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NATIONAL INDIAN GAMING COMMISSION

PRAIRIE WIND CASINO HOTEL

PINE RIDGE, SOUTH DAKOTA

JANUARY 23, 2018

Transcribed by:

1 >> CHAIRMAN CHAUDHURI: Thank you,
2 Mr. Brewer. My name is Jonodev Chaudhuri. I'm
3 honored to serve as Chairman of NIGC and Muscogee
4 Creek and from Bengali, India. It is an absolute
5 honor and privilege to be in the Oglala homelands
6 today. I'd like to thank President Weston as well
7 as the counsel as well as the people of Oglala for
8 allowing us into your homelands today. It is
9 truly an honor and a privilege to be here.

10 I'm going to turn it over to my
11 fellow Commissioners in a moment. We're here in
12 force from NIGC. We have the full Commission as
13 well as full range of our senior leadership and
14 subject matter experts to engage in positive
15 consultation today. But let me say a few things.

16 Rural outreach is one of our core
17 initiatives. Rural outreach is fundamental to our
18 ability to do our job as regulators at NIGC. When
19 we talk about rural outreach, that's just a fancy
20 way of saying we're committed to doing our job.
21 What is our job? Our job is to work with the
22 primary regulators of Indian gaming, namely
23 tribes, to ensure a strong and healthy Indian

24 gaming environment that supports the federal
25 policies that the Indian Gaming Regulatory Act was

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1 put in place to support. Namely, strong tribal
2 governments, tribal self-sufficiency, and tribal
3 economic development. So when we talk about rural
4 outreach, we have to recognize that success of one
5 is tied to success of all. And in order to do our
6 job, we have to support communities all throughout
7 Indian country. So that's why today represents an
8 important outgrowth of our commitment to doing our
9 job, to commitment to rural outreach. We're very
10 thankful for the long standing relationship that
11 NIGC has with Oglala as well as all the nations of
12 the great plains. We're committed to doing what
13 we can to be receptive and open to any comments or
14 thoughts, suggestions, or ideas from communities
15 in this region, and I very much look forward to a
16 positive consultation today.

17 I'll have some more to say a little
18 bit later on. But with that I'm going to turn it
19 over to our Vice Chair, Kathryn Isom-Clause.

20 >>KATHRYN ISOM-CLAUSE: Thank you,
21 Chairman. I'm Kathryn Isom-Clause. I'm Vice
22 Chair of the Commission. And I'm Taos Pueblo. I
23 really want to express how honored we are to be

24 here today. Thank you President, tribal counsel,
25 and everyone who traveled here today for being

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1 here with us. We really appreciate y'all coming
2 here, especially on a little bit of short notice.
3 I think we've been trying to get as much done in
4 the short time that we have. So we do appreciate
5 your willingness to work with us on that.

6 As Chairman mentioned, this is a
7 very important place for all Indian country, being
8 out here in Pine Ridge. It has a lot of
9 historical significance and continuing
10 significance today. And we want to recognize that
11 with kicking off our consultations here.

12 Also, as Chairman mentioned -- you
13 took all my good talking points! We're here to
14 solicit primarily -- you all are the primary
15 regulators of gaming. We support you. We have
16 our own role. But we really are here to listen
17 and have a good dialogue. We have three different
18 topics that we'll present ideas on, but we also
19 hope to have a little bit more of an open-ended
20 discussion at the end, especially dealing with the
21 rural outreach and some of the things that
22 Chairman mentioned.

23 From our perspective, we are here
24 to strengthen our partnerships, provide clarity
25 for regulations and policies, and make our day to

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1 day work more efficient. That's the goal of
2 everything that we're going to talk about today.
3 I'd also just like to touch on the fact that due
4 to the three-year terms we serve, we do have
5 somewhat limited time as this current Commission
6 -- we're really lucky to be this current
7 Commission. I'm honored to serve with my fellow
8 Commissioners. But given that limited time, we're
9 trying to accomplish things that we can do in sort
10 of a bite size piece I guess is how I've been
11 thinking about it. That's kind of the focus of
12 our topics today, but that's not to say we don't
13 continue to work on these issues even after the
14 current Commission make up changes. We want to
15 continue to have stability and continue the same
16 policies that we have been working on.

17 And part of that will be reflected
18 in our strategic plan that's going to be posted
19 next month. That's actually for fiscal years 2018
20 through 2022. So you'll see the same initiatives
21 that we're going to talk about today and you can
22 see them in more detail when we're able to post

23 that in February. So we're really looking forward
24 to hearing your ideas, and thank you for being
25 here with us today. With that I'll turn it over

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1 to Commissioner Simermeyer.

2 >>SEQUOYAH SIMERMEYER: Thank you.

