tribal Council meetings, Committee meetings, tribal events, and tribal administration workshops and meetings at Chinook Winds because of convenience and to patronize the Tribe's Gaming Operation. These activities are a valid operational expense of the Casino; they are not directly related to providing governmental services to tribal members and they advanced the Gaming Operation's marketing strategy of increasing identification of Chinook Winds Casino with the Siletz Tribe and tribal members.

The amount of comps in this category is telling in showing what a minor - even minuscule - role Tribal Council and tribal activities played as a marketing expense at Chinook Winds, and as the focus of NIGC's NOV (which is directed at comps issued to individual "Tribal Council" members for personal gain and to the Tribal Council itself). It comes to a few hundred dollars a month out of a annual marketing budget of \$7.5 million for 1999. If we take the running total of \$129,660.35 of validated comps set out above and the total alleged comp violation by NIGC of \$138,564.94, we are left with \$8,904.59 in comp charges. My own listing of Tribal Council and tribal related comps - taken from a total of specific comp entry listings - comes to \$8,549.73. I am not sure where the discrepancy of approximately \$350 occurs; I have added the figures several times. The existence of so many duplicate charges which NIGC incorporated in its NOV probably explains the discrepancy. For example, the STGC listed \$23,108.59 in duplicate charges on page 24 of the comp list they provided to NIGC while Chinook Winds CFO Roland Cunningham lists \$22,723.02 in duplicate comp charges, a difference of approximately \$400, which is close to my difference of \$354.86.

The minor variances in these numbers is not critical for purposes of the discussion and its legal impact. This amount - say \$8900 for purposes of the present discussion - is comprised of comp charges for tribal events such as Tribal Council meetings, committee meetings, and workshops. These comps for official, tribal events were charged either to the Tribal Council as a whole or to individual Tribal Council members. This category also includes a few individual comp charges - approximately 20 - where documentation has not yet been located. This Statement will be supplemented as necessary to include that documentation.

In the few instances in this subcategory where Tribal Council members comped meals while attending Tribal Council

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meetings or other tribal activities, the members took these comps in lieu of per diem or meal reimbursement. These were official - not personal - expenses. There may be a few hundred dollars in such charges. Most of the meal comps in this category are for when the member comped other persons for meals, while that member was at the Casino.

The Casino chose not to invoice some Tribal Council comps (for banquet charges and the like) to the Siletz Tribe. As I have explained above, increasing the visibility of the Siletz Tribe and tribal members at the Casino is part of the marketing strategy of the Gaming Operation. This is evident from the artistic themes of the Casino - depicting historical cultural and tribal practices - to the Casino's encouragement of tribal elders attending Casino events and patronizing the Casino. These charges were a valid operational expense of the Casino.

The Siletz Tribe has a substantial problem with NIGC judging the validity or reasonableness of its gaming related business decisions. Is NIGC going to review every contract the Casino enters into to decide whether the Casino paid too much for a particular item, or whether an entertainment contract was justified by sufficient revenues, or whether the Casino has the right type of slot machine to maximize slot revenues, or whether the Casino could have saved money by buying cheaper uniforms, or provided its employees with less health benefits? The list can go on and on. In each case the argument could be made that the Casino's decision increased or decreased, either directly or indirectly, net revenues to tribal members under IGRA, but clearly Congress never intended to allow NIGC to micro-manage Indian casinos to such an extent. Indian gaming is an exercise of tribal sovereignty and Indian tribes have the sovereign flexibility to exercise their gaming rights as they deem best.

In the present case, NIGC has overstepped its authority and interfered with the internal business decisions of the Siletz Tribe and its Gaming Operation, by classifying expenses as improper and imposing its own business judgment on the Tribe's Gaming Operation. NIGC never applied the listed comp entries to the existing comp policy of the Board. As shown by the preceding discussion, NIGC was completely erroneous in 93.3% of its alleged violations, all of which were directly connected to Gaming Enterprise Board authority and activity. The remaining 6.7% of tribal expenses is a valid and reasonable business decision by the Gaming Operation and the Siletz Tribe regarding absorbing less than \$10,000 worth of expenses.

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#### Conclusion

As the preceding discussion shows, no violation of IGRA or the State-Tribal Gaming Compact or of the use of net gaming revenues occurred at Chinook Winds or by the Siletz Tribe in 1999. NIGC did not conduct a proper investigation of the data provided to it and reached erroneous conclusions about comp charges incurred and authorized in 1999 at the Casino; these conclusions were based upon assumptions by NIGC of bad faith on the part of the Tribe, and not by hard evidence. The data provided by the STGC to the NIGC was neutral and contained no evidence showing whether the comp charges were properly or improperly issued or authorized. If the NIGC had conducted a minimal investigation it would have found that the comps were valid.

The Siletz Tribe does not understand why the NIGC assumed bad faith on the part of the Tribe and did not conduct an objective review of the data provided to it, except for the personal history of animosity the Tribe has had with the field representative in question, a past member of the State of Oregon's Compact negotiation team. See Affidavit of Craig Dorsay, attached.

... None of the comps was taken for personal use by any Board member, in their Board capacity or any other capacity. All comps were issued or authorized for the Board or Board members for official purposes and were valid operational costs of the Gaming Operation. No net revenues were misused; operating costs of a Gaming Operation are by definition not net revenues and NIGC must prove that a particular expense was not an operating cost before implication of net revenues can occur.

The NIGC does not have authority to enforce a State-Tribal Class III Compact validly entered into between an Indian tribe and a State. Congress left this subject to the exclusive province of the Compact mechanism. The NOV cites no authority justifying NIGC's intrusion into the internal business decisions of the Siletz Tribe's Gaming Operation; NIGC's NOV has interfered improperly with Casino operations. Even if NIGC somehow has this authority, the Tribe's explanation shows that all of its comp expenditures were justified and valid.

