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NATIONAL INDIAN GAMING COMMISSION  
PORTLAND REGION  
REGULATORY REVIEW CONSULTATION

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TULALIP RESORT AND CASINO  
10200 QUIL CEDA BLVD  
CHINOOK BALLROOM  
TULALIP, WASHINGTON  
JULY 15, 2011  
9:12 A.M.

REPORTED BY: CHERYL J. HAMMER, CCR 2512

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TULALIP, WASHINGTON; JULY 15, 2011

9:12 A.M.

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CHAIRWOMAN STEVENS: Good morning. There we go. Thanks for returning. We see a lot of folks who stayed for the full two days. We're going to continue our discussion from yesterday. Today we're talking about groups five and three. Do we have any newcomers? Yes. Please do introduce yourself if you don't mind. Thanks.

MR. SPENCER: Yeah, my name is Mike Spencer. I'm vice chairman of the Spokane tribal council. Thank you for giving us an opportunity to meet here today. We did have some representatives here yesterday, so they'll bring me up to date on everything. Thank you.

CHAIRWOMAN STEVENS: Great. Thank you. Yes, sir.

MR. DeVENY: I'm Darwin DeVeny from the Quinault Nation, executive director.

CHAIRWOMAN STEVENS: Welcome. Just for the benefit of the folks who weren't here yesterday, we are going by our day two agenda. We'll be talking about group five and three today, although

1 that does not preclude comments about any of the other  
2 topics that we covered yesterday.

3 We understand everybody has very busy  
4 schedules and may not be able to make both days or may  
5 not be able to be here at the time we're talking about  
6 specific regulations. So the floor is all open to  
7 make comment on any and all parts, even if they are  
8 not necessarily what we're talking about at the time.

9 If we're okay with just jumping right  
10 into the work, I do want to make some initial  
11 announcements. We had up on the screen our trainings.  
12 We mentioned it yesterday. These are our upcoming  
13 technical assistance and training opportunities. July  
14 will be at Cherokee Hard Rock. That's a regional  
15 training. Are these all regional trainings?  
16 Keep in mind they may tailor it to that particular  
17 region.

18 In August -- July will be at Cherokee.  
19 August will be down at Poarch Creek and then, oh,  
20 look, in North Dakota. That's good. I do want to  
21 give Nimish the opportunity to let you know what else  
22 we might be doing that pertains to the Northwest.  
23 Nimish, if you can come up and let them know what we  
24 are looking at for the Northwest.

25 MR. PUROHIT: Good morning, everyone.

1 What we do is a series called regulating gaming  
2 technology, and I'm the presenter for three days, so  
3 if you don't like my voice right now, then I would  
4 recommend not attending that, because you get to hear  
5 me for three days.

6 But the next example of that is going  
7 to be at Poarch Creek in Alabama and every regional  
8 training event is specific to that region. I've done  
9 one here last year in Spokane, Washington, and  
10 Calispell, and that was done specifically with the  
11 tribal lottery system as compacted games and gaming  
12 systems and Class II gaming systems and forensics  
13 onsite.

14 So it's a three-day technology event.  
15 Right now we're working with a region here and Vita  
16 Bishop and Mark Phillips to have something again  
17 toward the end of this year as well on the western  
18 side of Washington, and hopefully we're able to get  
19 some hosts for our training event as well.

20 We hold these at the tribal gaming  
21 facilities as well, as an example, that are up there.  
22 As I said, it's going to be a three-day event. The  
23 only thing you would need are equipment with  
24 projectors and that. You can please talk to Vida, see  
25 if you have any opportunities to host the training

1 event as well. We'd appreciate that. Thank you.

2 CHAIRWOMAN STEVENS: Thank you. So if  
3 there's anyone who's interested, please contact the  
4 region about what that would entail specifically.

5 MR. GOBIN: Tulalip might be  
6 interested in doing that, but we'll get in touch with  
7 you.

8 CHAIRWOMAN STEVENS: Thank you.  
9 Anyone who needs to get more information about that  
10 training, you can talk to Vida, yeah. So let's go  
11 ahead with our day. I'll turn over the microphone to  
12 -- well, before I begin. I do want to give folks the  
13 opportunity who may have written prepared statements  
14 and their time is of the essence for their schedule.  
15 So, you know, the floor is open if there's anyone who  
16 has prepared statements they would like to make for  
17 the record for any of these parts. Yes, Spokane.

18 MR. SPENCER: Yes, the Spokane tribe  
19 has prepared written comments, but I don't want to  
20 take up time actually reading the comments into the  
21 record. I'd like to present the original document to  
22 the chair, copies to the other commission members, and  
23 ask that they be formally placed into the record.

24 CHAIRWOMAN STEVENS: Yes, we certainly  
25 can do that. We'll have someone come around and take

1 those from you. Actually, give them to Lael. Any  
2 others?

3  
4 WRITTEN COMMENTS OF THE SPOKANE TRIBE REGARDING  
5 NATIONAL INDIAN GAMING COMMISSION REGULATORY REVIEW  
6 TULALIP RESERVATION JULY 14-15, 2011  
7

8 "Thank you for the opportunity to  
9 address the NIGC on the important issue of regulatory  
10 review.

11 Previously, at the May 20, 2011  
12 session at the Coeur d'Alene Reservation, we submitted  
13 our comments to Group #1 and Group #2. Accordingly, I  
14 limit my comments today to Groups #3, 4 and 5. I  
15 note, however, that the Class III MICS issue is in  
16 both Groups 1 and 5, and that is an issue of great  
17 importance to the Spokane Tribe. A copy of the May  
18 20, 2011 comments are attached hereto, and the Tribe  
19 may supplement this statement as we hear and read the  
20 comments of other Tribes and review preliminary drafts  
21 released by the NIGC.

22  
23 GROUP THREE: CLASS II GAMING - GENERAL COMMENTS  
24

25 Our comments on Group Three, Class II

1 gaming, will be brief. We have followed the very hard  
2 and detailed work of the Class II Working Group and we  
3 support their efforts and comments. Many tribes are  
4 confronted by states who hide behind 11th Amendment  
5 immunity to deprive them of compacts, such as  
6 Louisiana with the Jena Band and Texas with the  
7 Kickapoo. Many other states use the unfair leverage  
8 of the Seminole decision to coerce tribes into  
9 unreasonable gaming taxes and intrusions on tribal  
10 self-governance. Spokane knows the plight of these  
11 tribes all too well. Spokane operated without a  
12 compact for a decade because we refused to capitulate  
13 to Washington State's unreasonable restrictions,  
14 including a complete prohibition on machine gaming, as  
15 the State hid behind 11th Amendment immunity. As you  
16 consider the regulations for Class II games, please  
17 keep in mind that a viable Class II game is the only  
18 leverage many tribes have in the wake of the Seminole  
19 decision.

20                   With prior Commissions, discussion of  
21 Class II policy flowed into discussion regarding  
22 monitoring and investigation - a main topic of Group  
23 Four. It was with great frustration that Spokane  
24 watched prior Commission Chairman Hogan work so hard  
25 to draw a "bright line" with Class II games only to

1     undermine the efforts of many tribes to leverage Class  
2     II gaming to secure Class III gaming compacts. While  
3     the NIGC would place many Class II games in to  
4     question, DOI sat by quietly, opting not to implement  
5     Class III procedures when confronted with state  
6     assertions of 11th Amendment immunity. Likewise, DOJ  
7     opted not to bring litigation against hostile states  
8     on behalf of the tribes. In Seminole's wake, NIGC,  
9     DOI and DOJ should work cooperatively under the  
10    federal umbrella to develop a collective and  
11    coordinated approach to ensure tribes are in the  
12    position that Congress intended when states refuse to  
13    negotiate in good faith.

14

15                   GROUP FOUR: DEFERENCE TO TGAs AS THE PRIMARY  
16                   REGULATOR - GENERAL COMMENTS

17

18                   Group Four covers a lot of territory.  
19    Spokane accepts that NIGC needs access to the tribal  
20    gaming facilities. Spokane applauds the policy  
21    embraced by the NIGC's preliminary draft revisions to  
22    Part 573, which embraces a policy of deference and  
23    support of TGAs. The TGA is the primary regulator of  
24    tribal gaming. The tens of millions of dollars in  
25    authorized Tribal Commission budgets, the shear



1 manpower numbers, and the common presence of the most  
2 experienced regulators in the industry, quantify this  
3 basic fact. The Tribe itself has the highest  
4 incentive to ensure that the games are fair and  
5 honest. In the vast majority of circumstances, any  
6 Tribe out of compliance has the highest incentive to  
7 come in to compliance. The draft revisions to Part  
8 573 embrace a formal policy that ensures the NIGC will  
9 take every effort to identify the problem for the TGA  
10 and/or Tribal Council, work with the Tribe to come in  
11 to compliance, and only if those steps have been taken  
12 and have failed, take action in the form of an NOV  
13 with attendant threats of fines and closures. We hear  
14 rhetoric that this is how the Hogan Commissions  
15 approached situations, but we know of too many  
16 circumstances where the NOV came as a surprise to  
17 tribes, resulting in panic when facing the prospect of  
18 major fines and closure orders. Even though those  
19 situations ultimately were resolved with nominal  
20 fines, such heavy-handed threats have no place in  
21 proper government-to-government dialogue.

22 In the preliminary draft to Part 573,  
23 there is a provision about when an NOV becomes a final  
24 agency action that appears intended to clarify that  
25 the Chair may withdraw an NOV, which is good. Still,

1 we are looking into the technical legal issue of  
2 whether this language properly fits within the  
3 framework of APA review, and may supplement this  
4 statement based upon that review.

5 The monitoring and investigative  
6 authority of the NIGC is best utilized when tempered  
7 with a policy of proper deference and support of TGAs.  
8 Within those policy constraints, the proposed  
9 preliminary draft changes to part 571 set forth an  
10 acceptable process to ensure the NIGC's access to  
11 critical documents. Access to and review of those  
12 critical documents should be utilized when necessary  
13 to enable the NIGC to discover problems and to work  
14 with TGAs and tribal councils to correct those  
15 problems.

16 Spokane submits certain technical  
17 comments on the specifics of Group Four.

18  
19 GROUP FOUR: TECHNICAL COMMENTS

20 Parts 556 and 558 - Background Investigations for  
21 Primary Management Officials and Key Employees

22  
23 We just received Tuesday morning, the  
24 NIGC's preliminary drafts of parts 556 and 558. Our  
25 initial review is favorable and supportive, with two

1 exceptions.

2 First, Tribes should be able to turn  
3 to the NIGC for assistance to conduct a background  
4 investigation on any employee or entity for which the  
5 TGA seeks assistance. Being able to turn to the NIGC  
6 to process fingerprint cards beyond primary management  
7 officials and key employees enables tribes to make  
8 better informed and faster decisions. This is  
9 particularly important because many states deny or  
10 severely restrict tribes from the State's database  
11 resources. The costs of processing fingerprint cards,  
12 however, should be borne by the participating tribes  
13 and not paid out of fees paid by other tribes, who  
14 restrict NIGC's assistance to Key Employees and  
15 Primary Management Officials.

16 Second, the revision to 558.2(c)(2)  
17 highlights a provision that considers requiring  
18 notification to NIGC of determinations of  
19 unsuitability in license denials. We suspect this is  
20 highlighted because IGRA requires that a Tribe notify  
21 NIGC of licenses issued, but is silent on notifying  
22 NIGC of licenses denied. 25 U.S.C.

23 2710(b)(2)(F)(ii)(1). The crux of the abuses of the  
24 Hogan Commissions were the result of an agency culture  
25 that believed it could fiat authority on the grounds

1 that it was a good idea, without regard to IGRA's  
2 limits on that authority (class III MICS, facility  
3 licensing, etc.). Although the proposed requirement  
4 to notify NIGC of licenses denied is a good one, and  
5 improves a database on which all tribes can make  
6 better, more informed licensing decisions, it falls  
7 outside of the NIGC's parameters of authority set  
8 forth by IGRA and perpetuates the culture that lead to  
9 past abuses. Accordingly, Spokane endorse using the  
10 word "may" and opposes using the word "shall." We do  
11 believe that a Tribe can compel its TGA to submit such  
12 information to the NIGC in the context of the Tribal  
13 Gaming Ordinance, but that is properly a matter of  
14 tribal self-governance.

15 The preliminary draft appears to make  
16 the "pilot" program permanent. We applaud this  
17 change. It has been a farce to call it a "pilot  
18 program" when it is older than most tribal gaming  
19 facilities.

20

#### 21 Part 531 - Collateral Agreements

22

23 The definition of management agreement  
24 should be revised to make clear that collateral  
25 agreements can be made and binding upon the parties

1 before NIGC approval of the management agreement. No  
2 entity should be allowed to perform day-to-day  
3 decision making over a tribal gaming facility prior to  
4 NIGC approval, but other agreements should be valid.  
5 Many times, tribes are hindered from entering into  
6 finance and consulting agreements with desired  
7 contracted parties because of the collateral agreement  
8 rule. Such a result arbitrarily stifles tribal  
9 self-determination by restricting a tribe's ability to  
10 enter into contracts. Collateral agreements should be  
11 required to be submitted with proposed management  
12 contracts to ensure full disclosure of all aspects of  
13 the relationship between the Tribe and the contracting  
14 entity, but that can be accomplished without the  
15 current rule that voids collateral agreements unless  
16 and until the management agreement is approved.

17           Additionally, formal regulations  
18 regarding declination letters would provide tribes and  
19 contracting parties greater confidence that  
20 declination letters are meaningful and correct.

21

22 Part 502 - Definitions.

23           Definition of "management contract"

24

25           Some commentators suggest expanding

1 the definition of "management contract" to include any  
2 contract that includes a percentage-based fee. This  
3 proposed change has no basis in IGRA. If Congress  
4 wanted to provide NIGC with that authority, they would  
5 not have used the restrictive term "management  
6 contract." Given the consequences of such a  
7 definition, it would be challenged and likely would  
8 not survive judicial scrutiny. While Spokane shares  
9 the concerns of the proponents of such a definition,  
10 we are mindful that NIGC must remain within the bounds  
11 of its authority, as created and limited by Congress.

12 The stated concerns in the NOI  
13 regarding aggregate fees (loans/expenses/development  
14 fees, etc.) is valid, but that discussion is more  
15 appropriate in the context of "sole proprietary  
16 interest" and "primary beneficiary," and not in the  
17 context of defining "management agreement." The  
18 concern of aggregate fees is not limited to financial  
19 agreements, but includes MOUs and Gaming Compact taxes  
20 as well.

21  
22 Definition of "net review"

23  
24 The definition of "net review" should  
25 be clarified to include machine lease payments,

1 participation fees and contributions to wide area  
2 progressives as allowable operating expenses in  
3 calculation of net revenue.

4 We note that the current proposed  
5 definition better reflects the reality in Indian  
6 gaming that management fees are a cost of doing  
7 business.

8 Both of these concerns warrant  
9 avoidance of GAAP. The only reason to use GAAP is for  
10 convenience. GAAP's function is to establish  
11 uniformity and consistency for purposes of financial  
12 audits. Convenience alone should not overcome the  
13 sound policy of ensuring a accurate reflection of the  
14 costs of business regarding Indian gaming.

15  
16 Definition of "allowable uses"

17  
18 Some suggest that NIGC define  
19 "allowable uses" to clarify what a tribe may  
20 legitimately fund with gaming revenue. Spokane  
21 opposes a separate definition of "allowable uses."  
22 The concerns expressed by proponents, e.g. maintaining  
23 adequate reserves and cash flow, can best be  
24 accomplished by tribes authorizing such expenditures  
25 "to promote tribal economic development" as expressly

1 authorized by IGRA. Any new definition of allowable  
2 uses carries the substantial risk of unduly impeding  
3 tribal self-governance.

4  
5 GROUP FIVE: CLASS III MICS AND "SOLE PROPRIETARY  
6 INTERESTS" - GENERAL COMMENTS

7  
8 CLASS III MICS

9  
10 Spokane submitted comments on Class  
11 III MICS at the Coeur d'Alene session on May 20. We  
12 were hopeful that we would have a draft to review by  
13 the time we reached group 5 on the NIGC's aggressive  
14 and welcome consultation schedule. We cannot stress  
15 enough the importance of NIGC's compliance with the  
16 Order and opinion of the United States Court of  
17 Appeals for the D.C. Circuit in C.R.I.T. vs. NIGC.

18 In our May 20 statement, we went  
19 through the NIGC's inconsistent history on this issue,  
20 from the Hope Commissions through the Hogan  
21 Commissions. We noted Spokane's amicus support for  
22 the Colorado River Indian Tribes at every level of the  
23 litigation, from the Administrative Law Judge through  
24 the DC appeals court. We applaud the policy embraced  
25 in the NIGC's preliminary draft facility license



1 regulations as properly reflecting the parameters of  
2 that court decision. We emphasize that the DC Court  
3 decision leaves no room for NIGC to promulgate Class  
4 III regulations. We know a few tribes are urging the  
5 NIGC to continue to promulgate Class III MICS.