3 I want to join my colleagues in saying thank you
4 President Weston, and the leadership here, Mr.
5 Brewer, and the Oglala community for having us
6 here today and for helping us kick off this
7 consultation series here in this community. It's
8 an important thing. I'm Sequoyah Simermeyer. I'm
9 third member of the Commission. I'm Coharie from
10 North Carolina. I just also want to join my
11 colleagues in saying I appreciate everyone's time
12 and commitment engaging in this discussion here
13 and the continuing discussion that we're going to
14 be having on these topics. From my perspective
15 since being on the Commission, I tried to approach
16 the work that we have an opportunity to do,
17 looking at both the direction that's given to us
18 under the over arching marching orders in the
19 Indian gaming regulatory act, to look at the
20 expertise of our colleagues in the field, both our
21 regulators in Indian country and our institutional

22 knowledge that we have with the Commission
23 ourselves with our tremendous staff. And also to
24 be diplomatic in how we look at decisions that
25 tribes make. And so the opportunity to consult in

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1 these topics does a lot to help in the work that
2 we're able to do and the way that I'm going to
3 kind of accomplish my hopes on being on the
4 Commission. Part of that is the opportunity that
5 the Constitution provides not just as a matter of
6 good governance, not just as a matter of helping
7 to make better decisions at the federal level, and
8 not just as an opportunity to help expand other
9 federal partners who may not be engaging in Indian
10 country, but more importantly it helps to define
11 the government to government relationship, and
12 define meaning to that. So all the work and
13 effort that we're hoping to engage in here
14 wouldn't be possible without that opportunity and
15 your and everyone's support. Thank you for that
16 and I look forward to the topics that we're going
17 to discuss today.

18 >> CHAIRMAN CHAUDHURI: Thank you.

19 Let me just say a couple of things. Our chief of
20 staff, Christinia Thomas will go into more
21 housekeeping matters in a moment. But I do want

22 to let everybody know before we move forward with
23 formal introductions that we do have a recorder.
24 The plan is to have this consultation recorded,
25 then transcribed. The benefit of that is that

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1 other communities, other gaming bodies, other
2 tribal nations that aren't able to be here today
3 can at least benefit from being able to read out
4 the discussions that we have. And so I do want
5 folks to know that there is a recording.
6 Similarly, this is a nation to nation
7 consultation. All deference will be given to
8 tribal representatives. We understand that there
9 are -- that there may be potential legal counsel,
10 or other representatives and tribal nations here.
11 If time allows we'll hear from others. But this
12 is a nation to nation consultation, and we want to
13 make sure that we have enough time to hear as many
14 comments as possible from tribal leadership,
15 tribal regulators, and official representatives of
16 tribal nations.
17 So as Vice Chair mentioned, I think
18 it's very important to communicate what the
19 purpose of today's topics are -- selecting today's
20 topics are. We made good -- I feel confident in

21 saying this, we made good on our commitment that
22 we've had as an Agency for many years to work with
23 Indian country before ever putting pen to paper.
24 That flows from our consultation policy, and our
25 commitment to meaningful consultation. Not just

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1 after the fact consultation. But hearing from
2 folks before we even put pen to paper. We've
3 provided draft documents to help with today's
4 discussion. Those draft documents flow out of
5 past conversations that we've had, especially the
6 management agreement materials. We have some
7 specific language that we're considering. But if
8 anybody is wondering why we're working under the
9 timeframe that we're working on, I just want to
10 kind of reiterate some of the points made by my
11 colleagues. Stability is very important to us at
12 the Agency. We have no doubt that stability will
13 continue after our respective terms are over. But
14 part of doing our jobs is to make sure that we do
15 everything that we can do within our respective
16 terms. So right now we have a full Commission.
17 There have been times historically that the Agency
18 hasn't had a full Commission. My term ends later
19 this spring. And I haven't made plans about what
20 happens when my term ends. But running through

21 the tape is important to us all. That's not to
22 say that active work won't continue, active stable
23 work won't continue should any one of us not be a
24 member of the Commission anymore. But we're
25 simply trying to do all that we can given our

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1 statutory terms. And so we're not trying to push
2 anything through that's not consistent with what
3 we work out through consultation. However, we
4 want to be as helpful to the Indian gaming
5 community and to Indian country and the general
6 public as possible given our terms.

7 So before we actually talk about
8 the details, it's always important to know who
9 we're talking among. Introductions are very, very
10 important to us. We're going to hear, if we could
11 go around the room, we're going to hear from all
12 of the representatives of NIGC, and what our roles
13 are. But we also hope that tribal
14 representatives, tribal Commission
15 representatives, and any other representatives
16 feel free to kind of share who they are, what
17 Tribe they represent, what their role is with that
18 Tribe. Since we're having a transcriptionist, the
19 more detail the better. It's always easier during

20 transcriptions to put in detail that's clearly
21 provided up front. But before we go into
22 introductions, it's part of our tradition to
23 always recognize NIGC alumni. We have former Vice
24 Chair, if you want to -- well, we'll get to
25 introductions. Liz Homer. But we also have Mr.