This concludes the statement of reasons in support of the Siletz Tribe's appeal of NOV 00-09. Please contact me if you have any questions, and please notify me of the hearing date for

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this appeal. This notice of appeal and statement of reasons is being sent by facsimile, as provided in 25 CFR § 577.6. Because of the length of the affidavits attached to the statement of reasons as evidence, the entire appeal packet will be sent to the NIGC by certified mail within the ten days provided for by federal rule.

Sincerely,



Craig J. Dorsay

CJD:jjm

Enclosures:

Comp Entries Report Numbered by Craig Dorsay  
Affidavit of Brad Darcy  
Affidavit of Roland Cunningham  
Affidavit of Gordon Dickie  
Affidavit of Delores Pigsley  
Affidavit of Bonnie Peterson  
Affidavit of JoAnn Miller  
Affidavit of Rosemary Landis  
Affidavit of Jane John  
Affidavit of Mary "Dolly" Fisher  
Affidavit of Jessie Davis  
Affidavit of Mike Darcy  
Affidavit of Gerald Ben  
Affidavit of Kelley Ellis  
Affidavit of Craig Dorsay  
Affidavit of Terry Russell

c: Siletz Tribal Council  
Siletz Tribal Gaming Enterprise Board of Directors  
Siletz Tribal Gaming Commission

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# Statesman Journal Online LOCAL NEWS



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Today's News - June 30, 2000

## Commission: Siletz tribal council took gifts

Members must repay the money, the agency says

KARLIENSEN, Statesman Journal

The Siletz tribal council and its members violated federal gaming laws by accepting \$138,000 in gifts, the National Indian Gaming Commission has charged.

The Confederated Tribes of Siletz Indians tribal council and its members accepted the money in the form of gifts — such as dinners and show tickets — at Chinook Winds, the tribe's casino in Lincoln City, during 1999. But that is not authorized use of casino revenue, the top national Native American gambling regulatory agency said.

In a June 15 notice to tribal council Chairwoman Delores Pigsley, the gaming commission ordered tribal council members to repay the money to the casino. Pigsley is to repay \$2,840. Vice chairwoman Bonnie Petersen is to repay \$1,107.

However, Petersen said the expenditures were legitimate and that the gaming commission's figure was \$22,000 too high because of duplicated costs from data entry errors.

In a statement issued by Petersen on behalf of the tribe, she said the tribe considers complimentary expenses as operating expenses, not net revenue.

"As it is with tribal gaming operations elsewhere, it has been a tribal policy that the tribal council, acting as the Gaming Board of Directors, is authorized to issue comps for gaming purposes for marketing and

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public relations of the casino," Petersen wrote.

However, the purpose of Indian gaming generally is to provide revenue for tribal social programs and members' needs, said Kyle Nayback, director of congressional and public affairs for the agency in Washington, D.C.

The agency regulates tribal gaming and enforces the nation's Native American gambling laws.

The notice of violation is a civil matter, not criminal, Nayback said, and no fines have been imposed. But the state will be looking into whether state law was violated.

The national agency accused the Siletz of violating its own tribal gaming ordinance, the national Indian Gaming Regulatory Act of 1988, the agency's regulations and the tribe's gambling compact with Oregon.

The tribe has until July 15 to submit its response or an appeal to the gaming commission.

Petersen said she is confident the tribe will "satisfactorily address all NTGC's allegations."

The Associated Press contributed to this report.

#### Other articles from July 14:

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## Agency: Siletz gave members free items

The Associated Press

6/29/00 12:56 AM

PORTLAND, Ore. (AP) -- Members of The Confederated Tribes of Siletz Indians accepted \$138,000 in gifts at the Chinook Winds Casino in Lincoln City, the National Indian Gaming Commission said.

The top national Native American gambling regulatory agency accused the Siletz tribal council and its members of violating federal gaming laws by accepting the money in the form of gifts at the tribe's casino -- such as dinners and show tickets, during 1999

Such freebies for council members' personal use is not authorized use of casino revenue, said Kyle Nayback, director of congressional and public affairs for the agency in Washington, D C. The agency regulates tribal gaming and enforces the nation's Native American gambling laws.

"The purpose of the Indian Gaming Regulatory Act and Indian gaming generally is to provide revenue so that tribal governments can fund social programs and provide for the needs of its tribal members," Nayback said. "What is not within an acceptable use is free personal meals for tribal council members and free show tickets."

Bonnie Petersen, vice chairwoman of the tribal council, issued a statement on behalf of the tribe, saying the tribe is confident a complete review of the expenditures will show that all were legitimate expenses

"As it is with tribal gaming operations elsewhere, it has been a tribal policy that the Tribal Council, acting as the Gaming Board of Directors, is authorized to issue comps for gaming purposes for marketing and public relations of the casino," Petersen wrote. The tribes consider the comps as operating expenses, not net revenue, she added.

The notice of violation is a civil matter, not criminal, Nayback said, and no fines have been imposed. But the state will be looking into whether state law was violated.

The agency accused the Siletz of violating its own tribal gaming ordinance, the national Indian Gaming Regulatory Act of 1988, the agency's regulations and the tribe's gambling compact with Oregon.



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## Tribe warned on casino freebies

*An agency accuses the Siletz council of giving members about \$138,000 in free items*

Thursday, June 29, 2000

*By Courtenay Thompson of The Oregonian staff*

The nation's top Native American gambling regulatory agency has issued a notice of violation to the Confederated Tribes of Siletz Indians for the alleged misuse of about \$138,000 from its Chinook Winds Casino in Lincoln City

The federal National Indian Gaming Commission accused the Siletz tribal council and its members of violating federal gaming laws by accepting \$138,564.29 in complimentary items at the casino, such as dinners and show tickets, during 1999

Such freebies for council members' personal use falls outside the authorized uses of casino revenue, said Kyle Nayback, director of congressional and public affairs for the agency in Washington, D.C., which regulates tribal gaming and enforces the nation's Native American gambling laws

"The purpose of the Indian Gaming Regulatory Act and Indian gaming generally is to provide revenue so that tribal governments can fund social programs and provide for the needs of its tribal members," Nayback said. "What is not within an acceptable use is free personal meals for tribal council members and free show tickets."