6 Because of that, we repeat a small portion of our  
7 statement submitted in May.

8 Class III MICS have taken on a life of  
9 their own. The Hogan Commissions approved ordinances  
10 expressly empowering the NIGC to promulgate and  
11 enforce them. Several compacts refer to the NIGC MICS  
12 as a baseline for compact standards. This Commission  
13 should run away from the agenda of the Hogan  
14 Commissions and stay clearly within the parameters of  
15 authority set by Congress. Those states and tribes  
16 that embraced NIGC Class III MICS in compacts and  
17 ordinances did so at their own peril. We often hear  
18 that NIGC had the authority to promulgate the MICS  
19 until it lost at the DC Circuit. That is pure  
20 nonsense. The Court correctly ruled that NIGC never  
21 had such authority.

22 We continue to hear from a small but  
23 vocal group of Tribes insisting they want to see the  
24 Class III MICS continue in some form because they made  
25 some deal in a compact or state regulation. Those

1 agreements were reached with full knowledge that the  
2 NIGC's authority to promulgate Class III MICS was in  
3 serious dispute. This Commission should not  
4 perpetuate the problem by devoting NIGC resources to  
5 promulgate regulations that admittedly are ultra  
6 virus.

7           Additionally, we challenge the  
8 allegation that some are at peril if the NIGC no  
9 longer promulgates Class III MICS. A number of  
10 Tribal-State gaming compacts in North Dakota, Arizona,  
11 Oklahoma, Wisconsin, and Florida refer to the Class  
12 III MICS. That being said, the reference within those  
13 compacts is not impacted by whether the Class III MICS  
14 exist or do not exist on a prospective basis. Many of  
15 these compacts only refer to MICS as they existed at a  
16 date certain. Thus if the Class III MICS were  
17 repealed today, tribes with such compacts would have  
18 the baseline that existed on the date certain  
19 previously referenced. Other compacts refer to  
20 compliance with the Class III MICS that are found in  
21 the NIGC regulations (without a reference to a date).  
22 Spokane's position is that even if the Class III MICS  
23 were to be repealed, it would not result in a  
24 violation of any of those "incorporation by reference"  
25 compacts unless those individual compacts require the

1 Class III MICS to continue to be published. We are  
2 not aware of any compact that has such a publication  
3 requirement.

4 Beyond a short phase out period,  
5 the Spokane Tribe strongly opposes the perpetuation of  
6 illegal MICS simply because it inconveniences some  
7 tribes. Those Tribes can transition into some other  
8 type of default MICS through a regulators organization  
9 or amend their compacts, or defer to some other  
10 industry entity. Indeed, the NIGA/NCAI Task Force  
11 subgroup of regulators, which authored the initial  
12 Class III MICS could be revived. Perhaps more  
13 appropriately, the NTGC/R (National Tribal Gaming  
14 Commissioners/Regulators) could assume the tasks.  
15 Indeed, it would be a logical extension of the  
16 excellent services provided to date by NTGC/R.

17 Calling the Class III MICS  
18 "guidelines" rather than "regulations" is code for  
19 making all tribes pay to develop MICS that only will  
20 be utilized by relatively small number of tribes.  
21 Spokane Tribe sharply objects to the use of its fees  
22 for such purposes. If the NIGC does capitulate to the  
23 vocal minority of tribes insisting on NIGC Class III  
24 MICS, then the fee structure should be changed to  
25 ensure that only those Tribes advocating for Class III

1 MICS pay the entire cost, from promulgation, to  
2 auditing, to enforcement.

3  
4 SOLE PROPRIETARY INTEREST

5  
6 In response to the NIGC's initial  
7 Notice of Inquiry for regulatory review, which  
8 preceded the current consultations, the Spokane Tribe  
9 recognized the importance of the issue of sole  
10 proprietary interest. To date, the focus of this  
11 issue has been in the context of management,  
12 development and finance agreements, which are  
13 important. It is with grave concern that Spokane  
14 observes the trends around the country wherein large  
15 portions of tribal gaming revenue are sliced off and  
16 handed to state treasuries, state agencies and local  
17 governments. IGRA's "primary beneficiary" rule also  
18 is triggered when such large portions of tribal gaming  
19 revenue are exported to state and local governments.  
20 25 U.S.C. 2702(2). We express great caution, however,  
21 as to whether these issues can be properly addressed  
22 in the context of NIGC regulations. We are not  
23 objecting to the effort, but we are skeptical that  
24 regulations are the appropriate means to address the  
25 issue. Certainly, any approach requires a look to the

1 aggregate impact on tribal gaming revenue, taking into  
2 account all development and finance costs, management  
3 fees, compact "taxes," mitigation fees, etc. Terms  
4 for one tribe in one location may be wholly unworkable  
5 for a different tribe in a different location. The  
6 analysis is necessarily very fact-specific. If the  
7 NIGC proposes a preliminary draft regulation, we will  
8 supplement our comments at that time.

9 The Spokane Tribe appreciates that the  
10 NIGC has undertaken this difficult task of regulatory  
11 review. Spokane respects NIGC's appreciation for  
12 listening to the tribes' concerns which is reflected  
13 in the preliminary drafts that have been circulated to  
14 date. Thank you for your consideration.

15 Respectfully,

16 Michael Spencer

17 Vice-Chairman

18 Spokane Tribe of Indians"

19  
20 CHAIRWOMAN STEVENS: With that, I'll  
21 turn the microphone over to Lael and have her continue  
22 on the power point. Everyone should have a copy of  
23 the power point if you'd like to follow along. We're  
24 on day two, group five.

25 MS. ECHO-HAWK: Good morning. Group

1 five we do not currently have drafts, so you do not  
2 have handouts. The only handout that might be useful  
3 is the power point, as the chairwoman just indicated,  
4 but we don't have drafts yet. We're still in that  
5 process of consulting.

6 So for group five, we included part  
7 518, which is self-regulation of Class II gaming, the  
8 potential or discussion on sole proprietary interest  
9 and whether or not that might need a regulation of  
10 some kind, and then finally, minimum internal control  
11 standards for Class III gaming.

12 So the Notice of Inquiry that we sent  
13 out in November asked whether or not the commission  
14 should review the process for obtaining a Class II  
15 self-regulation certificate. We received lots of  
16 comments. We received a lot of comments that are  
17 very, very supportive of this, but also said that the  
18 administrative burden of completing the process and  
19 filling out a petition for self-regulation outweighed  
20 any of the benefits that were obtained by that  
21 certification.

22 Comments indicated that submission  
23 requirements were duplicative, burdensome, that the  
24 petition, the annual reporting requirement undermined  
25 the purpose of the certification. Those comments

1 indicated that the additional reporting requirements  
2 were even more than was required without a  
3 certification, and then we received other comments  
4 that the threshold, the high threshold for obtaining  
5 that certification needed to be maintained.

6 Self-regulation is a hallmark of  
7 tribal sovereignty. We saw that over and over again.  
8 Tribes indicated this was an important tool, but that  
9 the benefits and the recognition for those tribes  
10 should be greater than what is currently available  
11 today.

12 So our questions for the tribes and  
13 for the industry are how many tribes are interested in  
14 pursuing self-regulation. And you have to keep in  
15 mind that self-regulation is only for Class II gaming  
16 activities. So that is something that we've been  
17 thinking about and been looking around the country and  
18 seeing who, you know, what tribes have Class II only  
19 facilities, because this is for, again, Class II  
20 gaming activities.

21 Are there additional responsibilities  
22 or incentives for self-regulating tribes. What can  
23 tribes expect once they achieve this self-regulation  
24 certification, and does it mean -- what does it mean  
25 practically. Then we're interested in knowing whether

1 and how the reporting requirements should be amended.

2           Petition requirements include the  
3           submittal of all the information that's up here;  
4           history of gaming operation, composition of gaming  
5           operation, use of gaming revenues, accounting systems  
6           of the tribe and of the government, internal controls,  
7           recordkeeping, issuance of gaming licenses, gaming  
8           regulations. If you look at the regulation itself,  
9           it's very lengthy and it lists all these things out.

10           And then there's another part of the  
11           regulation, part 518.4, that says, okay, here are the  
12           criteria that the tribe has to satisfy in order for a  
13           certificate to be issued and so, you know, we're  
14           asking how can that be -- how can we improve that  
15           criteria, make it more clear, make it less burdensome,  
16           make it less duplicative, if that's the concern.

17           The criteria include a finding that  
18           the tribe conducts gaming with effective and honest  
19           accounting, a reputation for fair, safe and honest  
20           operations. The operation has to be fiscally and  
21           economically sound and no criminal or dishonest  
22           activity.

23           Now, all of this comes from the  
24           section of the act of IGRA that talks about the  
25           self-regulation certification. The regulation



1 requires finding the tribe has adequate system for  
2 accounting of revenues, investigation, licensing and  
3 monitoring of gaming employees, investigation  
4 enforcement and prosecution of violations of gaming  
5 ordinance and regulations and the finding -- and a  
6 finding, separate finding that the gaming activity's  
7 been conducted in compliance with IGRA, the NIGC regs  
8 and the tribe's gaming ordinance and gaming  
9 regulations.

10 The regulation continues with some  
11 indicators for those criteria, including adoption and  
12 implementation of the MICS. Now, you have to keep in  
13 mind that this regulation was written quite a while  
14 ago and was before there were MICS and so there's some  
15 reference to Nevada and to New Jersey MICS if the NIGC  
16 hasn't implemented there. So there's definitely some  
17 areas we can see that how old this regulation is.

18 Evidence that suitability  
19 determination for gaming regulators is at least as  
20 stringent as the suitability determination for key  
21 employees and primary management officials. Permanent  
22 and stable funding for the tribal regulatory body,  
23 adoption of a conflict of interest policy, evidence  
24 that the operation is financially stable. A TGRA that  
25 monitors gaming, promulgates regulations, ensures

1 adequate accounting systems, does routine audits,  
2 inspects the premises, systems for investigation,  
3 licensing and monitoring of employees, standards of  
4 issuance of a vendor license, adequate system of  
5 investigation and enforcement.

6           There's quite a bit, obviously,  
7 regulation, and as we've gone through it, we've seen  
8 some areas that could, perhaps, be refined and, you  
9 know, looking at what the ordinance requirements are,  
10 perhaps some of this information's already included in  
11 that and so should it be reincluded in the  
12 self-regulation petition.

13           One of the concerns has been that  
14 there is out of all the gaming tribes, 248 gaming  
15 tribes, only two are self- -- have obtained this  
16 self-regulation certification.

17           Another thing that the petition  
18 requires is a notice that's sent out to the public in  
19 the local area that the tribe is looking to become  
20 self-regulating. This is all included in the  
21 regulation and we can put it up on the board as we  
22 discuss this further.

23           So the second issue in group five is  
24 sole proprietary interest, and the Notice of Inquiry  
25 asked the commission whether -- or asked the tribes

1 whether or not the commission should consider a  
2 regulation defining sole proprietary interest and  
3 provide a process by which a tribe can request that  
4 sort of review of their documents.

5           Comments received indicated that  
6 tribes thought that if there is a regulation  
7 promulgated, that the review of those documents should  
8 only occur at the request of the tribe. That the  
9 percentages contained in IGRA, the 60/40 percentages  
10 in IGRA define what percentages might violate the act  
11 sole proprietary to this provision.

12           Another commenter indicated that if  
13 the sole proprietary interest is defined, then so  
14 should primary beneficiary. There was some comments  
15 about -- and we talked a little bit about this  
16 yesterday when we were talking about collateral  
17 agreements -- that a clear definition of sole  
18 proprietary interest might provide stability and  
19 access to financing, providing some sort of clarity in  
20 what is required in your sort of umbrella of  
21 documents.

22           Other concerns that the sole  
23 proprietary interest definition might limit tribal  
24 access to capital and then that a determination of  
25 sole proprietary interest should be left to the

1 courts.

2                   And then finally, as the chairwoman  
3 discussed yesterday, and I think we'll speak a little  
4 bit more about this afternoon as well, is Class III or  
5 Class III minimum internal control standards. The  
6 Notice of Inquiry -- I don't have it here. I guess  
7 we'll talk about it this afternoon as well -- the  
8 Notice of Inquiry also indicated and the Notice of  
9 Regulatory Review indicated that group five was where  
10 we would contemplate how to address Class III, the  
11 Class III MICS issue.

12                   It's something that is still on the  
13 table for discussion and we're interested in your  
14 comments on how to handle that. We had some  
15 discussion about this yesterday and I think we set  
16 aside some time this afternoon to talk about it with  
17 the Class II MICS issue as well.

18                   So that is the summary of the group  
19 five.

20                   CHAIRWOMAN STEVENS: Thank you, Lael.  
21 So up on the table right at the moment is what we went  
22 over, which was the self-regulation of Class II gaming  
23 and sole proprietary interest and also the minimum  
24 internal control standards for Class III. You know, I  
25 think Lael was making clear what the process is right

1 now and I think that it's really good for us to  
2 understand what does the self-regulation currently as  
3 it is cover.

4           There may be some misunderstanding  
5 that self-regulation would be full, complete  
6 regulation including Class III and that's not the  
7 case. It would just be for Class II and what we're  
8 looking for today are these questions. For a Class II  
9 self-regulation certificate, is there interest by  
10 tribes to obtain that certification, and if they are,  
11 are there -- you know, have you looked at our current  
12 regulation and identified areas that have been of  
13 concern.

14           We know that we've had some tribes  
15 begin the process and then stop and say this is a  
16 little burdensome, so we're just going to stick to  
17 having the NIGC regulate for us.

18           In particular, looking at the current  
19 regulation, what we would like, especially for the  
20 operators and the regulators to let us know how we  
21 could improve upon the current regulation, whatever  
22 that might be.

23           Do we have tribes here that are  
24 interested in self-regulation for a Class II? Okay.  
25 So we see a few hands. I saw from my visual here

1 about five or six hands go up. Have you all had the  
2 opportunity to look at the regulation to identify  
3 areas that might be preventing you from becoming Class  
4 II self-regulated? Yes.

5 MS. OSBORNE: Mark Osborne with the  
6 Shoshone-Bannock tribes gaming commission. I think I  
7 don't know enough about the Class II issue as much as  
8 we do the Class III's, but we always get concerned  
9 about new doors being opened up and what do they lead  
10 to.

11 Is this going to be an issue that may  
12 fall somewhere in the compact issue, again, with  
13 states, because they don't have any regulatory power  
14 or authority in Class II? Are they going to make up  
15 some kind of an approach to do this? I mean, that's  
16 what we want to be careful about. Because if it's an  
17 avenue of new-style gaming that we could promote at  
18 our casinos, we'll be glad to do it and glad to look  
19 at it, but if it's going to lead us to some type of  
20 dispute with states because they can't get their hands  
21 on anything, that's what we're concerned about.  
22 That's what we'd be concerned about.

23 CHAIRWOMAN STEVENS: I'm trying to  
24 think of a situation where the... Because this only  
25 has to do with Class II, so I'm not sure what the

1 compacts being with regard to Class III, how and why  
2 the state would want to be involved if they're not  
3 regulating you now in your Class II. But, you know,  
4 that's certainly a concern to be aware of. It's how  
5 the state might interpret it.

6 Now, this regulation was put into  
7 place and do we have a history on how it was put in  
8 place? I think it was put in place in 1998 and that's  
9 been, what, 13 years ago. Yes.

10 MR. ARMSTRONG: Yes. Tracie, I  
11 believe that we had looked at this regulation right  
12 after it was written and we had made a decision to do  
13 research on it, and about the only thing that we found  
14 is that this current regulation was quite cumbersome  
15 to work through the process. We felt that it was  
16 quite lengthy.

17 We thought that some of the  
18 requirements there were -- just it was just too hard  
19 to accomplish with the regulation as it is written.  
20 James Armstrong, Snoqualmie tribe.

21 CHAIRWOMAN STEVENS: Any other  
22 comments on Class II?

23 MS. BLUELAKE: Yes. Lisa Bluelake.

24 CHAIRWOMAN STEVENS: We have a  
25 microphone coming over to you.

1 MS. BLUELAKE: My name is Lisa  
2 Bluelake. I'm legal counsel with the Confederated  
3 Grand Ronde, which is one of two tribes in the country  
4 that are self-regulated. There's a few comments I  
5 would like to make, but I would take a little issue  
6 with minimizing the impact of Class II.

7 I think, you know, obviously that with  
8 the CRIT decision and what the intent of IGRA is as  
9 far as NIGC's role in Class III, I think that if a  
10 tribe has Class II self-regulation, I think that that  
11 needs to be interpreted with the intent of IGRA and  
12 one of the IGRA specifically indicates that there are  
13 four powers of the commission that self-regulated  
14 tribes are exempted from. And I'm getting the  
15 impression NIGC is trying to limit that by focusing on  
16 Class II rather than Class III, even though to get the  
17 certificate you look at things that pertain to Class  
18 II and Class III.