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1 Ken Many-Wounds. I saw him earlier. Ken
2 Many-Wounds is an alumnus of NIGC. If I'm missing
3 anybody, please forgive me. But at this time, if
4 we could go around the room. If we can start with
5 NIGC folks -- it's important to us to let everyone
6 here know that coming out here is a highest
7 priority for us. So we're going to hear from the
8 NIGC folks. Ken, I'm sorry. And President,
9 before we go into introductions, again, many
10 thanks for allowing us into the Oglala territory.
11 If you can share -- if you would like to share
12 some words to help open us up as well, it would be
13 greatly appreciated.
14 >> Thank you, Chair. Vice
15 Chairman, Chairwoman, to be politically correct,
16 welcome. The Commission, welcome. To everyone
17 else, to my relatives, welcome. We've had a long
18 history with our casino, and I'm very, very proud
19 of our casino. We've had good people. We have

20 good people. But we've visited early about what's
21 happening here. We'd say we're a third world
22 country. We didn't set out to be Las Vegas. We
23 didn't set out to be Shakopee. We didn't set out
24 to create jobs. And that's what we've done.
25 That's what we've sustained and that's what we've

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1 maintained. The big thing that we really want to
2 work on is improving our casino for better
3 livelihood because we worry about the state -- you
4 know, we had this discussion again about the
5 health of the cities and the states, coming into
6 the state gambling. And it's going to hurt our
7 Indian casinos. I believe it's our jobs to make
8 sure that we work together, that we push the
9 issues, that all tribes come together to make sure
10 that we fight the good fight, and that we make
11 sure that our casinos are stable and sustainable.
12 Because if we don't, we're going to have a big
13 building there. And all the tribes are going to
14 have a big empty building out in the middle of
15 nowhere. We don't have the luxuries of having to
16 be built in urban areas so that we don't have a
17 big draw. So we've got to be creative in trying
18 to bring something else. And then we're doing

19 that. We're working on those things. But the
20 idea is that in order to make things change, laws
21 have to be changed. And that's where you come in.
22 That's where you bring the thought that we're not
23 here all alone by ourselves. And that's what we
24 at the great plains tribal Chairman's association
25 are planning. Planning more meetings. Bringing

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1 in the Rocky Mountain area, the northwest, to see
2 who has a different idea, a different approach, a
3 better -- or if we get together, to make sure that
4 we can all have something to say, to see where we
5 can go with this. Because it's about Indian
6 country. We've all got to remember who we fight
7 against. You know? Trump ain't my President.
8 I'll tell you that right now. If you voted for
9 him, I got something to say. We might have to go
10 out back. I'm just kidding you, but that's the
11 thing. That's what we have to fight against.
12 That's exactly what we have to do. And that's all
13 of our responsibility.

14 So we need to have more of these.
15 We need to -- even within our own tribes, within
16 the regions. I'm glad you talked about it. I
17 don't know if you want to make that announcement
18 about the other office. You'll do that. I won't

19 say anything. We'll work on this. But I just
20 want to say welcome. I could stand up here for
21 two hours, but I won't. Just welcome. I thank
22 you for being here. And we will discuss more of
23 this later on. Thank you.
24 >> CHAIRMAN CHAUDHURI: Thank you,
25 President. We actually have something for Oglala

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1 but our travel got a little mixed up. A couple of
2 our flights were cancelled, and it's kind of
3 tradition to us to show our appreciation with just
4 very modest tobacco pouch. We have something for
5 Oglala but we will have to follow up and figure
6 out maybe another reason to come back out in
7 person. But it is -- it's on its way.

8 Many thanks for that welcome and
9 accommodation. It is always important to us to
10 recognize that we are in a nation's homeland
11 whenever we come to consultation. And thank you
12 for that, President.

13 So the structure of today's
14 meeting, we're going to hear about some specific
15 topics. But separate from the topics we want to
16 hear about any topics of concern for anyone in
17 this room. We're going to have kind of an

18 open-ended section at the end if anybody wishes to
19 speak for two hours, they're welcome to. At the
20 same time we're scheduled to go to five. If
21 leadership has made the points that leadership
22 would like to make, there's no -- as I always say
23 there's no crime in finishing early. We may
24 finish well before five if everybody has had an
25 opportunity to share what's on their mind. I

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1 should mention one thing that you brought up,
2 President. As I mentioned, rural outreach is
3 extremely important to us. We have heard -- we
4 asked for input the last time we were here in the
5 plains when we were here in Rapid City. When we
6 were at Rapid City last year we had a listening
7 session to hear and receive input on what we can
8 do as part of our rural outreach commitment to
9 support communities in the Great Plains region.
10 One of the ideas that was discussed was the
11 potential for opening a formal Rapid City regional
12 office. We had a formal briefing as a Commission
13 last week, and we're in the final process of
14 sifting through comments. But there is much to be
15 said for the benefits of having that office.
16 Right now we have a wonderful team that staffs a
17 satellite office. But elevating the Rapid City

18 office to full regional status will do a number of
19 things.

