



THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION

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Tribal Gaming Commission

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November 8, 2006

Hon. Philip Hogen, Chairman
Vice-Chairman Choney
National Indian Gaming Commission
1441 L Street, N.W.
Washington, D.C. 20005
VIA FACSIMILE: (202) 632-7066

Re: Facility Licensing and Class II Classification Standards

Dear Chairman Hogen and Vice-Chairman Choney:

On behalf of the Confederated Salish and Kootenai Tribes Gaming Commission (Commission), I write to comment on National Indian Gaming Commission's (NIGC) Facility Licensing Regulations and Class II Technical Standards Draft Regulation. We are concerned with the manner in which the NIGC has developed these regulations, as well as the substance of the regulations.

First of all, the Commission is concerned about the NIGC's development of facilities licensing regulations and how the agency failed to engage in meaningful consultation before moving forward with publication of the facility licensing requirements. Also we are calling upon NIGC to engage in respectful and truly meaningful government-to-government consultation concerning the Class II Technical Standards Draft Regulation. President Bush directed all executive departments and agencies to work with Indian tribes in a way that "fully respects the rights of self-government and self-determination due tribal government." Executive Memorandum Subject: Government-to-Government Relationship with Tribal Governments, September 23, 2004.

Facility Licensing Requirement

The NIGC's approach to publishing these regulations before consultation seems to promulgate new Federal regulations or revise existing regulations without considering a case by case approach. This heavy Federal approach flies in the face of the Executive Order requirement that Federal agencies first consider tribal law approaches to resolving regulatory issues.

We as the Commission are concerned with the draft facilities regulations because they ignore the intent of Congress in passing the Indian Gaming Regulatory Act (IGRA), and assume authority not provided to the NIGC under the Act. The background of Indian gaming is tribal sovereignty.

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The primary purpose of IGRA is to “provide a statutory basis for the operation of gaming by Indian Tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments.” Congress went to great lengths to respectfully allocate regulatory authority between Tribes, the NIGC, and States, and IGRA clearly states that a “separate license issued by the Indian tribe shall be required for each place, facility, or location on Indian lands.” (25 U.S.C. 2710(b)(1)(B)).

The Commission being the regulatory body here on our reservation is well aware of these requirements under IGRA and work diligently in complying with them through our tribally approved gaming ordinance. Yet, it would appear that the draft NIGC regulation is a laundry list of requirements for what Tribes should provide to the NIGC so that you can ensure tribal ordinance requirements are being met with regards to facility licensing. However, the requirements in your draft regulations would quickly consume any tribal ordinance requirements and unduly burden and interfere with our Tribe’s licensing requirements.

We also object to the onerous Indian land eligibility requirements. These requirements micromanage tribal government regulation and intrude upon the sovereign right of tribes to manage their own affairs. Also we oppose the requirements for Tribes to certify that each facility is compliant with the tribe’s environmental public health and safety regulations is a back door attempt to impose a mandatory new system of Federal regulation on Indian Tribes. In addition to the NIGC’s lack of authority, this particular requirement is also unnecessary because it duplicates existing Federal and Tribal laws and regulations.

Finally, the Commission would like to make clear that the submission of this comment in no way concedes that the NIGC has such authority to promulgate facility licensing requirements. In fact, the Commission objects to your position that “IGRA does not specify what a facility license must contain, nor how the NIGC is to readily ascertain that gaming facilities are in compliance with these provisions.” IGRA is quite clear that the Tribe must issue a license for each facility and that the NIGC has authority to review the authorizing tribal ordinance. However, the NIGC does not have authority to actually write the facility licensing requirements for the Tribe. This appears to be a unilateral attempt by the NIGC to assume authority not provided in federal law.

Class II Game Classification Standards

The proposed regulations intrude upon tribal sovereignty by usurping the role of tribal governments as the primary regulators of tribal gaming under the IGRA (25 U.S.C. 2710(b)(1)). Tribal governments along with us as Tribal regulators would be excluded from any meaningful participation in the classification of games and, for all practical purposes, deprived of the authority to make this critical legal determination which would be transferred to independent game testing laboratories required to apply rules wholly controlled by the NIGC, and subject to NIGC oversight alone. As Tribal regulators we would not even be permitted to establish and rely upon our own game testing labs nor would they be able to authorize the placement of games

on the floor without approval by a NIGC-supervised testing laboratory. The proposed regulations represent an extraordinary and unlawful shift of governmental authority to the private sector and a statutorily unauthorized impingement on the sovereign rights and authority of tribal governments which in turn would have an impact on us as Tribal regulators.

Under the proposed rules, only the NIGC Chairman may object to a classification decision. Tribes have no such option, except in defense of an enforcement action. Laboratories must be approved annually, and may lose that approval if the NIGC is dissatisfied with their certification decisions. The regulation would permit only the NIGC to challenge laboratory determinations. The NIGC would give itself the right to reverse a favorable laboratory determination and to sanction such laboratory by removing it from the list of approved game testing laboratories. Besides the fact that IGRA provides no authority for the NIGC's assertion of regulatory jurisdiction over testing laboratories, the regulations appear to be calculated to prevent tribal governments from challenging classification determinations. The Commission as the primary regulators of class II gaming, affirm that the Tribes should be afforded the opportunity to challenge such an opinion on a government-to-government basis, without having to first subject itself to enforcement action.

In sum, the Commission being the primary regulators here on the reservation are opposed to the draft regulations of facilities licensing and Class II classification standards because these regulations take away our authority which is given to us by our tribal gaming ordinance to implement rules and regulations. These regulations also purport to provide unnecessary intrusion on already existing federal and tribal laws that are currently in place or creates new burdensome ones that interfere with existing federal and tribal regulations.

Thank you for your thoughtful consideration. We sincerely hope that you will provide tribal governments with better opportunities for meaningful government-to-government consultation and also remember that we as the primary regulators of gaming on the reservation work diligently in complying with tribal, federal and state laws and regulations in order to ensure that gaming is conducted honestly and free of criminal and corruptive elements.

Sincerely,

A handwritten signature in cursive script that reads "Forrest Lester".

Forrest Lester, Chairman
CSKT Gaming Commission