19 The annual report deals with finance  
20 issues, all those issues that deal with both Class II  
21 and Class III. So, you know, we may have to discuss  
22 this some more since it's just two tribes at this  
23 point.

24 But in addition to that, I just wanted  
25 to mention that we've commented and some of the



1 comments that we've had when we were going through  
2 these regulations, that the commission needs to take a  
3 look at how self-regulated tribes are impacted by the  
4 regs and indicate. For example, we talked about fees  
5 yesterday. In the fee regulations there's no mention  
6 of how those regulations impact self-regulated tribes,  
7 even though it's clear that self-regulated tribes do  
8 pay fees differently than nonself-regulated tribes.

9 Another one was the background  
10 investigations. There is nothing in the current or  
11 proposed regs that talked about the effect of  
12 self-regulation -- those regs on self-regulated  
13 tribes, even though it's clear that self-regulated  
14 tribes don't have to submit the same types of  
15 information to NIGC as nonself-regulated tribes.

16 There's other examples, but I just  
17 wanted to put on the record that that's something that  
18 Grand Ronde as a self-regulated tribe would like to  
19 see more of and I think if it's included in the regs,  
20 then more tribes would look at self-regulation and the  
21 possibility of going through the process, which is  
22 lengthy and cumbersome.

23 But it is something that the Grand  
24 Ronde is proud of and feels that, you know, it should  
25 be a process that's available and meaningful.

1 Currently it's not real meaningful in terms of actual  
2 benefits, but hopefully that, you know, we can, you  
3 know, work together to enhance those benefits.

4 MR. BOYCE: Mike Boyce, executive  
5 director of Grand Ronde. As the person that prepares  
6 this report annually, I can tell you it isn't -- once  
7 you go through the process and set it up initially,  
8 it's not as cumbersome as it might look annually.  
9 Once you have the template in place, it's basically  
10 just updating the annual information. So it's not  
11 that burdensome once you receive the certificate.

12 The problem is that there's no -- the  
13 benefits are lacking. There's a minor, minuscule  
14 reduction in fees and there's a little less burdensome  
15 in what we have to supply as far as licensing goes,  
16 but other than that there's just not a lot of benefit  
17 and that's what we'd like to see. We'd like to see  
18 that the standards are a little high, but the benefits  
19 be increased. If anybody wants to find out more about  
20 it, just give me a call, executive director at Grand  
21 Ronde. I'd be happy to talk to you about the process  
22 and help you if I can.

23 CHAIRWOMAN STEVENS: So can I ask a  
24 follow-up question? You mentioned benefits. What  
25 would be, in your mind, beneficial? What other

1 additional benefits might be considered?

2 MR. BOYCE: Certainly considering CRIT  
3 and you don't have the Class III enforcement, only  
4 Class II and you're self-regulated in Class II, I  
5 would see a bigger benefit in reduction of fees.

6 Also, I think, as you address each of  
7 these regulations, it should address how Class II  
8 could be affected and that would make the commission,  
9 I think, focus on either how it could be or couldn't  
10 be.

11 But if you just keep it in a Class II  
12 reg, nobody that's not -- or in self-regulated  
13 regulation, nobody that's not self-regulated is going  
14 to refer to it that often, but if it's in each  
15 regulation, even if, you know, you haven't reduced any  
16 burden on Class II tribe, if that was noted, each  
17 regulation, I think, should address the self-regulated  
18 tribe, in my opinion.

19 Then seriously look at how the impact  
20 of that regulation could either be reduced or  
21 eliminated for a self-regulated tribe.

22 CHAIRWOMAN STEVENS: What you're  
23 saying is it's all housed right here rather than  
24 seeing -- considering self-regulation, self-regulated  
25 tribes throughout all of the other regs?

1 MR. BOYCE: Yeah.

2 MS. BLUELAKE: I mean, there is a few  
3 examples that may be less relevant now that you aren't  
4 looking at modifying the facility licensing reg, but  
5 that was one example of the powers that self-regulated  
6 tribes are exempt from is inspection and examining  
7 premises and, you know, we had early on when that  
8 facility license reg was being proposed, well, there's  
9 an opportunity for you to either exempt self-regulated  
10 tribes or to minimize the requirements on  
11 self-regulated tribes.

12 Again, you know, you're proposing  
13 change to that, but that was one of our previous  
14 comments to NIGC in earlier years.

15 Another one, you know, is auditing.  
16 One of the powers that self-regulated tribes are  
17 exempt from is the access to inspection, examining,  
18 auditing the gaming facility. We've made comments to  
19 NIGC in previous years about exempting from some of  
20 the auditing requirements, especially since our  
21 self-regulation report includes all those things.

22 So, you know, there's a lot of overlap  
23 between what is reported through some of these  
24 regulations that apply to all tribes and what's  
25 reported in our self-regulation annual report, so that

1 there needs to be some recognition of that. So those  
2 are a few examples.

3 Also, recently, we commented on the  
4 consultation policy and suggested that there be  
5 specific provisions for consulting with self-regulated  
6 tribes. So those are some few examples. I'm sure  
7 there's many more.

8 CHAIRWOMAN STEVENS: Thank you. That  
9 is helpful. If you look at the self-regulation  
10 regulation, it's actually rather long. Not that it  
11 shouldn't be, but if you all haven't had an  
12 opportunity to go through it first, I can understand  
13 the conversation might be limited here.

14 VICE CHAIR COCHRAN: I think the focus  
15 for us has been when we're looking at this as well,  
16 and considering the comments -- Grand Ronde has  
17 submitted some comments -- is to look at duplications.  
18 Where can we eliminate the duplicative efforts that  
19 are going on so that we keep the integrity of the  
20 regulation, what IGRA was trying to get at when it put  
21 this into the act, but also taking away those  
22 duplicative efforts that are taking away time and  
23 resources from the tribes.

24 So thank you for your comments,  
25 because I read them and I actually seen your

1 certificate too, so...

2 CHAIRWOMAN STEVENS: I think the two  
3 certificates are in Dan's possession.

4 ASSOC. COMMISSIONER LITTLE: One of  
5 the few authorities I have.

6 CHAIRWOMAN STEVENS: He's the  
7 commissioner that signs the certificates and has them,  
8 so...

9 ASSOC. COMMISSIONER LITTLE: I do  
10 appreciate your comments, because when we did issue  
11 the NOI, we did ask. This is one of the issues that  
12 arose and we truly, really want to hear from tribes to  
13 find out what challenges you guys are facing and ways  
14 that we can improve this, because it's important if  
15 something is in the act and something that the  
16 commission should be looking to improve so that tribes  
17 can utilize this. So thank you.

18 CHAIRWOMAN STEVENS: Yes, Linda.

19 MR. HELM: Linda Helm, Port Gamble. I  
20 haven't had a chance to thoroughly review the  
21 regulation, but we are interested in self-regulation  
22 and just from what I'm hearing, it would seem that if  
23 the benefits were greater for the tribe, that would be  
24 good, and if it were less burdensome, that also would  
25 help other tribes.

1 CHAIRWOMAN STEVENS: Absent any other  
2 discussion, we can talk about also sole proprietary  
3 interest. Scott, you look like you have something to  
4 say.

5 MR. WHEAT: Yeah, well. For the  
6 record, Scott Wheat, attorney for the Spokane tribe.  
7 Sole proprietary interest issues are very important to  
8 Spokane and I would imagine to all the tribes in this  
9 room. Of course we've submitted -- in our written  
10 comments we've addressed this issue.

11 To just summarize our written  
12 comments, kind of two principal points to make. One  
13 is that we often -- if one is to look back at a NIGC  
14 analysis of this issue, it's usually in opinion  
15 letters from NIGC attorneys and it usually involves  
16 like review of management contracts and collateral  
17 agreements, and obviously, as we discussed yesterday,  
18 that's going to come up when we're doing those  
19 documents. It darn well should. It's something that  
20 the NIGC should be looking for and keenly aware of.

21 One of the things we also wanted to  
22 point out too, though, that while we see the potential  
23 for overreaching and violation of the sole proprietary  
24 interest requirement in management contracts in  
25 collateral agreements, where we really see it is in

1 tribal state compacts.

2 Now, we understand that it's the  
3 Department of the Interior that approves or does  
4 nothing and deems it approved to the compact, but we  
5 also think that, you know, compacts to the extent that  
6 in a practical application result in sole proprietary  
7 interest, that, you know, that's within the NIGC's  
8 scope of authority as well.

9 So we would hope that the NIGC expands  
10 the areas in which it is looking for potential sole  
11 proprietary interest violations, because at the end of  
12 the day, we all know that's the very centerstone of  
13 IGRA. And to the extent we have violations, you know,  
14 the lawyers can talk as long as the day is about what  
15 those should look like, but what it boils down to is  
16 it means that somebody else is reaping the benefits of  
17 Indian gaming other than the tribe, who theoretically  
18 owns the casino.

19 I think we can all agree that that  
20 just flat shouldn't happen, but unfortunately it has  
21 been. There's commissions, you know, taking -- us  
22 taking action with respect to the Fond du Lac. The  
23 Ninth Circuit has taken action with respect to the  
24 Schwarzenegger in the Rincon compact.

25 We expect -- and of course the US



1 Supreme Court declined to review the Ninth Circuit  
2 decision, so it stands. It's a very positive  
3 development for Indian country. I think it provides  
4 NIGC lawyers a very good analytical tool. The Ninth  
5 Circuit analysis was sound, sound enough for the US  
6 Supreme Court not to touch it.

7           You know, we were encouraged to see  
8 that there were references to the decision in the Fond  
9 du Lac NOV. But as you know, the same, you know,  
10 provisions that the Schwarzenegger administration was  
11 demanding that the Rincon band were demanded of many  
12 tribes in Fond du Lac and there are actually existing  
13 compacts in California that are resulting in about  
14 \$350,000 of Indian gaming revenue being directly  
15 transferred into the state's general fund.

16           Now, you know, it's not as if I'm  
17 trying to put the blame at this commission's doorstep,  
18 but what we have here -- and there's reasons for that.  
19 We need to get this on the record here. Ever since  
20 Seminole, states have used the lack of a viable remedy  
21 in compact negotiations to extort taxes out of the  
22 tribes, and it's time to stop it and we finally have  
23 very good law from the Ninth Circuit that will allow  
24 us to put a stop to it. And we're very encouraged  
25 that the NIGC is taking a look at this issue and has

1 taken action on this issue.

2 On the one hand, you know, we want to  
3 say kudos to the commission and, on the other hand, we  
4 want to say there's a lot of work to be done out  
5 there. There is a lot of agreements that are in place  
6 that tribes are suffering under them that we believe  
7 directly violated the core principle of the  
8 requirement of IGRA that tribes be the owners, the  
9 effective owners of the gaming circuits.

10 The second point -- I can't believe  
11 I'm calling this a summary, but...

12 CHAIRWOMAN STEVENS: Excuse me. Did  
13 you say as long as the day is?

14 MR. WHEAT: Yeah, exactly. Hopefully  
15 I won't be that long. I swear I'll be like two  
16 minutes on this one.

17 What we've seen when it comes to sole  
18 proprietary interest is, you know, people are trying  
19 to get their hands on our money, and when it comes to  
20 that people can be supercreative, phenomenally  
21 creative. I mean, we can look at things and there's  
22 been agreements where, you know, tribes end up paying  
23 rent on land they own, that's effectively, you know,  
24 30 percent of their GGR that goes straight to a state.

25 I mean, my point is is lawyers

1 drafting regulations and rules, there are just,  
2 there's crazy stuff going on out there that you all  
3 aren't going to be able to anticipate and it's all  
4 going to be very fact specific. And I think your  
5 lawyers will attest to that in their collateral  
6 document review, but a lot of times you got to piece  
7 three or four of these things together and you find  
8 out that at the end of the day, you know, when you  
9 combine everyone else's cut from the tribe's revenue,  
10 when you look at the actual effect of those  
11 agreements, the tribe's receiving pittance compared to  
12 other interests.

13           So the point here is is I think that  
14 regulations -- we're skeptical that cutting  
15 regulations, trying to define sole proprietary  
16 interest is going to be able to anticipate all of the  
17 instances in which those issues may arise and also the  
18 fact and the nature of that analysis may make it  
19 difficult to set forth a bright line.

20           Hey, you know, we all work with  
21 lenders. They all love bright lines, but sometimes  
22 the world is too complicated to give them a bright  
23 line and this may very well be one of those  
24 situations. We're not opposed to it, but we're  
25 skeptical that that would be the right driver.

1           What we would suggest is that the NIGC  
2 continue to develop, really, its body of opinions on  
3 the issue when certain agreements, circumstances are  
4 put before you and your attorneys, you analyze that,  
5 you know. To those of us who are in this line of  
6 work, I think, you know, there's over 25, under 30,  
7 you know, written declination letters and different  
8 analysis of sole proprietary interest issues directly  
9 from the NIGC.

10           So you're kind of developing the body  
11 of administrative common law, if you will, to address  
12 that issue and that may be the more sound approach.  
13 So that's the second point, and I'll shut up.

14           CHAIRWOMAN STEVENS: I'm just teasing  
15 you, Scott. You know, I'll probably put Jo-Ann and  
16 Lael on the spot, because we've had pretty extensive  
17 conversations internally about this. We see that, the  
18 creativity. When we have approved management  
19 contracts or we have declination letters, you know,  
20 that body of work becomes sort of what, you know, both  
21 tribes and management, partners, lending institutions  
22 look at to guide them.

23           We have 92 of these opinions and these  
24 decisions around management contracts, lending  
25 instruments. I want to applaud our general counsel's

1 office and staff for putting these all together over a  
2 very long period of time and summarizing and having  
3 them inform our internal discussions.

4           You know, I see them usually first,  
5 unless they come back on appeal, management contracts.  
6 Certainly the general counsel's office see the lending  
7 instruments and we struggle with what is the universe  
8 of creativity that we can see and we have trouble  
9 defining that, and then the intricate balance, as you  
10 have mentioned yesterday, Scott, about when is it the  
11 trust's responsibility and when is it not an ideal  
12 deal.

13           Where you've got a tribe that may not  
14 be able to get partnership, whether that means in  
15 terms of management or partnership in terms of  
16 lending, anywhere else where there may be a lot of  
17 controversy around their activity, which increase the  
18 risks, and that they may be, because of the risk,  
19 subject to maybe less -- not average types of terms in  
20 the contract or in their lending instrument.

21           So when is it sole proprietary  
22 interest and when is it not a perfect deal and not  
23 interfering with what may be a very narrow opportunity  
24 for a tribe in terms of their business and financial  
25 development.

1           So, you know, I don't know, Jo-Ann, if  
2 you'd be comfortable in talking about some of those  
3 questions that we have, what we've seen over time and,  
4 you know, what -- quite frankly, you know, some tribes  
5 want us to, kind of collateral agreements, they're  
6 like, don't get in our business, and other tribes  
7 after it's been executed say, we got a bad deal here.

8           It is an issue, but what is the best  
9 way for us to address this. Right now we have one  
10 bulletin, yeah, one bulletin, that was issued in 1993.

11           MS. SHYLOSKI: We don't have a  
12 bulletin on sole proprietary interest. We have  
13 bulletins that talks about the difference between  
14 managing and consulting.

15           CHAIRWOMAN STEVENS: Right. So, you  
16 know, would a regulation be sufficient. I don't know  
17 if you would be able to summarize, Jo-Ann, sort of the  
18 history, what we've seen and what kind of questions we  
19 would have about what we would consider even if we  
20 don't have a regulation and what we do consider now on  
21 factors when we're looking at either management  
22 contracts or lending instruments might help inform  
23 this conversation.

24           MS. SHYLOSKI: Certainly. Well, it's  
25 interesting that, you know, the agency began its

1 worked in 1993 and really did not address this mandate  
2 in IGRA about tribes having sole proprietary interest  
3 in the gaming activity until about 2003, and as the  
4 chairwoman mentioned, since that time we have issued  
5 92 advisory legal opinions.

6 That is something that folks can  
7 submit their agreements or proposed agreements to the  
8 Office of General Counsel's office for a determination  
9 or a legal opinion about whether they violate this  
10 mandate or whether it's a management contract.

11 In some respects those have been legal  
12 -- those legal opinions have been very helpful to  
13 tribes, enabling tribes to renegotiate their deals or  
14 to negotiate a better deal that hasn't been executed,  
15 but in other instances folks have said this is just a  
16 legal opinion; it's not agency action, and so  
17 therefore it's not worth the paper it's written on.

18 And so one of the things that we'd  
19 like to hear from you all is the process for sole  
20 proprietary interest responses. Do you think that the  
21 legal opinion, advisory opinion process is working.  
22 Would you like to see a more formal process.