Tribal leaders were not available for comment. Bonnie Petersen, vice chairwoman of the tribal council, issued a statement on behalf of the tribe, saying the tribe is confident a complete review of the expenditures will show that all were legitimate expenses.

"As it is with tribal gaming operations elsewhere, it has been a tribal policy that the Tribal Council, acting as the Gaming Board of Directors, is authorized to issue comps for gaming purposes for marketing and public relations of the casino," Petersen wrote. The tribes consider the comps as operating expenses, not net revenue, she added.

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The agency accused the Siletz of violating its own tribal gaming ordinance, the

national Indian Gaming Regulatory Act of 1988, the agency's regulations and the tribe's gambling compact with Oregon.

Chip Lazenby, Gov John Kitzhaber's legal counsel, said the Oregon State Police tribal gaming unit is following the investigation.

In the notice of violation to the Siletz, Commission Chairman Montie R. Deer ordered one former and eight current council members, including Tribal Chairwoman Delores Pigsley, to repay the casino for amounts ranging from \$1,043 to \$2,868 for complimentary items they had each received

In addition, he ordered the tribal council to repay \$120,366 41 for complimentary items issued to the tribal council

The tribe has until July 15 to submit its response, it can appeal Deer's decision to the commission

Page

## Tribe in violation of NIGC rules

A notice of violation against nine Tribal Council members of the Confederated Tribes of Siletz Indians of Oregon was issued by the National Indian Gaming Commission on June 15 and posted on its website.

The notice states "Each tribal council member must repay the gaming operation (Chinook Winds Casino) for all complimentary items taken for personal use."

According to the resolution, "the tribe must repay the gaming operation from Tribal Council funds, the sum of \$120,366.41."

Delores Pigsley, chair of the Tribal Council is in Alaska and was unavailable for comment.

Bonnie Peterson, vice chair of the Siletz Tribe said Monday, the news of the violation came as a surprise.

Peterson said complimentary items such as show tickets and meals were named in the violation. She said the complaint was anonymous and questioned some items billed to the Tribal Council instead of marketing. Tribal attorneys are currently preparing a response.

*News Guard*  
4/28/00

POSTED: Wednesday June 28, 2000



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## Siletz Tribal Council in violation of gaming rules

*By Gail Kimberling*

*Of the News-Times*



The tribal council of the Confederated Tribes of Siletz Indians has been found in violation of gaming rules by the National Indian Gaming Commission. Nine tribal council members have been ordered to individually repay Chinook Winds Casino in Lincoln City for "complimentary items taken for personal use" in 1999, and an additional \$120,366.41 must be repaid to the casino from tribal council funds.

A June 15 notice from National Indian Gaming Commission Chairman Montie R. Deer states, "Throughout 1999, by granting tribal council members the authority to award complimentary items to themselves, and to award complimentary items to other tribal council members and family members, the tribe has failed to adhere to the requirement of segregation of incompatible functions, duties and responsibilities. Granting tribal council members broad authority to award complimentary items does not adequately safeguard the assets of the gaming operation."

Kyle Nayback, Director of Congressional and Public Affairs for the National Indian Gaming Commission, said the situation involved a free loan, or direct withdrawal of cash, from tribal gaming revenues, which are unauthorized expenditures in violation of federal law.

"We monitor tribal gaming operations on a continual basis, and one of our agents in the field brought it to our attention," he said. "Awarding complimentary items for personal use does not fall within the authorized use of net revenue."

Under National Indian Gaming Commission rules, gaming revenues are to be used only for the purpose of funding tribal government operations and programs, to provide for the general welfare of the tribe and its members, to promote tribal economic development, to donate to charitable organizations, or to help fund the operations of local government agencies.

Not only must the Siletz Tribal Council repay the casino, it must also adopt regulations establishing procedures for an accounting system and internal control to ensure compliance with the required use of net gaming revenue, and adopt regulations governing "comp" procedures for the national commission's review and approval.

Nayback called this particular violation by the Siletz Tribal Council an unusual case that does not happen often.

"We will continue to monitor the tribe's compliance policy to ensure

compliance with federal law," said Nayback, but he refused to comment on any plans by the national gaming commission to investigate prior years. The tribal council has 30 days to appeal the notice of violation, and Siletz Tribal Vice Chairman Bonnie Petersen said its attorney, Craig Dorsay, is working on a response.

"He is collecting information from the NIGC and our own tribal gaming commission, and researching the items they cited," said Petersen. She thinks the violation may stem from the lack of proper billing for meetings of the tribal council, the gaming board and the Siletz Tribal Economic Development Commission (STEDCO) at the casino

"We established a policy in February of 2000 that the casino needs to bill the appropriate entity," explained Petersen "We believe that's what this is about, this hasn't been billed correctly "

Petersen also thinks the National Indian Gaming Commission notice may be the result of an anonymous complaint about council activities in 1999 "We've conducted business for a number of years at the casino," she said "We were surprised there was just one year (mentioned) "

She expects a response from the tribe to be issued by Dorsay later this week "First, we need to find out on what they (NIGC) base their determinations." stated Petersen.



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## **Indian gaming agency says Siletz tribe broke law**

PORTLAND (AP) - Members of The Confederated Tribes of Siletz Indians accepted \$138,000 in gifts at the Chinook Winds Casino in Lincoln City, the National Indian Gaming Commission said

The top national Native American gambling regulatory agency accused the Siletz tribal council and its members of violating federal laws by accepting the money in the form of gifts at the tribe's casino - such as dinners and show tickets, during 1999

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"The purpose of the Indian Gaming Regulatory Act and Indian gaming generally is to provide revenue so that tribal governments can fund social programs and provide for the needs of its tribal members," Nayback said. "What is not within an acceptable use is free personal meals for tribal council members and free show tickets."

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## Agency: Siletz gave freebies

PORTLAND (AP) — Members of The Confederated Tribes of Siletz Indians accepted \$138,000 in gifts at the Chinook Winds Casino in Lincoln City, the National Indian Gaming Commission said.