20 One, it will be headed up by a
21 formal regional Director with decision-making
22 authority for that region. But two, since it will
23 flow out of our commitment to rural outreach,
24 there are potentially aspects of the Agency
25 functions -- Agency operations that can be housed

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1 in that region. So for instance, through our
2 trainings we're able to provide a number of best
3 practices that incorporate lessons learned from
4 our work with various tribes, including tribes
5 with new operations. We potentially could house
6 that in the Rapid City office.

7 In addition to that, we have set
8 location for all of the staff who are assigned for
9 the region. Right now our regional office is
10 based out of St. Paul, Minnesota. And as we know,
11 St. Paul is many, many, many miles from Oglala,
12 many, many, many miles from plains tribes in
13 Montana. So that is something that we haven't had
14 a formal vote yet but we're moving forward on a
15 likely decision point very soon. So please keep
16 your eyes peeled on that. But thank you so much

17 for bringing that up, President.

18 With that, if we could move forward
19 with introductions of the NIGC team because we're
20 here as servants to Indian country. I want to
21 make it clear why everybody who is here is here
22 and what role they play so that even after today
23 we continue to be a resource for all the tribes in
24 the region. We're going to move forward with
25 introductions, and then hopefully introductions of

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1 everyone in the room. I'll just start off with
2 our finance Director. Ms. Yvonne Lee.

3 >>YVONNE LEE: Good afternoon. My
4 name is Yvonne Lee. I'm the Director of finance
5 for the NIGC.

6 >> CHRISTINIA THOMAS: Good
7 afternoon. My name is Christinia Thomas. I'm the
8 acting chief of staff with the National Indian
9 Gaming Commission. I'm also a member of the
10 (inaudible) out of Minnesota.

11 >>STEVEN IVERSON: Good afternoon.
12 I'm Steven Iverson. I'm a staff attorney with the
13 Office of General Counsel with the NIGC.

14 >> Good afternoon. I'm Tom Bovin
15 (phonetic), I'm an auditor with the NIGC. I'm
16 based -- I'm in the St. Paul region at the Rapid

17 City regional -- I mean satellite office.
18 >> JIM MCKEE: Good afternoon. I'm
19 Jim McKee. I'm a compliance officer in the Rapid
20 City satellite office. I work with Tom here.
21 >> LINDA DURBIN: Hi. I'm Linda
22 Durbin, Region Director for St. Paul.
23 >> MARVIN YOUPEE: Hi. I'm Marvin
24 Youpee. A lot of you know me. Some of you don't.
25 But I work with Jim out of the compliance office

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1 out of the satellite office.
2 >> DELANEY STEPP: Hello. I'm
3 Delaney Stepp. I'm the executive secretary for
4 the Crow Creek Gaming Commission.
5 >> WINNIE STEPP: Hello. I'm
6 Winnie Stepp. I'm the Chairwoman of the Crow
7 Creek Gaming Commission.
8 >> JOSEPH PORRES: Hi. I'm Joseph
9 Porres from the Standing Rock Sioux Tribe Gaming
10 Commission.
11 >> WANDA GOURNEAU: Good afternoon.
12 I'm Wanda Gourneau from the Crow Creek Sioux
13 Tribe, and I'm on the Gaming Commission.
14 >> CLEVELAND IRON HEART: Good
15 afternoon. My name is Cleveland Iron Heart. I'm

16 an internal auditor for Crow Creek Sioux Tribe
17 Gaming Commission.
18 >> MARION WOLF: Good afternoon.
19 I'm Marion Wolf with the Three Affiliated Tribes
20 Gaming Commission and Executive Director.
21 >> ELIZABETH HOMER: Good
22 afternoon. My name is Elizabeth Homer and I am
23 counsel to the Oglala Sioux Gaming Commission.
24 >> ELANE PROVOST: I'm Elane
25 Provost. I'm the office manager, licensing agent

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1 for the Gaming Commission.
2 >> NAOMI FELICIA: Good afternoon.
3 My name is Naomi Felicia. I am the Vice President
4 for the Gaming Commission here. I just want to
5 say welcome here to the country, land of crazy
6 horse. You are very welcome here. And good to
7 see and meet all of you.
8 >> DELILAH WATKINS: I'm Delilah
9 Watkins. I'm the file clerk with Gaming
10 Commission.
11 >> BILL POURIER: Good afternoon.
12 I'm Bill Pourier, general manager casino here.
13 Welcome, everybody. I hope you enjoy your stay.
14 And hopefully you get a lot done this afternoon.
15 >> BARRY THOMPSON: Hello,

16 everybody. My name is Barry Thompson. I'm from
17 Crow Creek Tribe. I'm the general manager at the
18 Lode Star casino and hotel. I want to welcome
19 everybody.