23 Since the agency's inception, we've  
24 only issued three NOVs, Notices of Violation, which  
25 are agency action by our chairwoman for sole

1 proprietary interest violations, and our chairwoman in  
2 her short term has already issued two of them. So we  
3 certainly would like feedback from you on that  
4 process.

5           Being agency action, those decisions  
6 can be appealed to the full commission and the full  
7 commission can render a final decision, which then can  
8 be litigated in federal court. So if tribes are  
9 thinking that having this issue be developed through  
10 the federal courts, it may be better for that to be  
11 done via agency action as opposed to legal opinion  
12 letters.

13           The other component of that we'd like  
14 to hear from you all about is the mandate itself.  
15 Over time we've taken a look at sole proprietary  
16 interest and what it means and there are primarily  
17 three factors that we've looked at. The length of the  
18 term that a third party is involved in the tribe's  
19 operation. You know, generally under management  
20 contracts folks can only be involved -- can only  
21 manage between five and seven years, depending upon  
22 the circumstances. So we look at the length of the  
23 term.

24           We also look at the amount of revenue  
25 going to that third party and whether there is a



1 significant risk that that third party is undertaking  
2 that justifies the amount. Generally we have found  
3 that in the NOV -- in the Notice of Violation context  
4 we often find that the third party is the primary  
5 beneficiary of the gaming activity, not the tribe  
6 itself.

7 Then lastly, we look at control, who's  
8 making the decisions here. Again, we find that we  
9 generally find that the third party has some sort of  
10 control over the gaming regulation or the operation  
11 itself. So those are the issues that we're grappling  
12 with and we'd love your feedback on.

13 MR. WOOLSEY: Hi. Tim Woolsey from  
14 Colville tribes. On that third factor -- this is sort  
15 of what I was asking about yesterday -- I understand  
16 how that the control factor has a significant impact  
17 in the context of a management contract, right,  
18 because you don't want someone controlling it without  
19 the chairman or the chairwoman approving that  
20 management contract.

21 But what if there actually is no  
22 control by the third party, but they still have those  
23 first two elements? They're getting significant  
24 revenues and the length of the term is long. I mean,  
25 that to me still highlights that there is a -- there

1 could be a proprietary interest involved, and I just  
2 would like the commission to really think about that.

3 Because again, as Scott pointed out,  
4 there is a lot of different creative instruments out  
5 there for a variety of situations that aren't  
6 management oriented, like a lease, for example. So I  
7 really would ask you to really think about that.

8 MS. SHYLOSKI: And we are. We are  
9 certainly open to hearing from you on what needs to be  
10 looked at for purposes of sole proprietary interest,  
11 what you think the factors are and your analysis on  
12 it.

13 As Lael mentioned yesterday, you know,  
14 you often see contracts where the same third party is  
15 getting a piece of the pie for doing different things.  
16 They may be providing funds, so there's a financing  
17 contract. They may be developing the operation, so  
18 there's a development contract. They may be  
19 consulting and so they're getting money there, and  
20 then when you add it all up, they're getting the  
21 benefit of the tribe's operation through doing all  
22 these different things and dealing with all these  
23 different issues.

24 MR. TAHSUDA: Madam Chairwoman,  
25 commissioners, I know you guys have heard this. I'm

1 sorry. My name is John Tahsuda. I represent a number  
2 of tribes in Oklahoma, and this is, as you know, a  
3 particularly hot topic for tribes in Oklahoma and I  
4 know you guys have heard a lot of this. I want to  
5 share with brother tribes up in this part of the  
6 country.

7 The experience in Oklahoma has been  
8 with the opinion letters dealing with this issue and  
9 stuff and has been, I'll be generous and say an uneven  
10 experience. Part of it, you know, has been some, I  
11 think, very different opinions from the tribes and  
12 with the commission historically about the role of  
13 this definition.

14 Honestly, there are some tribes, I  
15 think, that believe this is not even an issue that the  
16 commission should be involved in. I don't think  
17 that's a consensus opinion. I think there are a  
18 number of tribes there that think this is a legitimate  
19 exercise by the commission.

20 But one of the ways this is played out  
21 historically with the commission that has caused a lot  
22 of heartburn is the use through the opinion letters  
23 and actions taken by the General Counsel's Office in  
24 which there was no recourse by a tribe or by the  
25 tribe's partner, a vendor, who was brought into this.

1                   In Oklahoma we have a lot of  
2 facilities. There's a lot of operations. A lot of  
3 them are not in really favorable market areas and we  
4 have a history of, I think, being very creative in how  
5 we have been able to partner with third parties to  
6 develop facilities in a way that has allowed them to  
7 be built, operated and run to the benefit of the  
8 tribe, but have had to be creative in terms of length,  
9 in terms of issues that have at least been called  
10 control by the commission in the past, and also on the  
11 revenue side.

12                   In any one of these agreements -- and  
13 I know a lot of you guys know this, but out of those  
14 three factors identified very well by Jo-Ann, any one  
15 of those can be more heavily weighted at any  
16 particular deal depending on what are the needs of the  
17 deal.

18                   So I think at the root of it -- you  
19 know, over time in the discussions and particularly  
20 with the prior chairman, there was a lot of discussion  
21 going the direction of is there a way at least to make  
22 these decisions ultimately agency action, so that we  
23 have both an avenue within the commission through the  
24 commission's appeal process to deal with it, and,  
25 following that, to actually have, you know, then an

1 administrative record to go to the courts with.

2           There is a reason, I think, that there  
3 haven't been a lot of NOV's and legal challenges, is  
4 because a lot of the tribes, on the advice of  
5 attorneys, felt like it was very unfavorable to them  
6 in trying to express their views in fighting a legal  
7 opinion from the commission that wasn't agency action,  
8 that would go to the federal courts, without any sort  
9 of administrative record or factual record being built  
10 on it. Essentially be arguing purely myriad of law  
11 without understanding the mechanics of the deal for  
12 the tribe and they just felt often that, I think, that  
13 that was a very unfavorable legal position for them to  
14 be in.

15           So there was a real reluctance to  
16 challenge decisions made in the past based off of  
17 these opinion letters. Again, there were very few  
18 NOV's that came out of it because a lot of the tribes  
19 just backed down and said, okay, we'll figure out some  
20 other way to deal with this.

21           I think it's, you know, again, the  
22 three factors in this, I think, we have become adept  
23 at manipulating those, to the advantage of the tribe  
24 in most cases. Understanding that there are times  
25 when the tribe may not have had the best advice or the

1 best facts of its own to operate on and that there is  
2 (inaudible).

3 I mean, I would say there's probably,  
4 again, not a consensus view, but maybe a majority  
5 view, but there is a role for the commission to play,  
6 ultimately as a trust role and trust responsibility to  
7 the tribes in looking after those interests, but I  
8 think it's a very difficult one.

9 We're still working on our -- and you  
10 had some response, but we're still working on what may  
11 end up being our final response or will hopefully be a  
12 consensus response from the Oklahoma tribes on this  
13 issue. One of the mantras that we've had ultimately  
14 is that we think that, with the ultimate goal of  
15 protecting the tribe's interest and making sure the  
16 tribe is the primary beneficiary, that the tribes need  
17 to have the maximum economic flexibility to do what  
18 they have to do to make their gaming operations  
19 successful and a benefit to the tribe.

20 We don't want to see sort of an  
21 informal agency process get in the way of that, at  
22 least in a way that we don't have an effective way to  
23 present our own views in opposition to them. Thank  
24 you.

25 CHAIRWOMAN STEVENS: So thank you,

1 John. So what I'm hearing is there is some desire to  
2 have some formal process, that we create an  
3 administrative record, something that the tribe can  
4 get their hands on. Because the opinions are not  
5 necessarily -- I mean, in some ways they do help the  
6 tribe, in other ways they don't.

7 But also addressing Scott's concern is  
8 how do you get this into a formal process, you know, a  
9 regulation could not encompass every possible nuance  
10 to very creative deals. That's where we're struggling  
11 with this.

12 We hear what you're saying. We also  
13 understand, because we see every -- just when we  
14 thought we knew every deal twist, there's another one  
15 that's presented to us. So I would be interested in,  
16 you know, for the tribes that you represent, how do we  
17 merge and how do we bring those two things together,  
18 the desire for final agency action and by what method  
19 do we get there a reg can't encompass that might  
20 actually a reg might encroach in your ability to be  
21 flexible.

22 Scott, I'm going to turn over here for  
23 just a second and then we'll go back to you. I'm  
24 sorry. I didn't see your hand.

25 MR. SMALL: That's all right. I'm not

1 an attorney, so I won't be too long. When you were  
2 mentioning you had 92 legal opinions out there, one of  
3 the things that I'm concerned about in these opinions  
4 is does tribe -- would tribes have access to these  
5 opinions and then our tribes in particular, the  
6 Shoshone-Bannock tribes, would be the lending  
7 institutes, your opinions on those.

8 We're entering into a loan through a  
9 bank here and I get concerned with a lot of the  
10 language that they're putting in there. So is there a  
11 chance that -- I know they're just opinions, but it  
12 still would be a lot of help for us in negotiating  
13 these terms on our loan.

14 MS. SHYLOSKI: You are welcome to  
15 submit your proposed, unexecuted agreement to our  
16 Office of General Counsel for a legal opinion on it.

17 MR. SMALL: I was just looking for  
18 maybe some of your past legal opinions. We don't need  
19 to know the tribe's name or those kinds of things,  
20 maybe just some of the bare bones opinions about  
21 those.

22 MS. SHYLOSKI: And that's where we  
23 have been heavily criticized, because due to the  
24 Freedom of Information Act, a lot of these opinions  
25 when we release them have the numbers and other



1 proprietary business information redacted from them  
2 and so they aren't as helpful to folks as they would  
3 be if those numbers were in them, but we're not able  
4 to release them with the proprietary business  
5 information in it.

6 MR. SMALL: Okay. I'm just curious.

7 CHAIRWOMAN STEVENS: I think the  
8 combination of the two, are they posted?

9 MS. SHYLOSKI: They're on our website  
10 --

11 CHAIRWOMAN STEVENS: Redacted.

12 MS. SHYLOSKI: -- redacted.

13 CHAIRWOMAN STEVENS: So I think what  
14 tribes have been having to do is -- I see the  
15 attorneys shaking their heads -- you go on our website  
16 and you look at what you can look at and then help  
17 that inform your negotiation and then submit your  
18 unexecuted documents prior to finalizing them and  
19 doing sort of a two-prong approach.

20 Again, this is where we get  
21 criticized, because it's rather time consuming for  
22 you. It may slow your deal down a little bit, but I  
23 would say that most of the banks or the lending  
24 institutions are aware now of what we're looking for  
25 and, you know, they're even to the point where

1 they're, from what I've seen, okay with submitting,  
2 you know, unexecuted instruments so as to avoid their  
3 deal going sideways at the last minute, because we  
4 weren't included to tell you -- you know, there's  
5 certain provisions that are going to be problematic.

6 So I think that's what you'd probably  
7 have to do. If you have folks negotiating this for  
8 you or your attorneys, they are on our website. It's  
9 not going to be complete, but if you can include us  
10 early and often in your deal, that would certainly  
11 help your time frames.

12 MR. SMALL: Thank you.

13 CHAIRWOMAN STEVENS: Scott.

14 MR. SMALL: I'm sorry. I had an  
15 attorney bother me from the back here, and you  
16 probably all know her. It's Sharon House, and she  
17 does represent our gaming commission. I believe she  
18 had some type of a comment or...

19 MS. HOUSE: Good morning. Again, my  
20 name is Sharon House. One of the recommendations that  
21 I'd like to make again is to go back to the bulletins.  
22 I think it was expressed very clearly here that there  
23 is a bulletin, but it's from '93 or '92. That's a  
24 long time ago.

25 I mean, you've got so much more

1 documents and so much more things that have happened,  
2 is that maybe one of the recommendations would be is  
3 to do a bulletin that encompasses a number of the  
4 issues you've just brought up. Again, I mean, on sole  
5 proprietary interest, dividing it into some of the  
6 issues that were just expressed here.

7           And I think it is time for another  
8 bulletin. That's a long time since then.

9 Unfortunately, I remember that. But anyway, it would  
10 seem that that takes into consideration what Scott's  
11 talking about, is not having a regulation, and it also  
12 takes into consideration the tribe's experiences and  
13 it doesn't harm you in regard to the Freedom of  
14 Information Act.

15           It allows all the information to go in  
16 there with some of the opinions, the legal opinions,  
17 without stating, you know, in detail and looking at  
18 them specifically, but maybe it could be categorized  
19 in a little different manner. And I heard that here,  
20 is that there's different categories and how you want  
21 to look at it in different situations and that way we  
22 know you need, you know, a final agency action.

23           But I think this would be very  
24 helpful, because that takes a long time to have the  
25 tribe come forward with all its documents, submit them

1 to you. If there was some type of guidelines and  
2 bulletin ahead of time, then they would know exactly  
3 which documents really needed to come forward to the  
4 commission and that might save both the tribes and the  
5 commission a lot of time in going through the  
6 preliminaries. Thank you.

7 CHAIRWOMAN STEVENS: Okay. You're up,  
8 Scott, and then we're going to take a break and cut  
9 off the lawyers. I'm kidding.

10 MR. WHEAT: No lawyers can talk after  
11 the lunch break too. Just really quickly. We've been  
12 dancing around the primary beneficiary issue and so I  
13 just wanted to touch on that too. I mean, that's a  
14 separate, you know, requirement of IGRA, and I think  
15 you may well have situations that could arise where  
16 you don't necessarily have a sole proprietary interest  
17 violation, but you do have a primary beneficiary  
18 violation.

19 I think you start getting into, you  
20 know, perhaps less of control issues in the  
21 three-prong analysis that you -- sole proprietary  
22 interest and more just, you know, straight how much  
23 revenue is going out the door to other entities and  
24 you very well get, you know, these cumulative analysis  
25 primary beneficiary concerns.

1                   And I could see another prong in  
2 forming that in the analysis would be as you look at a  
3 sole proprietary interest, if there's a lot of money  
4 going out the door, why is it going out the door. Is  
5 it going out the door because it's a high-risk loan,  
6 you know, is there substantial services being  
7 provided, or is it just simply a tax being called  
8 something else.

9                   But at the end of the day, if that  
10 results in, you know, if you look at what the state's  
11 getting, what the county's getting, what the sheriff's  
12 getting, what the developers are getting, what the  
13 managers are getting, and the tribe's getting about,  
14 you know, one or two cents on the dollar, I would  
15 submit that you probably got primary beneficiary  
16 issues to be looking at.

17                   So we would like to see NIGC continue  
18 to develop its analysis on primary beneficiary as  
19 well.

20                   CHAIRWOMAN STEVENS: Would we be  
21 expecting your client's offerings on primary  
22 beneficiary if you haven't submitted anything yet?

23                   MR. WHEAT: We've got some, but we  
24 mention it in our written testimony that if you'd like  
25 to go into it further. We've on behalf of some of our

1 clients been able to address that in some ways.

2 CHAIRWOMAN STEVENS: I think it's safe  
3 to say that we see that. I'm looking towards Jo-Ann  
4 because those are the, you know, OGC, our General  
5 Counsel's Office is the ones that are looking at these  
6 things and we wonder about, you know, where does sole  
7 proprietary interest end and primary beneficiary  
8 begin. So we would be interested in hearing your  
9 client's thoughts.

10 MR. WHEAT: Thank you.

11 MS. SHYLOSKI: We'd appreciate them.  
12 Thanks.

13 MR. WHEAT: Happy to provide them.

14 CHAIRWOMAN STEVENS: It's good to hear  
15 that the things that we were struggling with  
16 internally, that clearly that's been on the minds of  
17 tribes and their representatives. So it's not just us  
18 wondering about this.

19 MR. WHEAT: Yeah. You're not crazy,  
20 or we're all crazy. One of the two.

21 MR. SPENCER: Mike Spencer, Spokane  
22 tribe. On the primary beneficiary issue, I agree with  
23 Scott that we need to take a good look at who's  
24 sharing in the revenues and what the percentages are  
25 being shared by what entities and what revenues are

1 actually being enjoyed on behalf of the tribe.

2 I believe as John was mentioning  
3 earlier, you know, sometimes in order to get an  
4 operation up and running, it's fairly expensive and  
5 more money has to be divided into more places at the  
6 onset in order for the tribe to enjoy, you know, any  
7 benefit from the gaming operation at all.

8 So we need to carefully analyze, you  
9 know, what is the particular situation of that tribe,  
10 what's involved, and what are the risks associated  
11 with partners coming in assisting that tribe to enjoy  
12 a successful gaming operation.

13 So I hope that we'd look at each one  
14 of those situations independently and analyze, you  
15 know, what is a realistic expectation of sharing of  
16 revenues for the tribe and the partners that would be  
17 involved to help it be successful.

18 CHAIRWOMAN STEVENS: Thank you. So  
19 why don't we take a 15 minute break and we'll be back  
20 and start to talk about other parts of group five, in  
21 particular, process on Class III.