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**Testimony of John R. McCoy**  
**Executive Director of Government Affairs**  
**The Tulalip Tribes**  
**Before the Senate Committee on Indian Affairs**  
**Hearing on the National Indian Gaming Commission**  
**July 26, 2000**

I. Introduction

Good afternoon, Ladies and Gentlemen. My name is John McCoy and I am the Executive Director of Government Affairs for The Tulalip Tribes of Marysville, Washington.

I would like to thank the Committee for the opportunity to present my views on the important subject of the regulation of Indian Nation governmental gaming and the role of the National Indian Gaming Commission.

Before I begin, I would like to acknowledge that many of the ideas expressed here were made more clear and given force by the detailed legislative history laid out in a paper on tribal sovereignty prepared by Franklin Ducheneaux and Peter Taylor of Ducheneaux, Taylor and Associates.

II Main Point

My main point today revolves around the question of whether or not the Indian Gaming Regulatory Act (IGRA) confers to the National Indian Gaming Commission (NIGC) all of the authority that the Commission is now exercising in Indian Country. In short, I argue that IGRA intended for the NIGC's role to be one of oversight of the tribe's regulatory efforts not of regulation.

In particular, I will address the unauthorized promulgation of the NIGC Minimum Internal Control Standards, or MICS, last year and the proposed OSHA Standards this year. Frankly, I worry that the NIGC is simply creating new and unauthorized roles for itself in order to justify the increase in fees it collects from the tribes. The NIGC is flush with cash and I believe they are simply seeking additional authority in order to justify their fee assessment, resulting in a vicious cycle for tribes who must pay these fees and then be subject to new rules promulgated by the Commission, many times footing the bill for redundant services.

### III. IGRA's Intent for the Primacy of Tribal Regulation

We know that Congress intended for Indian Nations to have the primary role in regulating Indian gaming. Paragraph (5) of IGRA [25 USC 2710 (5)] provides that tribes have the exclusive right to regulate gambling where Federal law and state criminal law did not prohibit it. This is in keeping with the sovereignty of Indian Nations and their right to regulate commercial activities within their borders. Paragraph (4) [25 USC 2710 (4)] of IGRA provides that "A principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government." One primary purpose of IGRA that emerges in the legislative history was to federally pre-empt any state regulation of gambling activities by Indian nations by recognizing the inherent right of tribes to regulate their own affairs with minimal Federal intrusion on tribal sovereignty.

Congress also intended that the tribes retain their inherent right of self-government to regulate their own class II gaming activities, giving the Commission only oversight and guidance responsibilities, with a minimally intrusive right to help regulate it. Indeed, the drafters of IGRA deliberately used the word "shall" rather than "may" when they wrote in section 11(b)(2) [25 USC 2710 (b)(2)] that the Chairman of the Commission "shall" approve a tribal gaming ordinance if it meets the six minimum Federal standards set out in paragraph (2)(A) through (F) of that subsection. This language was intended to make the Chairman's approval ministerial rather than discretionary. It was also intended to preserve the integrity of gaming while providing for minimal Federal intrusion into tribal sovereignty, consistent with the right of tribal self-government.

Congressman Udall, the original sponsor of the language that would become Section 11 (b)(2) of IGRA, set forth his intention that the Federal Commission's regulatory powers be of a limited nature and expressed his confidence in the primary responsibility and right of the tribes to govern themselves when he stated that:

"This does not mean that my committee does not find a need for some Federal involvement in the regulation of tribal gaming activity. I believe that any federal intrusion into the powers of tribal self-government should be

limited to that which is necessary to protect the tribes and the public while honoring this right of self-government."

#### IV. The NIGC MICS

In February, 1999, the NIGC published a Final Rule on the NIGC MICS in the Federal Register. These MICS were originally developed with the input of tribal leaders and the National Indian Gaming Association and were intended to act as guidelines only. However, when the MICS were published it became clear that the NIGC intended for the MICS to act not as guidelines but as enforceable rules, casting themselves as the enforcer.

Publication of the MICS as a Final Rule is inconsistent with section 11(c)(3) [25 USC 2710(c)(3)] of IGRA, which requires the Commission to issue a certificate of self-regulation to tribes that meet certain requirements. During the time that a tribe holds such a certificate, the Commission would no longer be empowered to exercise certain oversight provisions. In addition, the tribe's fee assessment level would be reduced. For five long years, tribes waited for the NIGC to promulgate regulations that would permit them to exercise this right of self-regulation and relieve themselves of the heavy fee burden. However, the NIGC MICS, rather than creating a process by which the class II tribes could relieve themselves of the burden of Section 7(b)(1) through (4) of IGRA, the self-regulation provisions of IGRA have been used by the Commission, without statutory authority, to subject the class II tribes to detailed Federal internal control regulations.

By publishing the MICS as a rule, the NIGC is over-stepping its authority as an oversight body and beginning to act as a regulatory body. This new role is not only unauthorized, but tribal governments are paying for this new "service" from the NIGC and being told that it is for our own good. Congress intended for the National Indian Gaming Commission to hold a regulatory role with respect to Class II gaming, but that role was not to be one of development and imposition of detailed regulations of Indian gaming in lieu of tribal government decisions on necessary regulations, but one of oversight of the tribe's regulatory efforts.

The language of the Senate Report on S. 555, which would eventually be passed as the Indian Gaming Regulatory Act, clearly sets out the congressional intent that the tribes would retain their inherent right to regulate

class II gaming. The Commission's role was to be primarily one of oversight to see that the tribe implemented the minimum Federal standards set out in its gaming ordinance under section 11 (b)(2). The Commission was given certain other powers vis-a-vis class II gaming such as management contract review and approval, establishment of fees and assessment of fines, granting of certificates of self-regulation, etc. But on page 7 of that report, it states, "Class II continues to be within tribal jurisdiction but will be subject to oversight regulations by the National Indian Gaming Commission."