20 >> KEN MANY-WOUNDS: Good
21 afternoon. My name is Ken Many-Wounds. I come
22 from the Hunkpapa Lakota nation from Standing
23 Rock. Prisoner of war of the Oglala at this point
24 in time.

25 >> JANET MORAN: Good afternoon.

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1 I'm Janet Moran. I'm the Director of marketing
2 for the Prairie Wind Casino.

3 >> DENISE DRAKE: Hi. I'm Denise
4 Drake. I'm assistant controller for Prairie Wind
5 Casino.

6 >> MONA BRAVE: Hi. I'm Mona
7 Brave. Prairie Wind Casino controller. Welcome.
8 I hope to learn a lot this afternoon.

9 >> TRAVIS BARDEN: My name is
10 Travis Barden. I'm the Prairie Wind Casino
11 administrative assistant.

12 >> DARIN JANIS: Welcome. My name
13 is Darin Janis. I'm the OST public relations
14 coordinator for President Weston's office.

15 >> JONATHAN RED OWL: I'm Jonathan
16 Red Owl. I'm the Director of Gaming here at
17 Prairie Wind Casino. Welcome, everybody.
18 >> CHAIRMAN CHAUDHURI: I think we
19 got everyone. Okay. Again, thank you so much.
20 It's no short -- I mean, short order to pack up
21 and come to a meeting in the middle of January in
22 this neck of the woods. I'm very thankful for
23 everybody who took the time to be here. I went to
24 the front desk and I asked is it going to be warm
25 or cold today? The lady said it's going to be

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1 pretty warm. It's going to be like this all day.
2 Is it 15 degrees outside? I was like okay, that's
3 pretty warm. Again, thank you so much for
4 yourselves taking the time to be here.
5 I'm going to turn it over to our
6 chief of staff, Christinia Thomas, who is going to
7 kind of walk through some housekeeping matters for
8 us.
9 CHRISTINIA THOMAS: You actually
10 did most of the housekeeping stuff earlier. Just
11 to reiterate, we are recording this meeting so
12 that we can transcribe it later. So if you have
13 comments, please state your name and your tribal
14 affiliation before adding your comment. We are

15 scheduled to go from 1 to 3 but apparently the
16 Chair wants to go to five so we can do that as
17 well.

18 For the questions and comments
19 portion for each topic, we'll actually be stopping
20 after each presentation of the topics to get
21 questions or comment it is from individuals.
22 Before we actually proceed to each of the topics,
23 we do always stop and ask if there's anybody that
24 wants to put something on the record first in case
25 they're unable to stay for the entire duration of

22

1 the consultation. That's the point we're at right
2 now.

3 >> CHAIRMAN CHAUDHURI: Recognizing
4 sometimes folks have other travel that they need
5 to take care of, other meetings, if anybody needs
6 to get a statement on the record before we get
7 into all the details, two-hour statements are
8 appropriate for this time. I guess --

9 >> I got -- I got a comment here
10 from this guy named (inaudible) signed by the
11 Chairman for comments to go hand deliver.

12 >> CHAIRMAN CHAUDHURI: These
13 written comments will be part of the record from

14 today's consultation. However, if anybody -- if
15 you'd like anybody to read them into the record,
16 please just let us know. With that, any
17 additional statements or comments before we kind
18 of start getting into the topics?

19 >> CHRISTINIA THOMAS: The first
20 topic is under the management contract
21 regulations. We have a couple of handouts for
22 drafts. Yvonne Lee is the one that will be
23 handling that topic. I will hand it over to her.

24 >> CHAIRMAN CHAUDHURI: Before
25 Yvonne gets started, I do want to mention, the way

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1 we've got it structured, we'll have a subject
2 matter expert kind of layout the background for
3 what we're thinking of doing, or what we want to
4 hear input on. Then I think the Commission will
5 weigh in and give a little bit more background.
6 But it really is open-ended. Whatever comments
7 that folks want to share, whatever criticisms,
8 whatever concerns, I want everybody to feel -- I
9 don't want anybody to be bound up by the process.
10 I want to be a conversation more than anything
11 else. With that, Yvonne.