22 (Recess taken.)

23 CHAIRWOMAN STEVENS: Let's get started  
24 again. We do want to open it up to -- we've been  
25 talking this morning about sole proprietary interest

1 and self-regulation. The next thing that's on our  
2 agenda for this morning, and again, I want to  
3 reiterate that you can jump in and talk about any of  
4 the parts at any time, groups one through five, and  
5 any of the drafts that we have out there.

6 The next part we want to talk about is  
7 Class II minimum internal control standards and Class  
8 III technical standards. One of the things I wanted  
9 to talk about -- I'm just looking here. Might have  
10 gone off script. I think I went off script into the  
11 afternoon. There we go.

12 We do want to talk about how to  
13 proceed with MICS generally and technical standards.  
14 And that last comment there says NOI asks how to  
15 proceed. The Tribal Gaming Working Group, which is an  
16 independent, sort of ad hoc group of tribal  
17 representatives that is not part of NIGC, has turned  
18 -- several tribes have turned into some of the work  
19 products for that group as alternatives to the Class  
20 II minimum internal control standards and the  
21 technical standards.

22 We're looking at those right now, but  
23 the last -- over the time that we've been here and  
24 through the Notice of Inquiry and over these past 10  
25 consultations that we've done on these subjects, we



1 hear again and again the desires from tribes to have a  
2 tribal advisory committee again. Not necessarily  
3 under the terms or structure that they were done in  
4 the past, but harkening back to days when the advisory  
5 committee had facilitators, they were able to get some  
6 work products out, and that they were well informed by  
7 experts in the industry.

8           So I do want to talk about how should  
9 we proceed. I know yesterday we talked about Class  
10 III and authorities and especially in light of the  
11 CRIT decision, but we do want to talk about process.  
12 I would like to know, you know, how might we proceed  
13 with Class II, Class III minimum internal control  
14 standards and technical standards.

15           We really are seriously considering a  
16 tribal advisory group, and there's some basic  
17 questions and I know that there was -- I think Glen  
18 had some time constraints and wanted to make some  
19 comments for the record before he had to leave today.  
20 I'm not sure if you're prepared to do that right now.

21           MR. GOBIN: Well, I guess, first off,  
22 my name is Glen Gobin, vice chair of the Tulalip  
23 tribes. I want to say on behalf of our chairman, Mel  
24 Sheldon, who can't speak right now -- I've got the mic  
25 -- I just want to say thank you to all of the

1 attendees that came in for the tradeshow that we had  
2 and all those that stayed for the consultation and  
3 continued on here to Friday to discuss some very  
4 important issues that we have.

5 I again want to commend the commission  
6 for their following through with what we call a very  
7 aggressive schedule to go back and consult with tribes  
8 about issues that they're facing and moving these  
9 forward in a good way.

10 Through that process, though, even  
11 prior to the regs when they came out, there were a  
12 number of tribal comments put out regarding the regs  
13 that are in place regarding Class III and tribes  
14 commented on those. Tribes have commented both on  
15 them since then with the new commission that's in  
16 place and with Class II minimum internal controls and  
17 technical standards.

18 So there's been a lot of, lot of  
19 statements made. There's a lot of information out  
20 there, there's a lot of tribal comments on the record,  
21 and so Tulalip is in support of an advisory group that  
22 might be formed that would move forward and address  
23 the MICS Class II as well as the technical standards  
24 from Class II.

25 Again, I see there's none being

1 proposed for Class III, but I guess I'll just make the  
2 statement on the record again. We just feel that  
3 those regs just need to be repealed and dealt with in  
4 that manner.

5 But the advisory group for Class II,  
6 we would support moving forward with that insomuch as  
7 it doesn't create a whole nother process of selection  
8 and cause the time frame to continue and we get into  
9 -- and inadvertently cause it to extend out further.  
10 And so as long as that can happen, we're fully in  
11 support of that, because I think done correctly it  
12 would speed up this process and start moving it along  
13 smoother and also free up attention to some of the  
14 other issues that are being addressed in the previous  
15 consultations like yesterday and today.

16 And so we would support that going  
17 forward. And that was it. So thank you very much. I  
18 do apologize that we do have, both Mel and I, have a  
19 previous commitment as well across the hall. We have  
20 a long-time employee, a tribal member employee, that's  
21 retiring today and so we're going to be honoring him,  
22 so...

23 CHAIRWOMAN STEVENS: Thank you and  
24 best of luck over there and our well wishes for that  
25 employee. So on the agenda we're talking about Class

1 II. It would be really great if we could get some  
2 feedback. We don't have any drafts on this except  
3 what was published in 2008 on Class II MICS and the  
4 technical standards.

5 As I said, the Tribal Gaming Working  
6 Group, the independent working group of tribal  
7 representatives, has proposed in part an alternative  
8 Class II MICS and technical standards. My  
9 understanding is that document is not yet complete.  
10 There is going to be an additional submission. I know  
11 tribes have requested to see it and actually probably  
12 has been circulated by the Indian working -- or the  
13 Tribal Gaming Working Group and many folks have seen  
14 it.

15 I would like to know how the Class II  
16 MICS that have been posted or that have been finalized,  
17 that were finalized in 2008, although not effective  
18 yet, any comment that you might have about those.  
19 Those were promulgated in 2006 to 2008 through a  
20 tribal advisory committee that the NIGC sponsored.  
21 We'd like to know your thoughts on that process.

22 If these -- what, if anything, in  
23 these standing regs are useful, where we might see  
24 improvement, and also the technical standards. And  
25 technical standards are for Class II machine game play

1 machines. So, you know, in this particular region of  
2 the country there are quite a few Class II machines,  
3 but not necessarily the kind -- the numbers that we  
4 would see, say, in Oklahoma or elsewhere, but still  
5 important.

6 So if you all have some information or  
7 observations about those standing regulations that  
8 would help inform what we'd like to do and how we  
9 should proceed. I will say that this commission has  
10 been -- we've been very clear about getting some  
11 closure to these, these regulations while we're here.  
12 They've been pending since about 2004.

13 It seems like the advisory committee  
14 started in 2004, you know, different iterations of an  
15 advisory committee evolved over time and by the time  
16 we came into office they were still on the back burner  
17 as not yet effective or seeing that they needed to be  
18 revised already.

19 We've heard from people who sat on the  
20 advisory committees previously informing our decision  
21 on how we can proceed with Class II or just MICS  
22 generally in technical standards, that has been  
23 helpful.

24 So, you know, I'd like to open the  
25 floor, especially from the regulator standpoint, on

1 these standards would be helpful. Yes, sir.

2 MR. SMALL: Nathan Small with the  
3 Shoshone-Bannock tribe. When I hear about these  
4 working groups and the advisory groups and those kind  
5 of things, I'm just wondering what role does the  
6 National Indian Gaming Association have on a lot of  
7 these issues. Are their comments and all of their  
8 stuff that they put out, is that not being listened to  
9 or are they being eliminated from this whole process  
10 or have they been a part of this process? I'm talking  
11 about the National Indian Gaming Association.

12 CHAIRWOMAN STEVENS: Yeah. They've  
13 been participating and their member tribes, you know,  
14 I assume their member tribes are directing their  
15 efforts. And we do see them. They have been  
16 attending almost all of these and under the Executive  
17 Order 13175, authorized tribal organizations, you  
18 know, certainly can participate in our consultation  
19 process.

20 So we do hear from them, we do  
21 consider what they have to say, because their  
22 organization is made up of tribal governments. We are  
23 careful that, and we've been told on many occasions  
24 that, while, you know, tribes appreciate being either  
25 members of NIGA or appreciate their input, that they

1 don't speak for all of their -- all tribes.

2 So we balance. We consider what they  
3 say, but we also consider that tribes, you know, as  
4 sovereign governments will speak for themselves and so  
5 we listen to all of it and they do participate. So  
6 does that answer your question?

7 MR. SMALL: Yeah. I was just curious  
8 as to the relationship that they have now with the  
9 NIGC.

10 CHAIRWOMAN STEVENS: Are you asking if  
11 they're fighting with us?

12 MR. SMALL: No. I was one of the  
13 officers back in the '90s when we first started --  
14 Indian gaming was first started and we -- I felt at  
15 that time we had a lot to do with the formation of a  
16 lot of these regulations and we either fought them or  
17 we were for them, those kind of things. But that was,  
18 you know, back in 1990, I think, a few years after it  
19 first started there.

20 I'm not affiliated with them right  
21 now, but I know our tribe is members of the NIGA, but  
22 I just haven't been attending a lot of the stuff, so  
23 I'm not quite sure where they stand and then when I  
24 hear this today I was thinking maybe they're kind of  
25 going to the wayside here.

1                   CHAIRWOMAN STEVENS: No. Actually,  
2 they've been involved and, from what I understand,  
3 they are communicating with their member tribes and  
4 their member tribes are communicating with us. We do  
5 get -- I think we do get -- yeah. Are you here?  
6 You're hiding. There she is. Danielle Her Many  
7 Horses from NIGA. So they've all been -- you've all  
8 been attending, right?

9                   MS. HER MANY HORSES: Yes.

10                  MR. SMALL: I didn't want to cause a  
11 fight.

12                  CHAIRWOMAN STEVENS: Yes. We're going  
13 to have a microphone come around to you.

14                  MCGHEE: Hi. My name's Linda McGhee.  
15 I'm with the Poarch Creek Indians, and I was on the  
16 2008 MTAC sponsored by NIGC, and I am also a member on  
17 the TGWG, the working group that's working right now.  
18 We do have a lot of tribal representation in that  
19 group and we are trying to keep contact open between  
20 NIGC. And let me tell all of you all, you probably  
21 already know this already, but this new commission has  
22 been more than willing to listen. They might not  
23 agree, but they're still willing to listen and take  
24 into consideration things that are brought to them.

25                               So you know, if our ideas on the new



1 MICS -- what we're doing, we're trying to rewrite a  
2 draft to submit to NIGC that takes out a lot of the  
3 policies and procedures that were in the regs. We  
4 feel like that in the old regs with NIGC had a lot of  
5 policies and procedures that weren't needed. Those  
6 need to be designated by your tribal regulators to  
7 tell you how to do something.

8 NIGC, you know, tells us we need to do  
9 something, but it's up to the individual tribes, in  
10 our opinion, to say how they're done, you know,  
11 whether or not you have this or that, and that's  
12 really what we're trying to work on. We're trying to  
13 work on getting a new set of regulations and present  
14 them to the NIGC. They may agree with us and they may  
15 not, but we are keeping in contact with NIGA and with  
16 NTGCR and a lot of the tribal groups out there.

17 If you were missed in any of the  
18 notices or anything, if you'd give me your email  
19 address, I will see that you get the documents that  
20 we're working on.

21 CHAIRWOMAN STEVENS: Thank you. Do we  
22 have tribal regulators that have hands-on with the  
23 Class II MICS and technical standards for Class II  
24 that might be able to inform sort of what your  
25 experience with them has been?

1 MS. MCGHEE: Linda McGhee again. I  
2 just wanted to say, I am director of compliance and we  
3 do our internal audits and we do have hands-on with  
4 all of that stuff, and the biggest problems we ran  
5 into, a lot of the regs for Class II were from Class  
6 III and we've had a difficult time auditing and  
7 regulating those regs to match our floor.

8 CHAIRWOMAN STEVENS: Scott.

9 MR. WHEAT: Scott Wheat. I just put  
10 on a different client hat here, since you asked the  
11 question. I know we also represent the Rincon Band of  
12 Indians out of San Diego County, and they actually  
13 have a staff person that the tribe sends and she's on  
14 the committee.

15 My experience with that committee is  
16 you have some of the best technical folks, regulators,  
17 out there in Indian country and they're doing some  
18 very good things. They're putting in a lot of time  
19 and I really want to, you know, thank the tribes that  
20 permit their staff to climb around and sit on that  
21 committee. They're producing good work and so we just  
22 wanted to speak to that and wrap around here in the  
23 Pacific Northwest and Spokane and echo Tulalip's  
24 comments that we support their work and hope that  
25 NIGC's going to think real hard about implementing

1 these.

2 CHAIRWOMAN STEVENS: We will and we  
3 have. They've submitted part of the work to us that  
4 they've been doing and the tribes that are members or  
5 have submitted those an alternative and our staff is  
6 in the process of evaluating that and asking sort of  
7 inquiring questions about the results that they come  
8 to.

9 I think even the group is asking  
10 clarifying questions of our staff as they move along  
11 when it's needed. So we are taking them into  
12 consideration. We're seriously considering what  
13 they've offered us.

14 You know, when we were down at the  
15 last consultation in Rincon, a number of tribes  
16 expressed a desire for us to publish what that group  
17 has, you know, worked on or that a tribe has submitted  
18 on their behalf as a tribal government as an  
19 alternative standard and we're certainly considering  
20 that.

21 We also understand that we don't want  
22 to circulate something that's not complete. I  
23 understand that the group is still working to make it  
24 a full, complete, polished, scrubbed document so that  
25 tribes have everything they need to make comment on

1 those.

2 So to answer your question, we are  
3 considering them seriously and what to do with them  
4 and how to have those inform our process as we move  
5 forward.

6 MR. TAHSUDA: Thanks. I'll do this  
7 again in the same vein. I know that the commissioners  
8 have heard most of this before. I want to say this  
9 too as a part of this offering thoughts mostly from  
10 Oklahoma. The Oklahoma tribes have done a lot of  
11 thinking on this.

12 But we ask and asked the commission  
13 early on in doing this in consultation process a  
14 little differently than the prior commission had done  
15 it and one of the purposes we suggested that would be  
16 useful out of this was allowing tribes from different  
17 parts of the country to participate with their sister,  
18 brother and sister tribes around the country to share  
19 and that's a part of the reason I'm here and want to  
20 do this and share this with you.

21 So in that same vein, again, I think  
22 commissioners have heard this probably more than  
23 anyone from us, but from our perspective -- and again,  
24 in Oklahoma we have a huge variety of facilities.  
25 Many tribes operate more than one facility and some

1 tribes operate as many as 15 or 16 facilities.

2 The regulatory side is, of course, of  
3 paramount importance, but we've always considered that  
4 there has to be -- again, in this notion that there  
5 has to be benefit to the tribe, the cost of regulation  
6 can not become so high that it defeats the purpose of  
7 gaming being of benefit, an economic benefit to the  
8 tribe.

9 So going back several years in some of  
10 the discussion we had in the prior commission, we put  
11 forward to them and sort of challenged them on the  
12 basis that they need to consider their attempts in  
13 developing regulations with the tribes in the same  
14 manner that other federal agencies do.

15 And that is that they have to, amongst  
16 other things, consider the cost effectiveness to the  
17 regulated group of these federal regulations. And so  
18 we had some disagreement about the cost of the  
19 regulations, we did our own economic studies and the  
20 costs of various proposed regulations by the  
21 commission over several years.

22 But I think that is something that we  
23 have -- I know a number of Oklahoma tribes are  
24 participating in the work group. That has also been  
25 amongst the goals that we have hoped to achieve out of

1 the working group and working with the commission now,  
2 is to come up with the best Class II MICS possible at  
3 the most cost effective way to deliver that.

4 And as Linda said, one of those ways,  
5 I think, is not to have the commission mandating how  
6 you're going to actually regulate in your own  
7 facility, but to mandate the principles of what needs  
8 to be accomplished through the regulation, but let the  
9 tribes figure out, do they own -- and we have very  
10 experienced, as almost all tribes in the country do,  
11 very experienced regulators.

12 They know how to achieve those  
13 principles of regulation in the best way they can do  
14 in their facility. So we have actually regulators and  
15 operators participating in the group, participating in  
16 discussion, so that we can hopefully at the end of  
17 this have a set of regulations that are not only sort  
18 of good from the legal and regulator side, but the  
19 operators can use effectively in a way that's  
20 ultimately to the benefit of the tribe and the tribe  
21 ultimately is gaining the most economic benefit  
22 possible from its gaming operations. That's just a  
23 thought.

24 CHAIRWOMAN STEVENS: Do we have any  
25 other contribution on the Class II MICS technical

1 standards, any questions? We're over here  
2 contemplating what we should do. I hate to jump to  
3 the afternoon section. There may be people who are  
4 specifically coming in only for that. I'd hate to --  
5 you know, we sent the agenda out in advance and  
6 however also understand that there may be people who  
7 need to leave.

8           If there are issues with any parts of  
9 the regulations, either what we've touched on  
10 yesterday, this morning, or, you know, you need to  
11 address your concerns on this afternoon's agenda  
12 because of your schedule, we certainly open the floor  
13 for comment on any parts of this on any of the issues  
14 we need to talk about. Yes, sir.