This structure was an attempt to balance the need for sound enforcement of gaming laws and regulations with the strong federal interest in preserving the sovereign rights of tribal governments to regulate activities and enforce laws on their own lands. I worry that the NIGC is now

throwing off that balance by emphasizing enforcement at the expense of tribal sovereignty.

#### V. OSHA Standards

The Indian Gaming Regulatory Act confers only a limited, oversight regulatory power on the NIGC. The language of the Act, taken together with the legislative history, confirms that the NIGC is to play a support role for gaming that is regulated, first and foremost, by the tribes.

The Commission is currently in the process of rule-making to implement section 11(b)(2)(E) of IGRA [25 USC 2710 (b)(2)(E)] which requires that the tribal gaming ordinance contain provisions ensuring that the environment and public health and safety be protected in the construction and maintenance of a gaming facility, and in the operation of the gaming activity. Some of our most respected tribal leaders have agreed to work with the Commission to ensure that the standards are fair and necessary. Frankly, I worry that the Commission will again seize this opportunity, and the fact that there was tribal input, as a way to justify the promulgation of additional regulations that will be imposed upon and paid for by tribal governments. These regulations are intended to be guidelines with which to evaluate tribal ordinance provisions to determine whether or not they meet the standards of IGRA, not to act as stand-alone rules.

The prospect of another set of stringent regulations and rules, with tribal governments footing the bill, is an outrage and smacks of paternalism. Tribal governments are responsible corporate citizens in their communities and

work hard to protect their own gaming integrity. Any responsible tribal government, and they are all responsible, has insurance. Those insurance carriers send inspectors through our facilities regularly to ensure the safety of our employees and customers.

The Tulalip Tribes have an excellent relationship with the Washington State Gaming Commission but even they contain their activities to regulation issues. We work with the state on a government-to-government basis. For the NIGC to ask tribal governments to once again participate in the creation of guidelines but to then publish them as rules and regulations is simply wrong and violates the consultation process that should be the foundation of the federal-tribal relationship.

#### VI. Monetary Concerns

Indian Nation governments fund the National Indian Gaming Commission 100%. Tribal governments are often paying for duplication or triplication of services, depending on their compact with the state. Many tribal governments, including the Tulalip Tribes, are being asked to fund tribal gaming commissions, state/tribal regulatory provisions AND a Federal assessment for Class II and Class III.

I worry that the NIGC is simply looking for a way to spend the money they are receiving from their fee assessment on tribal governments. As I have asserted throughout my testimony, I believe that the new roles being played by the NIGC with respect to MICS and OSHA standards are not authorized by IGRA. To ask tribal governments to participate and then fund unauthorized increases in NIGC authority is not only wrong, it is insulting.

Thank you.



Statement of Chairman Richard M. Milanovich

Senate Indian Affairs Committee Oversight Hearing on the  
National Indian Gaming Commission

July 19, 2000

Good afternoon, my name is Richard M. Milanovich. I am the Chairman of the Agua Caliente Band of Cahuilla Indians. Our reservation is located in Riverside County, California, and encompasses the cities of Palm Springs, Cathedral City, and portions of Rancho Mirage.

Thank you for inviting me present my views concerning the expansion of the National Indian Gaming Commission. I would like to focus my comments on four areas:

- The Staff of the NIGC must include professionals with a strong gaming background
- Properly trained field investigators must be given latitude in their review and testing of the NIGC's Minimum Internal Control Standard.
- Congress should revise the background investigation process.
- Congress should authorize a program to recognize tribes who are performing well in a self-regulated environment for Class III gaming.

In May of this year I was given the opportunity to make a presentation to the Commission itself during a field hearing they held in Sacramento, CA. The subject of the hearing was also focused on the NIGC's expansion.

I mention this hearing because it is this level of outreach that helps to describe the essence of their expansion. An expansion that has placed a premium on outreach to Indian Country. And I should also note, an expansion that has been paid for one hundred percent through tribal fees.

On paper, you will note that since Congress authorized an expanded budget for the NIGC the size of their staff has increase from around 30 employees to around 75 today. The largest part of this increase is outside of Washington, DC, including the opening of five field offices.

In his April 28, 2000 letter to the Chairman of this Committee, Chairman Deer reported that the NIGC had offered 20 training seminars which were attended by over 1,000 tribal regulators; formed tribal advisory committees for the formulation of regulations; and opened five regional field offices that will allow NIGC staff to make over 1,500 site visits each year. It is this commitment to outreach that helps me conclude the Commission is going in the right direction with their expansion. However, in order to help tribes protect the integrity of gaming, the NIGC must also position itself with a team of well-trained technical experts who can assess weaknesses within a casino.

### **Professionalism and Flexibility**

Now, I would like to comment on the need for technically competent field staff and the importance in giving those staff members latitude in the review, testing and ultimate decision process of the NIGC's Minimum Internal Control Standards.

The NIGC last conducted a field visit of the Agua Caliente Band's gaming facility on July 11, 2000. The field auditor sent by the NIGC, a former California Department of Justice Investigator, conducted a review of our tribal gaming commission's operations, a review of our surveillance system, and a sample audit of our employee licensing files.

During this visit, the auditor completed a test to confirm our implementation of the recently instituted Minimum Internal Control Standards. Specifically, the auditor learned that we had recently awarded a \$750,000 payout to a winner on our progressive slot system. The NIGC's MICS demand that when a gaming facility offers jackpots in excess of \$250,000, that facility must be able to provide dedicated camera coverage on each machine where a payout could occur until that jackpot has been won. In the case of our casino, we had to dedicate camera coverage on a 24-hour, seven day a week basis for several weeks over an array of machines until a payout was made.

Although we were able to provide the video recordings to the NIGC's field auditor without any problem, consider the technical challenge created by this standard—a standard that is only implemented in Nevada's casinos. For the smaller gaming facilities with ceilings that are not high enough to accommodate a wide-angle camera, this regulation will force tribes to deploy a camera and a corresponding VCR for each slot machine. This is a very expensive and labor-intensive requirement.