12 >> YVONNE LEE: Good afternoon
13 again. My name is Yvonne Lee. I'm the Director

14 of finance for NIGC. Under IGRA and current NIGC
15 regulations, tribes are to engage a third party to
16 manage their operations are required to enter into
17 a management agreement with the third party that
18 must be approved by the Chairman of the National
19 Indian Gaming Commission. Following the NIGC's
20 2017 consultation sessions, the Commission
21 carefully reviewed its regulations and the
22 Agency's internal procedures for reviewing and
23 approving management contracts. As a result of
24 that review, and based on comments received during
25 the consultations, the Commission believes that

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1 changes to our management regulations will improve
2 the efficiency of the contract review process and
3 ensure consistency with IGRA's requirements
4 regarding term limits. I will provide some
5 background on this topic, including current
6 regulations, Agency concerns, and the Commission's
7 proposed amendments to the regulations. After
8 this, we will open the floor for questions and
9 discussion.

10 The Chair of the NIGC may only
11 approve a management contract if it does not
12 exceed a term of five years, or in rare

13 circumstances, seven years. NIGC regulations
14 reflect that stipulation, and many contracts are
15 not approved unless they comply with all
16 requirements of IGRA, including term limits.

17 After management contracts have
18 been approved, tribes and their management
19 contractors may amend their contracts by following
20 the streamlined procedures for review, and
21 approval of contract amendments found in NIGC
22 regulation 25CFR535. Part 535 provides an
23 expedited process within which background
24 investigations are only required if a third party
25 individuals and/or entities responsible for the

25

1 manage contract have changed. And no business
2 plan or updated financial information is required.
3 The expedited process is designed to allow the
4 parties to sustain their relationship in a dynamic
5 business environment while maintaining integrity
6 of the Chair's initial management contract review
7 and approval.

8 The safeguards found in NIGC's
9 management contract review process serve to assure
10 IGRA's primary policy goals are met, including
11 protecting Indian gaming, and ensuring the Tribe
12 is the primary beneficiary of its gaming

13 operation.

14 A thorough review of past practice
15 revealed that parties using part 535's expedited
16 process have submitted amendments to the initially
17 approved contracts that have extended the term of
18 the approved contract by an additional one to five
19 years resulting in a contract that extends beyond
20 the explicit term limits of IGRA. Thus, the
21 Commission believes it is important to update
22 regulations to maintain IGRA's mandate.

23 The proposed amendments clarify the
24 regulations by explicitly noting that amendments
25 that extend the approved management agreement

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1 beyond the term limits permitted by IGRA which is
2 five or seven years will be reviewed under the
3 full requirements of a new management contract
4 under part 531.

5 For example, if an approved
6 contract with a five-year term is nearing the end
7 of its term, and the parties are happy with the
8 relationship and simply wish to extend it for an
9 additional five years, they may do so, but it may
10 not be reviewed as an amendment. Because IGRA
11 limits contract terms to five or seven years, the

12 Chairman will review the agreement under part 531
13 and the entire information that 531 requires must
14 be submitted.

15 For another example though, if a
16 management contract had a one-year term and the
17 parties wanted to amend the agreement to extend it
18 for an additional year, for a total term of two
19 years, the Chair would review the amendment under
20 part 535 because the term limit would still be
21 within the statutory limit of five or seven years.

22 The Commission understands this
23 change may affect the timing and expense of
24 updating background investigations for making
25 suitability determination of management

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1 contractors. And independent of the changes
2 discussed above, the Commission received comments
3 during the last round of consultation that the
4 background investigation process was
5 time-consuming and expensive. As a result, the
6 Commission has done a thorough review of its
7 background investigation process, and is proposing
8 changes to our internal procedures to make the
9 process more efficient, there by reducing the cost
10 of investigations.

11 Under the new process, NIGC staff

12 will review the background investigation
13 applications and divide them into different
14 investigative groups based on the level of risk.
15 The process will allow the Agency staff to focus
16 their investigative resources on the most vital
17 individuals and entities. This replaces the one
18 size fits all model that scrutinizes all
19 applicants the same.

20 For example, under the current
21 process, the top direct financial interest goes
22 through the same background investigation as the
23 smallest indirect financial interest. Under the
24 new process, entities and individuals with a
25 direct financial interest holding the highest

28

1 level of risk to the Tribe will have a more in
2 depth background investigation completed, versus
3 those entities or individuals who have indirect
4 financial interest.

5 In addition, the Commission has
6 proposed changing the individuals and entities
7 that are required to submit background
8 applications under the regulations to those that
9 have ten percent or greater financial interest.

10 This proposed change should

11 significantly reduce the cost to the management
12 contractors in submitting full applications on
13 smaller investors.

14 This proposed change will also
15 better align the Agency's requirement with other
16 regulatory agencies. This change should not
17 increase risk to tribal gaming as the Commission
18 will retain discretionary authority to conduct
19 background investigations on the owners with even
20 the smallest interest who may pose a threat to the
21 industry.

22 Further, the Commission is
23 proposing a regulatory change to clarify the
24 reduced scope of investigation provision to reduce
25 the burden of background investigations for those

29

1 who qualify.

