

**STATEMENT OF**  
**ARCHIE FOOL BEAR, TRIBAL COUNCIL MEMBER**  
**STANDING ROCK SIOUX TRIBE**  
**BEFORE THE**  
**NATIONAL INDIAN GAMING COMMISSION**  
  
**JULY 2006**

Mr. Chairman and Commissioners, I am Archie Fool Bear, Tribal Council Representative for the Standing Rock Sioux Tribe. Also with me is Standing Rock Tribal Councilman, Mr. Matt Strong Heart Lopez. I appreciate having the opportunity to express my Tribe's views regarding the National Indian Gaming Commission's proposed new regulations on electronic Class II games. I also want to take this opportunity to express my Tribe's concerns about the Commission's recently circulated draft regulations on gaming facilities licenses.

The Standing Rock Sioux Tribe is operating gaming facilities on the Reservation, under compacts with North Dakota and South Dakota and a Tribal Gaming Ordinance, as authorized by IGRA. Gaming has provided a much needed source of jobs on our Reservation, and has begun to provide us with a measure of resources to address the massive deficiencies we face in providing for the health, education and other needs of our people. We believe that the proposed regulations go far beyond what is needed or appropriate for federal oversight of tribal gaming. In our view, these proposed regulations infringe on tribal sovereignty, exceed the Commission's authority under IGRA, and would only serve to limit tribal gaming in ways that could undermine tribal efforts to continue to meet tribal member needs in the future.

We do want to commend the Commission for engaging in government-to-government consultation. However, we want to be assured that this consultation is meaningful and not simply a cosmetic exercise. True consultation requires that the Commission consider the Tribe's comments and the Tribe's comments should impact the outcome of the Agency's final decision. We will be deeply disappointed if, after this consultation process and comment period, the regulations that the Agency ultimately issues are no different from these draft regulations.

Regarding the Class II regulations, it is unclear to us, why the NIGC believes it needs to issue any more regulations. There have been a number of cases in federal court that have confirmed that Congress did not intend to limit Tribes to the most simplistic and rudimentary forms of bingo and similar games or to prevent Tribes from making the most of the current technology. However, the proposed regulations seem to be an effort to limit the Tribe's rights, as established by the courts, to engage in modern Class II gaming. As currently written, these regulations would significantly impact the fundamental characteristics of many Class II games currently in use by Tribes. It is likely that the more popular and profitable Class II games in use would no longer be permitted if these regulations went into effect. The law does not require such a result.

Related to our concern about the Class II regulations is our strong opposition to the NIGC's draft regulations for facility licensing and certification of Indian lands. These drafts regulations are a wholesale affront to the Tribe's sovereignty and our authority to regulate activities on our lands. Moreover, many of the areas that the NIGC's is seeking to impose itself are areas governed not only by Tribal law but also by Tribal-State Compacts. No additional law is needed in this area.

In these draft regulations, the NIGC would require Tribes certify on an annual basis that our facilities are maintained and operated in a manner which adequately protects the environment and public health and safety. However, nowhere in these draft regulations does the NIGC offer any guidance for what is considered adequate or inadequate. Instead, these regulations appear to inject the NIGC into the Tribal law making without any legal basis for exercising judgment. By way of example, many Tribal facilities allow smoking on some parts of the gaming floor. This is true, even places like Washington State, where smoking is banned in public places including bars and restaurants. The Washington State ban was enacted as a public health measure. With these proposed regulations, would the NIGC itself determine that smoking is an imminent threat to public health and require all Tribes to ban smoking in our casino(s)? Tribes, like States, are the best suited to determine which regulations are necessary to protect the people who enter into our lands and our facilities. And we have effectively addressed these

issues through Tribal law. The NIGC is not in a position to determine what is in the best interest of the Standing Rock Sioux Tribe or our customers.

The Standing Rock Sioux Tribe finds the NIGC's effort to regulate Tribal facilities for public health and safety particularly offensive when we have federal facilities – like the schools on the Reservation - that do not even begin to meet basic standards for public health and safety. For years, we have tried to get the federal government to make these schools safe. But the federal government has failed to do this. Consequently, every day that our children go into these federal facilities they are at risk due to mold, improper heating and cooling and other basic facilities and maintenance deficiencies. To have the federal government now come in and tell us that the federal government is going to oversee our facilities for health and safety standards is beyond ironic, it is offensive.

We also object to these regulations because they are in our view contrary to federal law by requiring the Tribe to undertake an unfunded mandate. These proposed regulations would require all Tribes to expend resources for a legal opinion regarding the eligibility of land where the casinos are now located to be used for gaming under IGRA. This legal opinion would be required regardless of the need for such an opinion. This will come at significant expense for Tribes and, in our case, would be completely unnecessary. The boundaries of the Standing Rock Sioux Reservation are well established as a matter of federal law and our casinos are located on trust lands within the Reservation. We should not have to expend our limited resources on an attorney opinion to prove that point. If there are instances where facilities are not properly located on Indian lands as defined under IGRA, the NIGC should seek to remedy those particular instances. But requiring every Tribal government to provide a legal opinion as to the Tribe's land status is overreaching and unnecessary.

Because the proposed regulations are a major and costly infringement on tribal sovereignty and in most instances completely unnecessary, the Standing Rock Sioux Tribe would strongly urge the NIGC to completely withdraw these proposals. Thank you for the opportunity to present my Tribe's views on these important issues.