As Chairman Deer has noted in the past, the "NIGC plays its role in this somewhat complex regulatory scheme, it must always be mindful that the regulatory requirements it imposes must be effective and efficient and must not place tribal gaming at competitive disadvantage with non-Indian gaming."

To the inexperienced person, this may seem like a reasonable requirement. Although the individual assigned to carry out this particular field visit was clearly an experienced investigator, according to our staff he did not appear to possess any background in gaming and had not been given any substantive training in the area of industry accepted practices. The bottom line is that it is important for the NIGC to make certain that they have more than cops on the beat. They must have people with experience in the area of gaming. They need to be able to help tribes detect an opportunity for graft before it occurs—not just be able to investigate the crime after it has happened.

The NIGC's field personnel need to be mindful of such complications and must be given the autonomy to make decisions in the field when the MICS are unworkable for gaming establishments.

### **Enhanced Authority for Background Investigation Process**

The third area of concern is within the area of the background investigation process, and specifically the fingerprint review process. The IGRA requires a tribe to conduct background investigations on primary management officials and key employees and to notify the NIGC of the results of such background checks before the issuance of any gaming licenses. Employees not having completed this background investigation may work in these important jobs, but are not given an official license.

Fingerprint checks are completed with the assistance of the FBI via either the NIGC or with the assistance of state law enforcement, typically under a tribal-state agreement. In California, the state has thus far refused to help tribes complete background fingerprint checks, so we must work with the NIGC.

Recently, it took the NIGC nine months to complete a fingerprint check for a key employee at our gaming facility, only to learn that the finger print card was not adequately clear and would need to be resubmitted. The consequence of this delay means that we run the risk of employing potentially unsuitable personnel for unreasonable periods of time while we wait for the NIGC and the FBI to complete their review. IGRA must be amended to provide a path for tribes to work directly with the FBI.

Additionally, accommodations need to be implemented for background checks on gaming commission employees. At present the FBI will not process finger print checks on tribal gaming commission employees and the NIGC only requires gaming employees to be licensed, not gaming commission employees.

### **Class III Regulation**

Finally, I would propose that IGRA be amended to provide for the status of "Class III self-regulation". As stated by former Commissioner Hogen, "the first-line of regulation of this industry is, and always should be provided by the tribes which operate the gaming facilities." With the implementation of the Minimum Internal Control Standards, the NIGC has taken a broad step into the regulation of Class III activities, often surpassing any regulatory environment established under Tribal/State compacts. In the event that a tribe has consistently met the standards established by the NIGC and those standards surpass those enumerated under a Tribal/State compact, tribes should be granted Class III self-regulated" status and receive a commensurate decrease in their fee assessment.

Thank you for giving me the opportunity to appear before you today. I would be happy to answer any of your questions.

# OKLAHOMA INDIAN GAMING ASSOCIATION

1038 W. Sycamore Rd. Norman, OK 73072-9411

September 6, 2000

The Honorable Ben Nighthorse Campbell  
Chairman, Committee on Indian Affairs  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for the opportunity to provide additional information to the Committee on the activities of the National Indian Gaming Commission. Since that hearing, the U.S. Court of Appeals for the Ninth Circuit and the U.S. District Court for the Northern District of Oklahoma have issued important decisions relating to class II gaming that support the content of my hearing testimony. I address the impact and content of those decisions below in response to the questions in your August 28, 2000 letter.

1. With regard to the classification of games under the IGRA, the problem sounds pretty simple – there are too many terms and definitions that are not compatible. Am I correct? It seems the best resolution would be to update and clarify the IGRA to make those terms and definitions correspond to each other?

Yes, you are generally correct. The terms that define “class II gaming” under the IGRA and the NIGC’s regulations certainly need to be clarified and made consistent with federal court decisions. Central to this problem is the silence of the IGRA on repealing the Johnson Act as to class II games that utilize “technologic aids.” As a result of this, the NIGC has interpreted that silence as meaning the Johnson Act, which defines “slot machines” and “gambling devices” very broadly, can be used to enforce against tribes who offer games that utilize technologic aids to bingo, even though the IGRA expressly provides that such games are class II. The NIGC gave this notion the force of federal law when it defined “facsimile” of a game of chance (which the IGRA says is class III) as a “gambling device” under the Johnson Act. The “facsimile” definition nearly renders the “technologic aid” definition a nullity.

In a decision issued last week, the Ninth Circuit in *United States v. 103 Electronic Gambling Devices*<sup>1</sup> affirmed the decision of the district court that the MegaMania bingo game is a class II device. In doing so, the court ruled that the United States could not

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<sup>1</sup> 2000 WL 1218766 (9<sup>th</sup> Cir. Aug. 29, 2000).

bring enforcement actions under the Johnson Act where the challenged game is a bingo aid.

Congress did not intend to allow the Johnson Act to reach bingo aids. The statute provides that bingo using “electronic, computer, or other technologic aids” is class II gaming, and therefore permitted in Indian country. Reading the Johnson Act to forbid such aids would render the quoted language a nullity. Why would Congress carefully protect such technologic aids through the text of [the quoted language], yet leave them to the wolves of a Johnson Act forfeiture action? We cannot presume that enacting IGRA, Congress performed such “a useless act”.<sup>2</sup>

The NIGC’s “facsimile” definition is plainly inconsistent with this ruling. The Ninth Circuit noted that federal district courts in the District of Columbia and New York also ruled that the Johnson Act does not apply to bingo aids.<sup>3</sup> Yet the “wolves” have continued to prey upon the class II tribal gaming facilities in Oklahoma and other states because of murkiness in the law.

The day after the Ninth Circuit decision, the Northern District of Oklahoma enjoined the NIGC and the Justice Department from enforcing against the tribes for offering Magical Irish Bingo machines in their facilities.<sup>4</sup> It remains to be seen whether the NIGC and the Justice Department will continue to press these cases and appeal.

The best way to resolve this problem is for the Congress to amend the IGRA to repeal the Johnson Act as to “technologic aids” to class II games. Another solution is for the NIGC to revise its regulations that address the definition of class II gaming. This option, however, does not ensure that the NIGC or the Justice Department will concur with the Ninth Circuit and other federal courts on the conflict between the Johnson Act and bingo aids.