2 To further reduce the time and cost
3 of background investigations, the Agency will no
4 longer use the office of personnel management or
5 OPM to conduct part of the background
6 investigations. Instead we will process
7 fingerprint checks through FBI and perform credit
8 checks through other more efficient alternatives.

9 Lastly, to reduce the up front
10 financial burden and timing concerns, the proposed

11 amendments to the regulation removes the
12 requirement of a deposit before the background
13 investigations begin. Instead the Agency will
14 bill the management contractors regularly as the
15 investigation proceeds.

16 I would now like to turn it back
17 over to the Commission to lead the discussion.

18 >> CHAIRMAN CHAUDHURI: For some
19 additional framing, I think my colleagues and I
20 will just provide additional background.

21 >>SEQUOYAH SIMERMEYER: This is
22 Commissioner Simermeyer. I just want to say
23 thanks for that concise restatement of a number of
24 different concepts that are being proposed in
25 this. I'm hoping that in our discussion here we

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1 can kind of focus on what some of the pragmatic
2 impacts are of these proposed ideas on the ground,
3 how they work. I think one of the goals and what
4 this does for me, it tries to achieve better
5 efficiency, tries to understand the on the ground
6 landscape of what the impacts are, and understand
7 that the over arching policy of IGRA, which
8 include following the Indian law, whatever it says
9 the requirements are for some of these five or

10 seven-year standards, and also for understanding
11 that the -- we don't need to put up burdens in
12 achieving those goals for tribes that aren't
13 necessary to achieving the goals for what IGRA
14 sets out to establish a standard for compliance.
15 I'm especially interested in hearing on the ground
16 impacts, whether it's today or other discussion
17 during this Consultation series. I really
18 appreciate that from my perspective.
19 >> CHRISTINIA THOMAS: I know for
20 this topic it might not be as directly relevant to
21 folks in this region. Some other regions are
22 coming up later in the schedule will have more
23 experiences more directly. But it is important
24 for everyone to weigh in on all of our policy
25 changes. I think all of Indian country has a

31

1 vested interest in everything the Agency does. So
2 we do appreciate your feedback on this, whether or
3 not you have gone through management agreement.
4 With this change we're really
5 hoping to make our Agency more efficient, save
6 your money really because our money is your money,
7 it's tribal money. We want to make ourselves as
8 efficient as possible while still staying true to
9 the requirements of IGRA and making sure those are

10 upheld, these agreements are following the rule of
11 law.

12 I'll turn it back over to the
13 Chairman.

14 >> CHAIRMAN CHAUDHURI: Just to
15 echo the comments of my colleagues, while there
16 may not be a lot of management agreements in this
17 region, I think it's important to kind of frame
18 these topics in terms of what we're trying to do
19 across the board at NIGC. So we already talked
20 about rural outreach. Right now we're operating
21 under tent pole initiatives. Those are primary
22 guide posts for the day to day work we do at the
23 Agency. Rural outreach is one of them. Another
24 one is strengthening the Indian gaming work force
25 both at NIGC and among our partners. We're doing

32

1 that through training and technical assistance.
2 Third one is staying ahead of the technology
3 curve. So we created a technology division that
4 helps keep us abreast of all changes on the
5 horizon in Indian gaming so that everything we do
6 from policy down to purchasing is done with an eye
7 towards staying on top of technological changes.
8 But the fourth one really relates to management

9 agreements. And that's addressing anything that
10 amounts to gamesmanship on the backs of tribes.
11 So IGRA preserves the tribes' roles as the primary
12 regulators of the operations. But furthermore,
13 IGRA -- the purpose of IGRA is to ensure that
14 tribes remain the primary beneficiaries of their
15 operations. So the tribes, and not third parties.
16 Tribes, and not vendors. Tribes, and not lawyers.
17 Tribes, and not lobbyists are the true
18 beneficiaries of their operations. Management
19 agreements and the approval of management
20 agreements is one of the ways that NIGC ensures
21 that that primary beneficiary status of tribes is
22 maintained. So we have a responsibility at the
23 Agency to -- we have a fiduciary duty to our
24 tribal partners to make sure that we do everything
25 we can to maintain the primary beneficiary status

33

1 as we review management agreements.

2 So the changes that we put into
3 place to kind of adhere to IGRA's intent in terms
4 of the duration of management agreements, the
5 changes that we put into place in terms of
6 efficient background, that all relates to our
7 fourth initiative, which is preventing
8 gamesmanship on the backs of tribes. It may not

9 directly relate to a lot of the issues that we see
10 day to day in this region. But we want to give
11 that background and that perspective.

12 That said, we're going to turn it
13 over to comments and concerns now. Anything is
14 fair game. Even though it may not directly relate
15 to a particular community, there are many gaming
16 experts here -- there are many folks who are
17 familiar with leadership issues. If there's
18 anything that we should be thinking about as we do
19 our work, we're all ears. So with that, we'll
20 turn it over and open up the floor for comments,
21 concerns. I do want to restate the written
22 comments that Standing Rock submitted, they will
23 be part of our formal consultation record.
24 However, if anybody wants to read any statements
25 into the record, they're welcome to do that as

34

1 well.

