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January 31, 2011

Traci Stevens, Chairwoman NATIONAL INDIAN GAMING COMMISSION 1441 L Street NW, Suite 9100 Washington, DC 20005

RE: January 20, 2011 Tribal Consultation - Written Comments

Dear Chairwoman Stevens,

On behalf of Ohkay Owingeh, I am encouraged that the National Indian Gaming Commission ("NIGC") desires to improve its tribal consultation process and to rebuild its government-to-government relationships. I am also encouraged of NIGC's desire to hold a tribal consultation session at the Hyatt Regency Tamaya Resort & Spa in Santa Ana Pueblo, New Mexico, on January 20, 2011. Please be informed that representatives from Ohkay Owingeh will be attending that tribal consultation session.

Consistent with NIGC's November 12, 2010 Notice of Inquiry ("NOI") and Notice of Consultation, the tribal consultation session seeks comments on NIGC's efforts to conduct a comprehensive review of all regulations promulgated to implement the Indian Gaming Regulatory Act ("IGRA"). Ohkay Owingeh supports NIGC's efforts to seek tribal input regarding which regulations need revision and the process or processes to be used to revise such regulations. To assist NIGC in such efforts, Ohkay Owingeh provides the following comments for consideration:

1. **COMMENTS ON NIGC'S REGULATION REVIEW AND REVISION:** Throughout the NOI, NIGC affirmatively seeks comment on whether it should use a standard Notice and Comment rulemaking procedure, a Tribal Advisory Committee to assist in its regulatory review of the regulations, or another process. Ohkay Owingeh makes the following comments:

- 1.1. Standard Notice and Comment Rulemaking. When a Tribe submits comments to NIGC concerning proposed regulations pursuant to a standard notice and comment rulemaking procedure, Tribes are not informed on who actually reviews the comments and whether the reviewer will directly respond to the Tribe's comments. Ohkay Owingeh prefers a meaningful and personal government-to-government relationship where NIGC will respond directly to Ohkay Owingeh on its comments. When a Tribe attends NIGC consultations, the Tribe should receive a direct response from the NIGC addressing the Tribe's concerns and issues. In the past six years, Ohkay Owingeh has attended NIGC consultations, it has never received a response to any of our concerns and issues. A standard Notice and Comment Rulemaking has proven to be quite impersonal, ineffective and unresponsive to Ohkay Owingeh's concerns. Even when NIGC follows up its standard notice and comment rulemaking procedure with tribal consultations, those consultations do not adequately address Ohkay Owingeh's concerns and issues.
- 1.2. <u>Tribal Advisory Coalition</u>. Concerning NIGC's authority to create Advisory Committees, NIGC should never consent to the creation of such a committee similar to the old Tribal Advisory Committee. The old Tribal Advisory Committee was a one sided entity that did not listen to tribal concerns or issues. Ohkay Owingeh strongly objects to the use of the Tribal Advisory Committee, and the method of appointing members to the TAC, as used in the past.
- 1.3. Ohkay Owingeh's Proposed Regulation Review and Revision Process. Whenever NIGC engages in tribal consultation process, Ohkay Owingeh prefers a personal and direct government-to-government consultation. Even if NIGC seeks consultation using a group discussion format, it should still set time aside to listen to unique tribal concerns. More importantly, NIGC should be responsive to such tribal concerns by directly responding to the tribe. Finally, when regulatory changes are proposed by NIGC, the proposed change should be accompanied by a written rationale for the proposed change.
- 2. **COMMENTS ON PART 502: DEFINITIONS.** Ohkay Owingeh proposes that the definition of "Class II Gaming" either include a list of all NIGC-approved class II gaming devices or refer to a single document that contains such a list. This list of NIGC-approved class II gaming devices will help the tribe plan for its gaming operation, while reducing risk of violating applicable law.
- 3. COMMENTS ON PART 522: SUBMISSION OF GAMING ORDINANCE OR RESOLUTION. If NIGC makes recommendations to amend Tribal Gaming Ordinances, NIGC should inform the Tribe whether the Tribe should submit the whole ordinance or just the sections that are being changed with explanations. A regulation clarifying the submission requirements for amendments would be helpful to Ohkay Owingeh and other tribes.

On behalf of Ohkay Owingeh, thank-you for your efforts in rebuilding our government-to-government relationships. Ohkay Owingeh will be supplementing these comments with additional comments either on the day of consultation or subsequently thereafter.

Sincerely

Jovernor Ron Lovato

cc: Peter Garcia, Jr., Executive Director
Ohkay Owingeh Gaming Commission
Lael Echo-Hawk, Counsel to the Chair