2. Under the law, the tribes in Oklahoma are only able to operate class II games at this time. What kind of games do those include?

The IGRA permits tribes to operate bingo and non-banking card games without tribal-state compacts. The games offered in tribal gaming facilities in Oklahoma include paper bingo and pull-tabs, as well as machines that are technologic aids to these games. Some facilities offer off-track betting on horse races pursuant to compacts with the State.

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<sup>2</sup> *Id.* at \*9.

<sup>3</sup> *Id.* at \*8 n.12.

<sup>4</sup> *Seneca-Cayuga Tribe of Oklahoma v. NIGC*, No. 00-CV-609-BU (N.D. Okla. Aug. 30, 2000) (Transcript of Court’s Ruling)

3. It is my understanding that the confusion resulting from game classification has resulting in expensive and costly litigation that the tribes have repeatedly won, yet the Department of Justice refuses to recognize those decisions. Can you explain the experience of the Oklahoma tribes in this regard?

Tribes based in Oklahoma have been in litigation over the play of bingo machines and other related games utilizing technologic aids for many years. Under the IGRA, tribal gaming commissions have front-line authority to classify games as either I, II, or III. Yet even where tribal gaming commissions and the NIGC have concurred that a particular game is class II, the Justice Department has brought forfeiture actions against those machines. The Ninth Circuit MegaMania decision was the product of such an action.

4. Would the tribes be willing to use a negotiated rulemaking to resolve the issue of game classification?

Yes. If Congress will not pass legislation to correct the problem, a negotiated rulemaking would be an appropriate step in the right direction.

Thank you for your advocacy on behalf of Indian tribes and people. If I can further assist on this or any other issue, please feel free to contact me again.

Sincerely,



Tracy Burris, OIGA  
Chairman



The Hon. Ben Nighthorse Campbell, Chairman  
 Committee on Indian Affairs  
 United States Senate  
 Washington, DC 20515

Dear Mr. Chairman:

This letter is in response to your letter of August 28, 2000 concerning the testimony I presented to the Senate Indian Affairs Committee on the activities of the National Indian Gaming Commission. In your letter you asked that I provide the Committee with answers to a series of questions.

The following are my responses to each of those questions:

1. **I have received complaints from tribes about the way the Minimum Internal Control Standards (or "MICS") adopted by the NIGC negatively affect smaller tribal operations. Do you have any ideas for how the MICS could make allowances for smaller operations and still guarantee the integrity of the gaming that is conducted?**

The Minimum Internal Control Standards appear to have been written with a one-size-fits-all approach. The Agua Caliente's gaming facility would be considered large in comparison to most of the facilities located throughout Indian Country. Because of our size we are able to meet and exceed the MICS as promulgated. However, we believe accommodations could be made to tribes owning smaller gaming facilities without threatening the regulatory integrity of the facility.

To this end, all tribes should be given the opportunity to submit variance requests from the MICS that do not affect the integrity of the gaming operation. These variance requests, to be approved by the NIGC and/or its employees who have a systemic understanding of gaming internal control systems, should be detailed and should explain how they affect the operation of the facility. The MICS should be a living document that changes with the evolution of the gaming industry.

2. **Evidently it takes the NIGC a very long time for the NIGC to process fingerprint cards? How would a direct relationship between tribes and the FBI facilitate the processing of fingerprint checks? Why do we need to amend IGRA to allow this to happen?**



**Page No: 2**  
**The Honorable Ben Nighthorse Campbell**  
**September 7, 2000**

The IGRA mandates that tribes establish a process to ensure that "background investigations are conducted on the primary management officials and key employees of the gaming enterprise...". Federal regulations further explain that tribes must submit to the NIGC a criminal history check, including fingerprints, conducted by a law enforcement agency on each primary management official and key employee prior to the licensing of that employee. Each of the checks must be reviewed by the Federal Bureau of Investigation's National Criminal Information Center. Currently, the FBI refuses to process fingerprint cards submitted by tribes, stipulating that they are only authorized to process such cards for local and state law enforcement agencies and for other federal agencies. Because tribes are often unable to work with their respective state law enforcement agencies a bottleneck is created at the NIGC in processing these checks. Allowing tribes to directly submit the checks to the FBI would eliminate the bottleneck.

We cannot comment as to whether IGRA must be amended to achieve this solution other than to say that IGRA requires the background checks, and the NIGC's regulations require the FBI's database be used in the review of such checks. Presumably laws other than IGRA could be amended to allow tribal law enforcement agencies or regulatory agencies access to the FBI's database.

- 3. You note that tribal gaming commission employees are not required to undergo background checks and fingerprinting. Is it your position that the people who are responsible for regulating gaming on Indian lands should be subject to background checks and fingerprinting? How does this strengthen the tribal gaming industry?**

In order for a tribal gaming commission to maintain the integrity of the gaming operations and to fulfill its mission to protect tribal assets it must be ever diligent and must maintain a high standard for its employees. Because gaming commission employees are not considered to be employees of a "gaming operation", the background investigation requirements outlined under IGRA and the NIGC's regulations do not apply to those positions. As such, the NIGC and the FBI will not process any checks on those individuals. This flaw in the statute must be addressed to require background checks on commission employees who have responsibility over management functions or are key employees.



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Commission employees' fingerprints need to be processed by an outside agency to insure that a proper criminal background check is performed. This will allow tribal gaming establishments to avoid any appearance of conflict of interest or impropriety, in turn leading to a stronger and more resilient regulatory environment and industry overall.

**4. Should a tribe that invests a great deal of time, effort, and resources to ensure proper running of its gaming operation be entitled to a reduction in fees?**

Yes. The NIGC is not the primary regulatory entity for either class II or class III gaming. Rather, they share a regulatory role with tribes. As such, to the degree a tribe relieves whatever regulatory burden is placed on the NIGC, a tribe should be financially compensated for that effort with a commensurate reduction in fees.