15           MR. OSBORNE: Madam Chair, I'm Marvin  
16 Osborne with the Shoshone-Bannock tribes gaming  
17 commission. We too want to commend the current  
18 commission and your staff for the work you've done and  
19 to put this commenting period out to make a new stab  
20 at regulatory requirements, to take a good hard look  
21 at the current Class III issues and how tribes feel  
22 about them and opening the door to another avenue of  
23 Class II that, I think, needs better understanding.

24           A good look at it, because it sounds  
25 to us that there's opportunities, you know, more

1 opportunities, and if we can get the approval, the  
2 authority to work with that with NIGC's backing, we  
3 would be glad to look at those. So we appreciate all  
4 the hard work you guys have done and I think we want  
5 to look at these avenues.

6 CHAIRWOMAN STEVENS: Thank you. We  
7 appreciate that comment. You know, and also, we're  
8 always open to speaking of the processes, we're always  
9 open to hear your feedback on how we're doing in this,  
10 this and other processes that we undertake. We're  
11 always open to improvement and remain flexible in how  
12 we approach tribes when we undertake this and other  
13 endeavors. This one is, as Scott said yesterday, an  
14 epic journey. Yes, sir.

15 MR. MINKER: I'd like to comment. My  
16 name is Fred Minker. I'm with Jamestown S'Klallam  
17 tribe gaming commission, the director. We all know  
18 542 is not enforceable to all most of us tribes,  
19 though there are some tribes that have adopted it as  
20 their standard in some states.

21 I would -- there are a lot of casinos,  
22 ours being one, who have used the information in 542  
23 to help devise our internal controls and we find it  
24 very helpful. I would be -- I would be disappointed  
25 if that information was just wiped out. I think that



1 change the name or whatever, call it best practices in  
2 the gaming industry, just have a section on your  
3 website for best practices that people can go to,  
4 utilize what they need for formulating their internal  
5 controls or whatever.

6 Don't make it an enforceable  
7 regulation, because a lot of people use that. NIGC  
8 has gleaned this information over the years from  
9 people that have been gaming for a hundred years.  
10 This information is not new information. It's stuff  
11 that people before us have learned the hard way, and  
12 there's no sense in us going out there and learning  
13 the same information the hard way, you know, there's  
14 no sense in reinventing the wheel.

15 So I would like to see the information  
16 stay in some form that makes it useable for anybody  
17 that needs it.

18 CHAIRWOMAN STEVENS: Yes, Linda.

19 MS. HELM: Linda Helm. This is also  
20 regarding 542. Just a question I had regarding our  
21 external audit. I'm wondering what would happen,  
22 since the external audit is audited to the MICS.

23 CHAIRWOMAN STEVENS: Well, we have to  
24 factor that in. We just had a conversation internally  
25 about this yesterday, about, you know, what outside

1 auditors are auditing to and confirming that in fact  
2 what we're auditing to are the MICS and just, you  
3 know, I assume they're also auditing to what's in the  
4 compact.

5 Okay. So that's another question.  
6 You are all the regulators here. What are -- what's  
7 being used by your outside auditor? Certainly we have  
8 that information here, I would imagine. I don't have  
9 it readily at hand.

10 MR. BOYCE: Mike Boyce, executive  
11 director, Grand Ronde. I can tell you what we do. We  
12 do a Class II audit to the NIGC MICS and then we do a  
13 Class III audit for internal purposes to the Grand  
14 Ronde Gaming Commission MICS. But the Class II audit  
15 does include bingo, poker, any Class II machines,  
16 cage, drop and count, IET, complimentary, going to  
17 include revenue audit here pretty soon.

18 So that cutoff between Class II and  
19 Class III MICS isn't as big as people would think. I  
20 mean, it's only table games, Keno and slots that would  
21 be out completely. So it's something to think about.

22 MS. HOUSE: Thank you again. Sharon  
23 House. I work for a number of gaming commissions and  
24 the experience has been in the different states -- in  
25 Kansas, California, Idaho and Wyoming -- is that they

1 do -- the external auditors do audit it to the Class  
2 III MICS, the federal Class III MICS, but it's also  
3 coming down to -- I believe there's a section in the  
4 MICS that identifies that it's the function that's  
5 important and the intent of what the, you know, what  
6 the MICS says, not so much the specifics, is is it  
7 following the money.

8           Perhaps that's a regulation that would  
9 be agreed to, because the tribes I've worked for agree  
10 with this gentleman about they don't want the Class  
11 III MICS thrown out. They want to keep it there as a  
12 guideline, and I mentioned that before.

13           But the issue comes down to are they  
14 following the money. I'm not an auditor, thank God,  
15 but that it really comes down to the intent of the  
16 MICS in each particular section and what the result is  
17 and why they're doing it and it seems that may be an  
18 approach that could be looked at as far as the  
19 industry standards and having, you know, all the best  
20 practices on a regular basis come forward.

21           The auditors that the tribes hire  
22 pretty much are familiar with the fact that there's  
23 different compacts and there's different requirements,  
24 but they go by already what the tribe and the compact  
25 identified as their internal control standards. That

1 term MICS minimum really is the -- I guess that letter  
2 kind of throws a lot of things off.

3 It's really the internal control  
4 standards that the tribe has, not just the minimums.  
5 That's up to the tribes, and I think that may be what  
6 we're looking for. Right now the external auditors do  
7 audit to that, but that doesn't mean that the tribes  
8 themselves have not adopted those same minimum  
9 minimums already or the same things.

10 I don't see that as -- I understand  
11 that it is a problem for certain tribes, but the  
12 compacts, if you look at the California compacts,  
13 which I'd rather not, but we have to, one of the  
14 issues is is that in their 99 compacts they identify  
15 all these internal control standards. They say you  
16 have to have, you know, surveillance, you have to have  
17 this, you have to have that, and they have to follow  
18 the money, basically, and that's what their key is.  
19 It doesn't say MICS.

20 We have a big disagreement about that  
21 right now with some of the tribes. But it does  
22 identify what's the intent of the internal control  
23 standards and how do we get that into a document that  
24 maintains what it was intended to maintain, which is  
25 to follow the money and make sure there's checks and

1 balances and that nobody's stealing from you. The  
2 integrity issue.

3 So it seems like the tribes I  
4 represent, it's real basic, it's trying to get it into  
5 that mold to say that this is how it has to be dealt  
6 with. I think that's where we're at and one of the  
7 ways may be is changing the term MICS to say internal  
8 control standards. That's what's important in the  
9 ordinances, in your resolutions, et cetera. Thank  
10 you.

11 CHAIRWOMAN STEVENS: Sharon, so are  
12 you saying the tribes should have to ICS?

13 MS. HOUSE: Well, it's called the TICS  
14 already.

15 MR. MINKER: I'd Fred Minker. I also  
16 would like to state that I hope you would keep 542  
17 updated. But on the external auditor, isn't there  
18 something in the MICS now that says the tribe has a  
19 set of tribal internal controls that are approved by  
20 the commission that the external auditor can audit to  
21 that for the required audit?

22 CHAIRWOMAN STEVENS: It may. I don't  
23 know it right off the top of my head.

24 MR. MINKER: I think I read that. I  
25 was just wanting an opinion if you were familiar with

1 it.

2 CHAIRWOMAN STEVENS: Yes. You are  
3 correct. Although that -- doesn't sound like that may  
4 be happening. So yes.

5 MR. ARMSTRONG: So in the context of  
6 IGRA and the context of the minimum internal controls,  
7 I believe that there could be something written into  
8 the auditing portion that stipulates mirroring what  
9 Fred has said here, that you audit to the compact  
10 where it applies and for those tribes that have  
11 adopted the MICS as their rule of thumb, then it would  
12 be either/or. So then that allows the outside auditor  
13 to come in and audit to the compact with our internal  
14 controls, Tracie, as you know, mirrored both the MICS  
15 and the state compact and I believe that would take  
16 care of all the idiosyncrasies where the tribes have  
17 adopted the MICS.

18 I think in the case of the auditing  
19 process, they come in and they audit to our compact  
20 and then in the cases where someone has NIGC MICS as a  
21 standing rule or law, then they come in and they audit  
22 to the MICS and that would be the best avenue that I  
23 could take on that one.

24 So then as I look at some of these  
25 rules here, there's many, many references to both

1 Class II and to Class III, and when I look at the  
2 original MICS I do not know what the intent was, but  
3 it seemed to be mixed together, yeah, Class II and  
4 Class III.

5 So when we're looking at these Class  
6 III MICS and these Class II MICS, I believe that we  
7 need some separation, all right, because when we  
8 interpreted the original MICS, we go, that's a Class  
9 II, and, that's a Class III, you know.

10 I do believe that there was once the  
11 Colorado River Indian tribe decision came down, they,  
12 the previous regime or somebody says, well, hold it.  
13 We have to have a fine bright line between Class II  
14 and Class III and we have that power to regulate Class  
15 III. All right. Scott can probably quote the law  
16 several times on the regulations pertaining to Class  
17 III regulations until the CRIT decision.

18 So I think we need to have a -- we  
19 need to have the intent, because IGRA stipulates that  
20 there are certain areas that are covered by for Class  
21 III, but not all areas of Class III.

22 So then to add on top of that Class  
23 III and Class II technical standards. Now, when  
24 writing Class II and Class III technical standards, we  
25 have to realize one thing. When writing these

1 technical standards, by the time we get the standards  
2 written, the technology has already changed and  
3 morphed into another one.

4           So we have to be very careful when  
5 writing these technical standards that we do not hog  
6 tie operations because of the technology that has  
7 changed. So I support the idea of guidelines with the  
8 MICS but not a requirement. I believe that there  
9 should be some separation and that we alter the audit  
10 process.

11           I believe that once we get the final  
12 draft, the advisory committee will look at it and  
13 before -- just to talk about the advisory committee --  
14 before they would look at it and then they would move  
15 towards a regulation. And I would like to have the  
16 ability for all tribes to be able to review this  
17 before it turns in, again, to a regulation.

18           CHAIRWOMAN STEVENS: Thanks, Jim, for  
19 that. I want to clarify something. When you say some  
20 separation, you mean separation of Class II and Class  
21 III standards so that they're not m-i-x-e-d, mixed  
22 together?

23           MR. ARMSTRONG: Correct. The  
24 interpretation of the original MICS versus what we  
25 have here as separation of Class II, Class III.



1                   CHAIRWOMAN STEVENS: The original MICS  
2 being like when they started talking about them in '99  
3 and they promulgated, I think, in 2002. Right. Those  
4 were covering both, and even when I heard earlier  
5 today, I believe it was from Poarch Creek, that even  
6 the product that was produced in 2008 for Class II  
7 MICS, M-I-C-S, what did have some Class III  
8 superimposed onto it.

9                   And then going to your first  
10 statement. You would like to maintain the Class III  
11 MICS as a guideline? Is that what I understood?  
12 Okay.

13                   MR. ARMSTRONG: Tracie, to top that  
14 off, though, I do realize that there are some items in  
15 the IGRA statute that is requirement of Class III, so  
16 we can't forget that. We have to realize that that  
17 has to be covered and so then you need to separate  
18 what can be regulated and what cannot be regulated.  
19 That's probably the best way.

20                   CHAIRWOMAN STEVENS: I just want to  
21 make sure I understood you correctly. And then  
22 insofar as an advisory committee, you know, we  
23 recognize that an advisory committee does not  
24 substitute for consultation. Advisory committees are  
25 supposed to be people, experts, who can produce a

1 draft, that we can then take and consult with.

2 Because these are such detailed  
3 regulations, trying to do it like in a form like this  
4 line by line would take forever and we don't have  
5 forever. The sooner we can get thorough standards  
6 that ensure the integrity of your operations, the  
7 better for you, because it just lies in uncertainty  
8 right now.

9 And then one last thing I wanted to  
10 clarify. Part of the separating the two and three, it  
11 was mentioned over here, that there are processes in  
12 following the money that are the same for two and  
13 three and that when I asked about this, you know, I  
14 think that's what they were trying to do before the  
15 CRIT decision is just have one standard.

16 But it can be burdensome to have a  
17 Class III standard on a Class II situation because  
18 they're different types of functions, but where they  
19 are the same, we would just have mirrors. Is that  
20 what I'm hearing? The two and three would have  
21 basically mirrors of the same process, the same  
22 functions, and when they diverge, they diverge. So  
23 that it's clear that this is what you do with Class  
24 II, this is what you do with Class III, because they  
25 are different.

1           One example that keeps coming to my  
2 mind and has been brought to our attention here is  
3 surveillance on a Class II machine as opposed to a  
4 Class III machine, you know, where you've got a game  
5 that's taking place at this terminal in a Class III  
6 environment. The game for a Class II is a server  
7 system. Do you need the same camera coverage on a  
8 machine when the game isn't happening at this spot?  
9 The game is happening somewhere else where the server  
10 is.

11           So an example of where things might  
12 diverge, they might separate, and we might need  
13 separate standards. Thoughts on that would be  
14 helpful, because what we've heard -- what I've heard  
15 is where they're the same, they're the same. Where  
16 they're not, they're not. But you do, you still have  
17 two standards where you might have processes that look  
18 the same. Yes.

19           MR. MINKER: The difference between  
20 Class II and Class III is probably easier defined at  
21 other states than Washington. In Washington their  
22 Class III machines, as far as I'm concerned, is  
23 basically a Class II machine without the finger guard  
24 and a lot more restrictions. So basically that same  
25 platform, you've got the same type machines, doing the

1 same thing, the state calls them Class III. For all  
2 intents and purposes, as far as I'm concerned, they're  
3 a Class II without the finger guard, so that makes it  
4 a little more difficult.

5 CHAIRWOMAN STEVENS: An added element.  
6 Yes. Dawn.

7 MS. VYVYAN: I wonder, Tracie, if you  
8 could address, I think that the gentleman made another  
9 point at least that I heard was the evolution of the  
10 machine and the technology changing and how the  
11 guidelines could be flexible enough to meet that or...  
12 I'm not a technical person, but I just thought that  
13 was an interesting point.

14 CHAIRWOMAN STEVENS: Well, we do labor  
15 over that and I think the former commissions also had  
16 labored over that question. How do you create  
17 regulations that are either flexible or you create  
18 some mechanism so that you can update them. You know,  
19 I guess we'd like to hear more about how we could do  
20 that.

21 I know in some other reg -- with other  
22 independent agencies that regulate, they have standing  
23 committees, could we do that, so that we revisit these  
24 at a certain interval of time or as changes in the  
25 industry occur where those practices have evolved and

1 become more commonplace and the fact that the change  
2 has occurred and many tribes are requesting that there  
3 be a change, that we remain flexible to whatever the  
4 change in the industry might be or if we have time  
5 certain that we revisit them or is it even possible  
6 that we can write regulations that are flexible enough  
7 to accommodate those changes.

8           You know, I would look to some of the  
9 industry experts here or the regulators to inform us  
10 on whether that's even possible to write them flexible  
11 enough to anticipate. It's the same question we had  
12 with sole proprietary interest. Can we anticipate  
13 those changes and write regulations that those changes  
14 would conform to, whatever those changes might be.  
15 It's unknown.

16           MR. MINKER: My opinion is not. By  
17 the time you figure out where the technology is out  
18 there and start to write something, it's already  
19 changed. The technology is changing so fast now that  
20 the regulations are really hard for us to keep up with  
21 anyhow and to write your regulations loose enough to  
22 cover for that -- I don't know -- might as well be  
23 nonexistent, but... So I don't envy you your job when  
24 it comes to that part, because that's difficult.

25           MR. ARMSTRONG: I think we need to

1 look at them as a whole. We have many regulations  
2 written by NIGC, and through my history and  
3 experience, the regulations, be it what they are, have  
4 been gone -- they've morphed so many times in the past  
5 10 years that I know of. Like every year there's a  
6 change to a regulation and there is another change to  
7 a regulation and I understand the need for the  
8 changes, but what we could do is probably have a  
9 little foresight. If we have electronic table games,  
10 we should take that into context now to meet Class III  
11 standards, or if you have poker, you take that.

12 I mean, every time there's a rule or a  
13 regulation written that affects the tribe, then we  
14 have to go back to the internal controls and almost  
15 rewrite the internal controls. So cutting down the  
16 manpower and the scope of the writing of the rules and  
17 controls, we'd look at it as a whole for the future.

18 I mean, we will always have the  
19 evolution, but if you have enough foresight, similar  
20 to technology, then we don't have to go through the  
21 changes.

22 I haven't looked at the draft NIGC  
23 submissions lately, the ones that are currently in  
24 draft. I think the last time I looked at those there  
25 was like 42 of them. So by the time we get done here,

1 complete our task, what do we see in the future on the  
2 changes on the tier A, tier B, tier C. If we can look  
3 a little bit ahead, we may not have to duplicate so  
4 many processes or add additional work to us.

5 I mean, just from one to another, we  
6 have several here, and I know that I'm going to have  
7 to go back and we have to make some changes and then  
8 next year you're going to make another change or there  
9 might be need for another change and we have to do  
10 that. So like in writing your rules and regulations,  
11 I just recommend that you look into the future to see  
12 if you can cover some of those issues that may come  
13 down at a later date. Then you won't have to change  
14 the rule.

