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August 9, 2011

VIA EMAIL TO: reg.review@nigc.gov

Chairwoman Tracie Stevens
National Indian Gaming Commission
1441 L. Street, Suite 9100
Washington, D.C. 20005

RE: Preliminary Draft Changes to 25 C.F.R. §§ 537, 571, and 573

Dear Chairwoman Stevens:

Thank you for continuing your review of the National Indian Gaming Commission ("NIGC") regulations by soliciting comments to the preliminary draft changes to 25 C.F.R. §§ 537, 571, and 573, from tribes in furtherance of NIGC's commitment to implementing the President's November 5, 1999 Executive Memorandum on Tribal Consultation with Indian tribes and Executive Order 13,175. In response, the Cheyenne and Arapaho Tribes of Oklahoma ("Tribes") hereby submit the following comments and suggestions.

25 C.F.R. § 537, Background Investigations for Persons or Entities With a Financial Interest in, or Having Management Responsibility for a Management Contract

The Tribes support the proposed addition of 25 C.F.R. § 537.1(d) which streamlines the background investigations process by explicitly allowing the Chair of the NIGC to exercise discretion in a way that maintains protection and minimized duplicative background investigations. By limiting the discretion of those tribes, wholly-owned tribal entities, national banks, and institutional investors that are already federally regulated or already go through a background investigation, federal and tribal resources are maximized. The Tribes propose, however, to add language to clarify that the background investigations relied on in this section must be current and performed within a period of sixty (60) days. In other words, it is not appropriate to rely on an outdated background investigation for purposes of this proposed additional section. Alternatively, when the Chair exercises the discretion allowed under this proposed draft part, the Chair should require those subject to the exemption to certify they will provide prompt notice of any intervening events from the time the relied on background investigation was performed and the time NIGC relies on it. This certification should also notice

those subject to this exemption that failure to so notice NIGC shall result in immediate revocation of the exemption.

The Tribes propose to add a category of individuals that the Chair can subject to a background investigation at the option of a tribe. By offering background investigations of individuals that are mandated by tribal ordinance or preference to have a background investigation, the burden on a tribe is alleviated and a tribe is better positioned to ensure that employees and vendors are thoroughly reviewed, should a tribe chose to go beyond the category of individuals currently subject to background investigations pursuant to the *Indian Gaming Regulatory Act* (“IGRA”), 25 U.S.C. §§ 2701, *et seq.*, and its implementing regulations.

As an aside, the statement currently included at 25 C.F.R. § 537.1(c)(4) appears to have been inadvertently deleted.

25 C.F.R. § 571, Monitoring and Investigations

The Tribes concur with the proposed language inserted as 25 C.F.R. § 571.4. The issuance of an investigation closure letter would serve as finality for any tribe that is subject to an investigation that does not result in commencement of an enforcement proceeding. Such a letter, however, should be mandatory and not discretionary.

The expansion of NIGC’s authority to enter the premise of a person¹ to inspect, examine, photocopy, and audit all papers, books, and records (including computer records) proposed in the draft language added to 25 C.F.R. § 571.5(a), (b), and new 25 C.F.R. § 571.6(d) would constitute an unwarranted intrusion into a tribe’s ability to self-govern. The Tribes explained its concern with increasing NIGC access to records in its submission of January 18, 2011, to the NIGC:

Records in the hands of third parties may be obtained through already extant litigation methods if truly necessary. In addition, NIGC regulations already allow the agency to take enforcement action if the records it seeks are truly within its purview. *See* 25 C.F.R. § 573.6(9). The NIGC has from time to time overreached in its requests for records, such as in the Colorado River Indian Tribes matter, and the tribes should be able to protect governmental documents and people’s personal information from unauthorized and *ultra vires* federal governmental review.

25 C.F.R. §§ 571.5(a), (b) and 571.6(d) should therefore not include the proposed language.

25 C.F.R. § 573, Enforcement

¹ 25 C.F.R. § 571.2 defines person as “an individual, Indian tribe, corporation, partnership, or other organization or entity.”

Chairwoman Tracie Stevens
August 9, 2011
Page 3

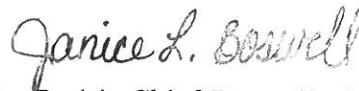
The Tribes support the addition of the goal of voluntary compliance as outlined by the addition of 25 C.F.R. § 573.2. Providing an opportunity for tribes to address NIGC's concerns expressed by a letter of concern or a non-compliance notice prior to a notice of violation is preferred by tribes who choose to correct an incident or condition of regulatory concern through voluntary compliance prior to an actual notice of violation.

The Tribes have no comment to the proposed addition of 25 C.F.R. § 573.5.

As a general comment, the Tribes oppose any attempt by the NIGC to regulate Class III gaming pursuant to Section 2710(d) of IGRA and the decision in *Colorado River Indian Tribes v. NIGC*.

We appreciate your consideration of our comments on the preliminary draft changes to 25 C.F.R. §§ 537, 571, and 573 and look forward to additional opportunities to comment at the proposed rule phase.

Sincerely,



Janice Prairie Chief-Boswell, Governor
Cheyenne and Arapaho Tribes

cc: Walter Hamilton, Chairman, Cheyenne and Arapaho Gaming Commission