Yours truly,

Richard M. Milanovich  
Chairman, Tribal Council  
**AGUA CALIENTE BAND OF  
CAHUILLA INDIANS**

TC-4269-09-00  
RMM: jas



September 5, 2000

Via Facsimile

Original by U.S. Mail

The Honorable Ben Nighthorse Campbell  
Chairman, Committee on Indian Affairs  
United States Senate  
838 Senate Hart Building  
Washington, DC 20510

Dear Senator Campbell:

Thank you for your letter of August 28, 2000, and your interest in the work of the National Indian Gaming Commission (Commission). I, along with Vice Chairman Elizabeth Horner and Commissioner Teresa Poust, thank you for your support of the Commission, and we appreciate this opportunity to respond to your questions.

1. In your recent letter to me, you stated that the NIGC has made approximately 1500 site visits in the last year. How many visits were you making before the expansion? Why were you able to make such a significant increase in the number of visits?

Prior to the expansion of the Commission staff, funding limitations permitted the employment of only seven individuals in the field. While these individuals attempted to visit each tribal facility once a year, the task was daunting. There are over 300 facilities located in 28 different states, often in remote areas requiring a full days drive to reach. Our attempts to visit each facility were further limited by investigative or compliance problems that often require repeated visits to the same facility. At best, these seven individuals made 500 site visits each year.

In 1997, Congress increased our budget and made clear that this larger funding base was to be used to expand the Commission's role and presence in Indian gaming. In short, we were told that seven field investigators working from the trunks of their cars was not the type of oversight that Congress contemplated by the Commission when the Indian Gaming Regulatory Act (IGRA) was enacted.

Given this directive, our first priority was to expand the number of personnel in the field. In doing so, we were able to increase both the quality and the quantity of site visits. Field investigators now strive to visit each tribal gaming facility three times each year. Visits are also made to consult with tribal regulators and tribal leaders, to address investigative and compliance

matters, and to provide technical assistance and training. In 1999, we made approximately 1500 site visits.

2. Do you believe the opening of field offices has had a significant impact on your operations? How?

Yes, the establishment of our regional field offices has had a substantial impact on the effectiveness of our operations. In addition to increasing the Commission's presence in Indian Country, these offices afford us the ability to observe and monitor tribal gaming operations more comprehensively -- the key to ensuring integrity.

Located centrally to many Indian gaming facilities, regional field offices permit quick response to the numerous requests for assistance we receive from tribal gaming facilities. More and more, we have been able to transition from a reactive agency to one proactive in its method of monitoring. Training and technical assistance go a long way toward ensuring voluntary compliance. We have received much positive feedback on the professionalism and training abilities of our field staff, and currently, we have more requests for training and assistance than we can fulfill.

The number of gaming operations for which each investigator is responsible has been reduced, and field investigators are now able to make regularly scheduled visits to all gaming operations for which they are responsible. Regional staff provides a mechanism for handling tribal background investigations on a regional rather than a national basis, and improves the Commission's ability to focus its staff and resources on the most serious problems facing Indian gaming operations in a particular region of the country. In upcoming years, we envision that the role of these offices will continue to grow.

3. There is considerable confusion over class II gaming definitions in Indian Country because of the different definitions given to terms in the IGRA, and this confusion has hurt the class II operations of many tribes, especially those in Oklahoma. What can you do to clear up that confusion? Have you ever used negotiated rulemaking to develop a regulation? Would this situation be conducive to such a rulemaking?

Under IGRA, the Commission has the responsibility of interpreting the Act's definitions of class II and class III gaming. Tribes that have been unsuccessful in attempts to obtain Tribal-State compacts are limited to class II gaming. One way we have sought to provide certainty is to issue game classification decisions. As you may know, we have issued a proposed rule that, if made final, will result in procedures whereby all games and gaming machines must be reviewed by the NIGC before they may be lawfully played as class II gaming. The procedures will allow for adjudication and appeal, which should benefit the regulated community.

As is the case with all major NIGC rulemaking, there has been extensive public involvement in the development of these game classification regulations, including a lengthy comment period and a public hearing. Because the rule is, ultimately, a procedural device that must be implemented with the Commission's existing limited resources, and because the regulated community and other interested parties have had ample opportunity to provide input, we do not consider this an appropriate subject for negotiated rulemaking.

We understand there is some legal controversy over the scope of the definition of class II gaming. As indicated in my letter to you dated July 21, 2000 the Commission is pleased to assist in any way with this issue. We encourage the Committee to seek the assistance of all interested parties such as the tribes and the Department of Justice in addressing this issue.

4. Is the NIGC subject to the requirements of the Government Performance and Results Act?

In a letter to Congress dated July 20, 1999, the General Accounting Office suggested that the Interior Department should include a section on the Commission in its strategic and performance plan. It reasoned that since the Commission was established as an independent agency within the Department of the Interior, and given the importance of its mission, the Department's plan should include the Commission notwithstanding its small size and limited spending authority. Size and spending authority, incidentally, are relevant to the applicability of GPRA, which provides for an exemption for those Executive agencies with spending authority under \$20,000,000, such as the Commission.

As a general matter, the Commission supports the goals and purposes of the GPRA and operates within the principles of performance-based management. It is worth noting that IGRA contains an alternative reporting requirement and specifies a biennial report as the mechanism through which the Commission is to report its activities and accomplishments to the Congress. Since this is the reporting mechanism expressly mandated by the Congress in IGRA, the Commission prefers its continued use. Moreover, it is a much more manageable mechanism given the Commission's size and resource limitations.

5. Do NIGC investigators have to undergo background and fingerprint checks? Why? What about tribal gaming commissioners and their staff? Why not? Do you believe that background checks of those individuals would strengthen tribal gaming? Why?

Yes, all investigators employed by the Commission are required to undergo an extensive background investigation, including a fingerprint check through the FBI's database. These investigations are conducted by the Office of Personnel Management at the direction of the Department of the Interior. While not statutorily required, we feel this practice ensures that our investigators are suitable for handling confidential and sensitive information, including information about alleged criminal activities.