15 Or if we're going to be requiring them  
16 as rules, Class II, Class III, then we're going to be  
17 in this situation for a very long time, in fact,  
18 beyond your guys' stay at the NIGC commission and  
19 every time there's a commission reappointed, there's  
20 subject to change.

21 So I don't think we can continue to do  
22 business. I mean, my term has been 11 years. Your  
23 terms are less than mine, so we'll end up four years  
24 down the line with a new commission and they're going  
25 to make a decision that something else is out, so...

1 I just recommend that we look into the future on this.

2 MS. HOUSE: Thank you again. For the  
3 commissions that I've worked with -- and this is just  
4 very brief -- is when I was -- and I want to say this.  
5 I was on the very first internal control standard work  
6 group, and it was not the NIGC. It was the NCAI NIGA  
7 task force, and that particular MICS group  
8 specifically advised the NIGC originally, do not make  
9 these regulations, because exactly what happened is  
10 going to happen. And it has.

11 It's not only gone whole circle,  
12 right, took how many years to prove what the original  
13 group had said was accurate, is that once you start  
14 doing that, you're going to have to change it  
15 continually, like the gentleman said.

16 If there was a way to do it, what they  
17 were recommending is, what I think one of your  
18 comments and suggestions was, is that you have a best  
19 practices group that's sitting on a regular basis that  
20 can bring these technical -- any time it says  
21 technical standards, my clients say do not even look  
22 at it as a regulation at all.

23 The other gentleman is absolutely  
24 right. You cannot change them. It just takes too  
25 long, and the tribes, in my opinion, have a short



1 window of opportunity to move forward and make their  
2 benefits for their tribe and the only way to do that  
3 is there's two things. MICS, I could see the upper  
4 Class II to a certain extent, maybe they need to be  
5 limited, but for purposes of Class III and Class II  
6 technical standards, perhaps a standing committee or a  
7 committee in relationship to particular areas.

8 Class two, you have one or Class III  
9 or when it comes to IT, because that's what you need  
10 now. It's totally different than it was. We had no  
11 IT people on the original group and, you know, they're  
12 saying why do we need them. Well, now why do you not  
13 need them is the next question.

14 So when you're looking at this, I  
15 think it's extremely important to take that under  
16 consideration, because this is the tribe's money, you  
17 know, that we're dealing with and I hate to put it  
18 like that, but it's the tribe's money and the tribe's  
19 benefits. That every time we take an extra month and  
20 -- when was that -- about two or three years ago we  
21 were changing those regs, what, three, four times a  
22 year. How much time did that take, and then we had to  
23 change them again by the time they came out.

24 So I think the comments are well taken  
25 by many of the tribes and there's ways to deal with

1 it. Technical standards are extremely important. We  
2 have them coming forward from the groups that work  
3 very hard on them and I think that has worked. We're  
4 back to square one again, I guess, full circle. So  
5 maybe that is one approach. Thank you.

6 VICE CHAIR COCHRAN: One of the  
7 observations I've had as we've gone around and  
8 consulted is there is a consistent message, in my  
9 opinion, on these, on the MICS and on the technical  
10 standards, that we try to focus our attention on  
11 standards and get away from micromanagement or the  
12 details, which often do trigger the need for  
13 revisions.

14 I don't know. I think that's what I'm  
15 hearing today as well a little bit. I just heard it  
16 in different ways, but it does seem to be a consistent  
17 message coming out in the consultations.

18 CHAIRWOMAN STEVENS: And I would say  
19 that it's incumbent upon us to plan, to have standing  
20 committees or some method by which we address changes  
21 in the industry. You know, interestingly, and my  
22 caveat to this statement before I make it is that  
23 we're talking about processes. So I'm going to say,  
24 you know, we've been meeting with Nevada Gaming  
25 Control Board, not for the reasons that you might

1 think or other people have met with them or there's  
2 references to Nevada.

3 Nevada tends to be the sort of  
4 reference that everyone makes to regulating gaming,  
5 again, what the industry standard is. So it was in  
6 our best interest to go meet with them and talk about  
7 their processes and, you know, they have to revisit  
8 theirs on a very regular basis.

9 Interestingly, the industry proposes  
10 them as those technologies change and say, okay, new  
11 thing, here it is, and I think they even have -- what  
12 I recall being told is they had -- the industry had  
13 their own group of people and they -- sorry. My  
14 instinct is to go over there, so it's probably good  
15 that they're closing the door, because I'm usually  
16 singing with them and I'm not right now -- they have  
17 their own group that annually meets and says, hey,  
18 this is what -- this is what we think the changes are  
19 and they go through a process.

20 Their process is actually very fast.  
21 They get it done in six months. In Nevada by the time  
22 it's proposed, six months, done. But certainly Nevada  
23 considers what they offer, makes changes as they need,  
24 and basically negotiates with the industry what's  
25 acceptable and what's not acceptable.

1           But they do go through this every year  
2 and the industry is often -- well, the industry often  
3 are the ones that say, by the way, we got to change.  
4 This is what the change is outside of that annual sort  
5 of review that happens.

6           So the other thing is it is incumbent  
7 upon us to plan for this, because it does cost us  
8 money to do this and our money is your money and that  
9 we have to build something like this into our annual  
10 process and our annual budget and contemplate changes  
11 of standing committees. What we found is people  
12 change, people move on. It's not anything that the  
13 industry in Nevada -- you know, they experience that  
14 same thing. So I don't think we have to really  
15 reinvent some wheels here. They already exist.

16           MR. TAHSUDA: John Tahsuda again. I  
17 think at least, you know, a lot of the folks involved  
18 in Class II have a hope and a goal coming out of the  
19 working groups that there will be for the commission's  
20 purposes more a set of standards and principles to  
21 follow. I'm not a regulator, but I was thinking about  
22 it more as accounting rules, as you know, with GAAP,  
23 but those are actually just principles and there are  
24 different ways to interpret those principles.

25 Different companies apply them to their own books in

1 how they do it and it's all legal and they work with  
2 the IRS to make sure they're following.

3 But those aren't hard and -- but those  
4 principles aren't dictated down as hard-and-fast  
5 rules. Also in doing it that way I think you can at  
6 least partially achieve -- one of the things that  
7 we've been working with for several years now is to  
8 try to come up with principles also that are  
9 technology neutral to a maximum extent possible so  
10 that when the medium changes, the principal goals of  
11 the cash and things, those are still present, so you  
12 don't have to change any of that.

13 You may have some implementation  
14 guidelines, you know, folks to follow so that maybe  
15 they can change them. Maybe that doesn't take the  
16 work load off you and your staff if you're going to  
17 keep changing a lot of things, but at least in the  
18 interaction with the commission at this level, you  
19 know, there's not a need to be sort of continuously  
20 updating things. There can be -- in a formal way.  
21 There can be continuous updates.

22 Again, I think we do kind of feel like  
23 we're in the same way that Nevada works. We're the  
24 ones that brought a lot of technology issues to the  
25 commission at the time and said, you know, these are

1 things that should be thought about, you know, and  
2 some of the good things that the commission has done  
3 in the past has been to sort of spread the word out.  
4 Okay. As changes have come to Class II gaming and  
5 technology and stuff, these are different ways the  
6 tribes are now implementing the regulatory schemes on  
7 things.

8 At the other extreme of that the  
9 experience has been in the last, you know, five or six  
10 years with these really detailed regulations coming  
11 down from the commission. There's one tribe in  
12 Oklahoma in particular I know of -- I won't say names  
13 -- they spent, I think, upwards of two million dollars  
14 on software changes to implement changes that were  
15 dictated, they felt like, from the commission of its  
16 regulations and a year later the commission said,  
17 well, we've heard from a lot of people that that's not  
18 working really well, so we're going to change them  
19 again. And they had to spend an additional like  
20 \$500,000 changing back off the software to implement a  
21 change that happened like literally 12 months later.

22 So to our mind again, that kind of  
23 violates this rule, that whatever the regulations are,  
24 they have to have some cost effectiveness as well. So  
25 I think if we can kind of -- I think if we can reach a

1 goal and principles that can be implemented down the  
2 line as much as possible technology neutral and giving  
3 the tribes the flexibility, I think that's in our mind  
4 one of the goals we're working towards.

5 CHAIRWOMAN STEVENS: That might have  
6 been the first time we've heard that term technology  
7 neutral. I'm going to attribute that to you, John.

8 Do we have any other comments? If  
9 not, I'm inclined to break for lunch and then we'll  
10 continue on with more specifics on technical  
11 standards, questions we have around Class II minimum  
12 -- oh, yes. Down here.

13 MR. SPENCER: Not so much a question  
14 or a comment. We just want to express our gratitude  
15 and appreciation to the Tulalip tribe and also to the  
16 other contributing tribes that assisted us during our  
17 fire. The funds were directly to rebuild White Swan.  
18 We currently have five new homes rebuilt thanks to the  
19 contributing tribes, and I just wanted to say thank  
20 you and good work to the commission. We're going to  
21 be leaving here. Thank you all.

22 CHAIRWOMAN STEVENS: Thank you for  
23 those good words and we wish you well in rebuilding  
24 your community. That was a terrible tragedy that  
25 occurred there, and I'm glad to see that other tribes

1 were able to come to your aid and wish you safe  
2 travels on your way back to your homeland. So thank  
3 you.

4 Let's break for lunch and we'll come  
5 back at 1:30.

6 (Recessed at 11:47 a.m., to be  
7 reconvened at 1:30 p.m.)  
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1 AFTERNOON SESSION

2 1:41 P.M.

3 --oOo--

4  
5 CHAIRWOMAN STEVENS: We were just  
6 discussing. We've changed our power point since the  
7 last time, and we had a number of questions about  
8 technical standards. Yeah, you know, technical  
9 standards, the grandfathering clause, the probability.  
10 Some things that will come up, that while we have  
11 Nimish here, I'm not sure that we have really anybody  
12 who wants to speak to technical standards for machine  
13 play. We do have Nimish here with us and, you know,  
14 certainly are prepared to talk about issues that come  
15 up around technical standards should we need his  
16 expertise. So we're looking through our previous  
17 power points here.

18 There may not necessarily be a  
19 question around here that you're probably going to --  
20 we're not going to get quite the participation just  
21 because of the volume of the Class II games here as  
22 opposed to Class III. You know, we would get a lot, I  
23 would imagine, discussion in Oklahoma about this.

24 MR. PUROHIT: (Inaudible.)

25 CHAIRWOMAN STEVENS: Yes. So who am I

1 missing? Poarch. There are some facilities here in  
2 Washington. There are tribes who have what we call a  
3 hybrid, where they have two and three in a facility,  
4 but we may have just one facility that's just Class  
5 II. This tribe, Muckelshoot, Nooksack, who have a  
6 stand-alone Class II facility with machines in them.

7 So here are some of the questions that  
8 we have, issues that have come up that we know of  
9 since the technical standards were implemented several  
10 years ago. We want to know how the standards are  
11 working for the tribes, for any of the tribes that are  
12 -- have Class II machines in their facilities.

13 The current standard, the current  
14 technical standard as it's written now has a  
15 grandfathering clause of machines that do not comply  
16 with the part at the time that this was final that has  
17 basically a grandfather clause that expires in 2013  
18 and we've heard a lot of concern about that and would  
19 be interested in hearing what tribes have to say about  
20 that.

21 The limitation on odds, the  
22 entertaining display requirements, which we heard a  
23 lot about when we were down in Rincon, tribal testing  
24 laboratories, how to handle variances, how to deal  
25 with remote access, and how has it been going with the

1 compliance with the applicable mixed standards.

2 So I don't know if anybody has issues  
3 or concerns that they want to talk to about these  
4 particular standards. Again, we're open here for  
5 discussion about how to proceed in addressing these.

6 We were talking about tribal advisory  
7 committees and what we're hearing so far is that given  
8 that there have been past committees on this and on  
9 the MICS, that it might be a good way to go and that  
10 perhaps a tribal advisory committee address some of  
11 these questions and help -- you know, having comment  
12 here would help inform the committee, you know, if we  
13 get to a point of a committee, to address these  
14 questions. Do we have a microphone somewhere?

15 MS. OGAS: Cathryn Ogas, attorney for  
16 Lytton Rancheria. I think I probably said a little  
17 bit about this at Rincon. I do think actually for the  
18 tech standards, I think for the most part they  
19 probably do work pretty good. Our gaming commission  
20 would have more to say. There have been a few  
21 problems, tweaks that they need, and I think we think  
22 a tribal advisory committee would be really good to  
23 do, especially if you get some really technical  
24 experts. If we could have technical experts, I think  
25 it would be a great idea to work out some of these

1 problems.

2 MR. TAHSUDA: John Tahsuda again. I  
3 think one of the difficulties that we ran into with  
4 the advisory committees over the past several sort of  
5 reincarnations of them was a bit of unwillingness by  
6 the prior commission to let the tribal side of the  
7 advisory committee have access to their experts and to  
8 the lawyers and it ended up being the committee  
9 members having discussions with committee or with  
10 commission staff who had all their experts and lawyers  
11 there.

12 It became a very adversarial, at  
13 times, process. I think as long as, you know, the  
14 advisory committee keeps in mind the goal, that this  
15 is supposed to be, you know, helpful to everybody and  
16 that everybody should be able to bring in one of their  
17 consultants and advisors that they need to kind of get  
18 their ideas and points across, which is ultimately to  
19 advance the discussion, then I don't think there will  
20 be as big an opposition to it.

21 I know there has been some question on  
22 the tribal side, but I think it all kind of came out  
23 of that issue about, you know, is there proper  
24 representation as well on the advisory committee and I  
25 think if there's more input from the tribal side as to

1 who should sit on the committee as well.

2 At times I think in the past it was a  
3 feeling that the commission by (inaudible) picked  
4 people to be on it. Not to say that those weren't  
5 good people to be on that advisory committee, but just  
6 by the mere fact that the tribes themselves didn't get  
7 to pick people that were on there sometimes, I think  
8 that also kind of contributed to a feeling that it  
9 wasn't as representative of the viewpoints of the  
10 tribal side as it should have been.

11 So I'd just offer those comments.

12 CHAIRWOMAN STEVENS: Just to clarify,  
13 John, are you saying that tribes should have a say on  
14 who's selected or what the qualifications are?

15 MR. TAHSUDA: Probably both, I guess.

16 CHAIRWOMAN STEVENS: I want to remind  
17 everybody, we only have so much time to do this. I've  
18 sat on some committees from an Interior standpoint,  
19 for Interior, and in my mind the first thing I want to  
20 do is try to have a well-balanced advisory committee.

21 So since you brought that up, here's  
22 some of what we've been thinking about looking back at  
23 the previous advisory committees and what we can learn  
24 from those based on our own experience and what tribes  
25 have been saying.

1           You know, we certainly need the  
2 expertise on technical standards, people who are  
3 familiar with how the technical standards have been  
4 working. It seems to me the technical standards are  
5 much more laser focused in terms of the revisions that  
6 we would visit. The MICS is a whole nother enchilada,  
7 and it would seem to me that that might actually move  
8 along quicker than the MICS.

9           So we do need the technical experts on  
10 the technical standards for Class II machines. We  
11 also need some people to talk about Class II and Class  
12 III so that we have some ability to identify which  
13 parts, when we pull them apart, which is what. Which  
14 is Class II, which is Class III, and, you know, we  
15 need to have people who maybe come from a very Class  
16 II intense environment and those who come from a Class  
17 III environment and people who do both, so that we can  
18 identify the parts in the MICS as applicable to two or  
19 applicable to three or applicable to both.

20           We'll need regional representation,  
21 because the universe isn't the same in any one place  
22 that you go. We need operational differences. We  
23 have small operations and large operations. We need  
24 some people with some expertise from I would think  
25 like an operational standpoint and the regulatory

1 standpoint on the movement of money and the flow and  
2 accounting of money and that people who are familiar  
3 with cage operations, surveillance operations. Not  
4 just the operation side of it, but the regulatory side  
5 of it.

6 So when you start adding these things  
7 up. Did I miss something? Am I missing? I don't  
8 want to list off all the functions in a casino, but,  
9 you know, how do we have enough diversity and not  
10 create this unwieldy group of people and be timely and  
11 thorough and have the right experts in the room,  
12 because to be an advisory committee, we do want to be  
13 mindful of how much time it takes, but we also need  
14 people who are going to be able to be committed to it  
15 and not drop out, whose tribe can afford either the  
16 travel or the time, because you're basically taking  
17 somebody off their normal job.

18 What's the other thing I was thinking?  
19 You know, the number of members, certainly that goes  
20 to that point, and making sure that we have time to  
21 consult with tribes, because the advisory committee  
22 does not stand in for our obligation for  
23 government-to-government consultation with tribes.

24 An advisory committee is going to be  
25 tasked with putting some drafts together based on

1 their expertise, so that then we can share it with  
2 tribes before we start down the path of rule making,  
3 and then offer tribes the opportunity to weigh on the  
4 work product of that advisory committee.

5 That's what we're thinking, and if I'm  
6 missing something. That's what we're thinking and we  
7 would really need to pull the MICS and the technical  
8 standards basically away from the rest of these  
9 regulations we've been talking about over two days so  
10 that those other regulations can move forward and  
11 these very detailed, specific, expertise driven regs  
12 would have to move on a separate parallel track.

13 And if we do that, that would modify  
14 our schedule and we have to be mindful of your  
15 resources and our resources of how long this will  
16 take, but, you know, based on what we're hearing thus  
17 far, there's still a desire to have an advisory  
18 committee for those three parts.

19 We love to hear any comment on what  
20 we've said about how this would be structured.

21 VICE CHAIR COCHRAN: The only other  
22 thing I would add to that is one of the things we've  
23 also talked about is if we put this together, this  
24 group would have pretty much its foundational work  
25 done. We've got an existing draft MICS. You've got



1 the work of the (inaudible) going on. You've got all  
2 the consultation feedback that we receive from tribes  
3 and the NOI.

4 So the footwork is really done, which  
5 we're hoping the time saver at the end is just a  
6 matter of getting the focus on making some decisions.  
7 So that was the only other thought I had.

8 CHAIRWOMAN STEVENS: Well, I'm a big  
9 fan of facilitators. I think there's two ends of the  
10 spectrum that we want to avoid and try to land  
11 somewhere in the middle, and I really personally think  
12 a facilitator can help us get there. You can have an  
13 ad hoc group that, you know, is independent and has  
14 open, you know, membership and contribution, but that  
15 can get a little lord like, you know, Lord of the  
16 Flies and out of control.

17 There's the other end of the spectrum,  
18 which we've heard from tribes about previous advisory  
19 committees, where the NIGC is acting as the  
20 facilitator and director in the meetings and making  
21 decisions on how the group makes a decision and  
22 whether or not contributions will be considered or  
23 not.

24 So to me that's two ends of the  
25 spectrum that we want to avoid and that a facilitator

1 could get us there. There are some other, again,  
2 having worked with Interior in their process and this  
3 administration, you know, having a fresh look at how  
4 to bring tribes into and through consultation, through  
5 advisory committees.

6 There's some experience now with this  
7 new administration in organizing. This can get very  
8 out of control and a facilitator helps us do that. We  
9 have some services available to us as a part of  
10 Interior that can keep us organized. That's my  
11 biggest concern and I think all of us share this  
12 concern and I think you all share this concern, that  
13 there's only -- we've got to come to some finality  
14 with these and organization is going to be key in  
15 making sure that we do this.

16 We'll have to consider all of these  
17 things we've talked about, but we can use some of the  
18 services that we have available to us to keep us  
19 organized and use a facilitator and also be mindful of  
20 ways to not meet in person, because that's, one,  
21 spendy, and two, time consuming in travel for both,  
22 really for the members of the committee.

23 I remembered what my question was. I  
24 had to write it down before I forget. But, you know,  
25 we had to think about how to structure this. We're

1 going to have to think about the number of people, the  
2 qualifications we're looking for, how long this will  
3 last, how would we have concentrated work sessions.  
4 We're going to need work horses. We're going to need  
5 people who can commit to very intense days of going  
6 through a product that's already been provided to us,  
7 the process to ask for nominations and how do we  
8 select them.

9           Then the other question that John has  
10 brought up is how do you -- we know that previous  
11 advisory committees were structured in a way that  
12 didn't allow anybody but the committee members to  
13 speak and the NIGC had their experts be able to speak,  
14 but the tribe or the committee member weren't given an  
15 opportunity to let their experts speak, whether that  
16 expert was their operator, their lawyer, their  
17 regulator, their compliance person, and factoring that  
18 into how an advisory committee works, so that we can  
19 have -- the purpose of this is to have a well  
20 informed, fully considered decision for the  
21 commission, that we have regulations that are well  
22 rounded and that we have experts who can do this and  
23 offer the best, as we know, that exists in Indian  
24 country into these regulations.

25           So we would have to think about that.

1 Maybe that's once the committee is together, the  
2 ground rules have to be set on how you bring in  
3 experts. Other industries do this. Other federal  
4 agencies do this. Again, I'm not a big fan of  
5 reinventing wheels. We're looking around at how other  
6 independent regulatory agencies do this, how DOI has  
7 done it, how other agencies have interacted with  
8 tribes.

9                   We know when the Health Care Act was  
10 coming down there were very accelerated, concentrated  
11 committees working on provisions for that. There were  
12 some other things that were mentioned to us by the  
13 Department of Interior. I think the other one was No  
14 Child Left Behind.

15                   So we're confident that we can do  
16 this, but there's some decisions we need to make  
17 before we can, you know, even talk about how we bring  
18 in experts, which are how many people, what  
19 qualifications, and how do we choose them. You know,  
20 these are clear, to me, clear things we should  
21 consider.

22                   We should have regional  
23 representation, operational size, experts, regulators,  
24 operators, Class II, Class III experience, and come to  
25 the determination of the number of members. So

1 anything you can do to help us inform that process  
2 would be helpful.

3 I think with this election it's very  
4 likely that we will be criticized no matter how we  
5 choose. So we will want to make the best choice  
6 possible and build in some mechanisms, so that, you  
7 know, maybe we don't have to have a committee that has  
8 every representative expert there, but that the  
9 committee itself can turn to, say, like in the  
10 technical standards. You know the manufacturers want  
11 to weigh in, maybe the testing labs want to weigh in.

12 Tribal regulators who may certify  
13 these machines, is there a mechanism where we can turn  
14 to them and offer them the opportunity to inform us,  
15 you know, instead of trying to plug them all into a  
16 room and do the group shuffle.

17 Those are the things we're thinking  
18 about and those are based on the things that we've  
19 been hearing over the past year. I'm happy to hear  
20 from anybody. I've been talking for a little while  
21 here, but that's just been our internal thought  
22 process based on what we're hearing and how we can  
23 manage this over the next year.

24 Can we get a microphone over.

25 MS. MCGHEE: Linda McGhee, Poarch

1 Creek. One thing I would ask or advise, that when you  
2 do form this committee, get the documents out to the  
3 committee in time for them to review them before we  
4 have a meeting. It was really bad when I was on the  
5 MTAC. Sometimes we'd get them the day before we flew  
6 out and you cannot review or send them out to your  
7 area and ask for their comments in that amount of  
8 time. So bear that in mind.

9 CHAIRWOMAN STEVENS: Linda, you're  
10 preaching to the choir. My poor staff knows how I  
11 feel about timely submissions of drafts so that they  
12 can consider it so decisions can be made. I'm with  
13 you on that and I recall that that was an issue.  
14 Especially, you know, you all have another full-time  
15 job going on and you need enough time to be able to  
16 come to the meeting prepared to contribute.

17 MS. OGAS: Cathryn Ogas, Lytton. Just  
18 to add to that, I totally agree with that. One of the  
19 other things from earlier, if you need the experts,  
20 for instance, on the technical standards, a lot of  
21 time your committee is not going to be able to do it  
22 themselves. They need somebody else and you have to be  
23 able to consult and that was one of the biggest  
24 frustrations, was there's people in the audience that  
25 said if we only would have known, we could have

1 prepared these guys, but we didn't and we didn't have  
2 a chance.

3           Then I'd just like to comment. I like  
4 all of your suggestions. I think region, size of  
5 operation, all those are things you could consider and  
6 one of the problems I did have with the last TAC was  
7 that they were all regulators. And I understand that,  
8 but operators do have some good input and I think the  
9 two of them together could work really well.

10           And the other thing was there was a  
11 lot of people. I think, Linda, were you the only one  
12 working on Class II and we were the only ones, Poarch  
13 was the only ones with Class II. So more Class II,  
14 because there are some of us still out there that are  
15 very vested in this. Thanks.

16           CHAIRWOMAN STEVENS: One of the  
17 benefits of a facilitator is the setting of ground  
18 rules, not just on using some of the resources that we  
19 have available to us as a federal agency, making sure  
20 that everything stays organized and on time and that,  
21 you know, that may be a ground rule as to how far in  
22 advance do you get drafts, whose job, you know, what  
23 are the committee members' responsibilities. Making  
24 clear what the action items are and what the  
25 expectations are of everybody at the beginning of

1 meetings, at the end of meetings, at the beginning of  
2 their journey and what their objectives are, and  
3 having a neutral facilitator do that is helpful.

4 How's everybody doing? You guys  
5 sleeping back there?

6 ASSOC. COMMISSIONER LITTLE: One of  
7 the beauties of or -- I don't know -- downfall, but  
8 this commission, we attend a lot of these tribal  
9 advisory committees. I remember I sat next to Elliott  
10 before, you know, kind of listening to what was going  
11 on. It was very frustrating, you know, and the last  
12 one I was fortunate that the chair for the gaming  
13 commission tribe that I was working for was a member,  
14 but I'm not sure if it was the time frame or the pace  
15 at which the advisory committee was progressing, but  
16 by the end of that advisory committee, half the  
17 committee members had left.

18 Then we ran into -- they ran into some  
19 situations where segments of the industry was not  
20 represented and that became problematic, and like I  
21 had mentioned two days ago, you know, I'm quickly  
22 coming up halfway through my term before I expire  
23 here. One of the things that we came on -- when I  
24 came onto commission here, it was the idea that -- and  
25 I was in DC for 12 years, going on 13 years now, but



1 things just stagnate and they don't go anywhere.

2 I know the other commissioners feel  
3 exactly the same way I do, is that we're here for a  
4 short period of time and we want to get something  
5 done. These are big, huge issues that, once again, as  
6 a nonattorney, you know, I don't know if in DC  
7 sometimes if attorneys want to get things done.

8 Got kids to put through college,  
9 right, Elliott? Sorry. I'm just looking at you. In  
10 any event, that's no offense to my attorney. No one  
11 in this room would ever do that. But, you know, it  
12 gets kind of frustrating sometimes. We don't get  
13 things done as quick as we'd like to.

14 So we're really looking to make sure  
15 we do this right. We're really, really looking for  
16 your input, because you guys, a lot of you have been  
17 involved in these and you've done this before and, you  
18 know, your helping us organize this correctly is very  
19 much welcome and needed.

20 So we really look forward -- if you  
21 don't have anything to say today and you want to  
22 forward comments later on, we would be very, very  
23 interested to hear from you.

24 VICE CHAIR COCHRAN: He just thinks he  
25 has attorney friends.

1                   CHAIRWOMAN STEVENS: You guys can't  
2 see this because I'm sitting right next to him, but  
3 there's this little red button like a Jennie-O turkey,  
4 that when he's done pops up; he expires.

5                   But, in all seriousness, we do, we  
6 understand that these have been -- there's been --  
7 it's difficult to regulate and run your operations on  
8 this unsteady ground of uncertainty about where the  
9 regs are going and especially compound that with  
10 changing technology. It's a challenge and you end up  
11 spending a lot of money just trying to keep up with  
12 what's going on at the moment, even if it's, you know,  
13 the draft. We have the 2008 that were finalized that  
14 then there's a whole nother draft that got started,  
15 because by the time that got done, as you said, Fred,  
16 by the time you're done, you know, you have to come up  
17 with another draft.

18                   So we do, to echo what Dan was saying,  
19 we do want to come to some completion on these three  
20 sort of outstanding issues before we go and do it in a  
21 way that's respectful to tribes, but also timely and  
22 thorough. And we understand we may not always agree,  
23 but we're going to agree in -- disagree in a  
24 respectful way and to use all of the resources we have  
25 available to us and there are actually many more that

1 we have that would help this process move along.

2 We will be, like I said, looking.  
3 Because there was so much turnover and there's  
4 probably many reasons why folks turned over in those  
5 previous committees, you know, when we go out to like  
6 get names for a committee, we'll make very clear the  
7 time frames and, you know, the resources and the  
8 demand on whoever's going to sit on these committees  
9 are going to encounter and that we will need full  
10 commitment and participation by those members and  
11 could be intense, long days in short durations to get  
12 some of this work complete.

13 Like Steffani was saying, we hope that  
14 we will have some work products and much of that  
15 ground work will be done by the time the committee  
16 comes around and is formed and starts working after  
17 they sort out what the ground rules are and that  
18 should shake down -- shade down the amount of work and  
19 time that committee members would have to take so that  
20 we don't face the problem of committee members saying,  
21 hey, this is taking too much of my time. It's gone on  
22 too long. I've got to get back to my regular job.

23 So that's what we're thinking now. We  
24 certainly are welcome -- welcome your comments to what  
25 we've said, anything we might have missed, and we'll

1 be talking about this at the next consultations as  
2 well. It looks like we're running out of steam here,  
3 so I will not -- somebody's sleeping back there --  
4 have this go on any longer. So I want to give some  
5 time to the other commissioners, if they have any  
6 closing statements before we adjourn.

7 VICE CHAIR COCHRAN: I just want to  
8 say thank you for staying with us an additional day  
9 and a half, almost two days now. I know it's been a  
10 long week for some of you and it means a lot to us to  
11 have you still sitting at the table talking with us.  
12 We know it's a long process, but it's an important  
13 one, and the amount of support and commitment that the  
14 tribes have shown is really kind of overwhelming for  
15 us at times, in a very positive way.

16 So thank you and thank you for my  
17 Oklahoma peeps. It's nice to see a lot of different  
18 faces, even though we're in the Northwest. This is a  
19 beautiful area of the country and Tracie's tribe has  
20 been an amazing host and so thank you to the tribe. I  
21 don't know if there's anyone left in here. We look  
22 forward to seeing you again and wish you safe travels  
23 home.

24 ASSOC. COMMISSIONER LITTLE: Just kind  
25 of echoing what Vice Chairwoman had to say. I want to

1 thank everyone for making the trip out here and  
2 staying a little longer for the conference. I want to  
3 thank the Tulalip tribe for hosting this wonderful  
4 event. What a fantastic facility. If there's anymore  
5 comments that anyone wants us to make, you know,  
6 obviously this whole process was very, very anxious to  
7 get those, so please submit those. The information's  
8 up there on the screen, the email address.

9 And then I just want to wish everybody  
10 safe travels home. Thank you.

11 CHAIRWOMAN STEVENS: One last shout  
12 out to all the staff who helped us prepare for this  
13 meeting. There's a lot of work that goes on behind  
14 the scenes, not only by the staff that you've seen  
15 here, but the staff you don't see here back in  
16 Washington DC or back in the regional offices, who  
17 make sure that the rooms are right, the paper's right,  
18 you know where to go. So I give a shout out to them  
19 and thank them. My hands up to you for your work and  
20 I appreciate and thank all the tribes that have  
21 attended and come so far to participate in these and  
22 look forward to your comments.

23 If you ever have any questions, any  
24 concerns, you need any clarification, that's how to  
25 get ahold of us. The next consultation is next week

1 in Albuquerque at Pueblo Laguna, Route 66, and that's  
2 next week. I think it's next Wednesday and Thursday.  
3 After that is Washington DC, the following Thursday  
4 and Friday, in the interior south auditorium. For  
5 those who will be out there that week, there's a lot  
6 of activity going on that week in DC.

7 One shout out for something that Dan  
8 has been handling, which is the public meetings. That  
9 will be taking place in Oklahoma City at River Wind --  
10 I get their two facilities mixed up -- outside of  
11 Oklahoma City. That's going to be where we will be  
12 doing, basically, the business of the committee -- or  
13 business of the commission in the public format.

14 We'll have another one of those later  
15 on in the year. We'll be doing them quarterly and  
16 you'll see we're just starting up, so they're not  
17 really exciting right now, but as we start to move to  
18 -- if we get to final passage, you know, it's one of  
19 the authorities the commission has is full commission  
20 to promulgate regulations and so those, like other  
21 commissions that you see, the public meeting is where  
22 that happens.

23 We hope to have some of that activity  
24 coming up, but right now we're not at that place. So  
25 they'll become more exciting as time goes by. Right,

1 Dan?

2 ASSOC. COMMISSIONER LITTLE:

3 Absolutely.

4 CHAIRWOMAN STEVENS: So those are the  
5 announcements. And again, we have some regional  
6 trainings that are coming up in July and August and  
7 we'll keep you informed as we do more, as we mentioned  
8 this morning, especially from the Northwest, for those  
9 attendees that are from the Northwest.

10 Other than that, again, thank you for  
11 attending and sitting through these meetings with us,  
12 and safe travels home. Thank you.

13 (Concluded at 2:21 p.m.)

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I, CHERYL J. HAMMER, the undersigned Certified Court Reporter, pursuant to RCW 5.28.010 authorized to administer oaths and affirmations in and for the state of Washington, do hereby certify:

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WITNESS MY HAND this 26th day of July 2011.

CHERYL J. HAMMER,  
Washington State Certified Court Reporter, #2512  
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