2 With that, the floor is all of
3 ours.

4 >> KEN MANY-WOUNDS: Thank you. My
5 name is Ken Many-Wounds. Just some -- being a
6 former employee, I know the internal workings
7 fairly well. But just some background questions

8 to begin with. How many management agreements
9 have been approved by the NIGC in the last five
10 years?

11 >> CHAIRMAN CHAUDHURI: That's a
12 good question. I don't want to throw Yvonne under
13 the bus. But the way we have it structured, our
14 management agreements are first routed through the
15 office of finance, the division of finance. And I
16 don't know if we're able to -- we can always come
17 back with the specific numbers. But do you have a
18 rough number? About five in the last five years.
19 Do you want to weigh in --

20 >> YVONNE LEE: Not the amendments.
21 Just contracts.

22 >> CHAIRMAN CHAUDHURI: Do you want
23 to weigh in on amendments?

24 >> YVONNE LEE: I don't have that
25 number. We can get back to you certainly.

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1 >> KEN MANY-WOUNDS: That would be
2 interesting to know for the group. Again, as you
3 stated, Chairman, it doesn't happen a lot in this
4 region, but it affects all of us in some way,
5 shape or form. On the advice the Chairwoman said,
6 it's our money.

7 How many are in the pipeline right

8 now? As we speak, how many management agreements
9 are in the pipeline?

10 >>YVONNE LEE: There are 11
11 management contracts and amendments in the
12 pipeline.

13 >> KEN MANY-WOUNDS: Amendments,
14 not just contracts. Both. A combination of both.
15 How long have they been in the pipeline?

16 >>YVONNE LEE: We have received a
17 lot of -- the volume of management contracts
18 amendments has increased a lot during the past two
19 years. So those contracts, I think we received
20 most in the year 2017.

21 >> KEN MANY-WOUNDS: This is the
22 million dollar question. How long is it taking
23 NIGC to get these management contracts from the
24 date they're submitted out of the pipeline and
25 approved of? We had five in the last five years

36

1 that were approved of. That's one a year?

2 >>YVONNE LEE: It depends. So when
3 we get the submission of management agreements, we
4 first send our submission letter, and then we send
5 our issues letter regarding provisions that we
6 need clarification or modification of the

7 management contract. Parallely, we conduct
8 background investigation. So a lot of it depends
9 on how many -- what's the volume that we currently
10 have, how many contracts are in the queue to be
11 reviewed, and also how quickly the parties respond
12 to NIGC's questions. A lot of times we send our
13 issues letter, and the parties have to work it out
14 and they might have some changes since their
15 original submission and they need to work it out.
16 That process sometimes takes quite a bit of time
17 to resolve. It's not really just in the past five
18 years we approved five. But it's really the time
19 it takes, and also every contract in nature is
20 different. So it all depends how quickly you
21 respond to our questions, and also the background
22 investigation, if it's a complicated one and
23 involves a lot of entities, those take more time
24 than others which probably just have one or two
25 stakeholders with the management contract.

37

1 >> KEN MANY-WOUNDS: Thank you for
2 that explanation. Solely, the key word I hear
3 streamlining this, does NIGC have the man and
4 woman power to streamline these and get them done
5 in a more effective and efficient way?

6 >> CHAIRMAN CHAUDHURI: I'll take

7 Yvonne off the hot seat. These are excellent
8 questions. It's always tricky when you try and
9 forecast the future. And so part of when you try
10 to assess staffing needs, you've got to assess
11 what the needs will be one year or two years down
12 the road. These things kind of come in cycles.
13 So a few years ago we did a pretty large
14 regulatory overhaul. And we updated a lot of our
15 regulations. So a lot of the regulations that are
16 -- a lot of the management agreements that are in
17 our pipeline right now may -- we may not have that
18 many agreements two or three years from now.
19 That's one point.

20 But the second point I really want
21 to make, when we talk about five in five years,
22 and that's why I'm so glad Ms. Lee touched on
23 amendments -- that's not taking into account all
24 of the amendments that the Agency processes. IGRA
25 had -- keeping with the idea of tribes being the

38

1 primary regulators, primary beneficiaries. IGRA
2 had a timeframe in mind for management agreements
3 after which the thinking was that many facility it
4 is would eventually be operated and fully run by
5 the tribes themselves. That's why you never say

6 never. But these amendments that kind of come
7 through the door from time to time, each of which
8 involves a lot of backgrounding, we're trying to
9 take a look at IGRA's intent, figure out what we
10 can do to help process things quickly, but also
11 kind of stay as true as we can to IGRA's five to
12 seven-year window.

13 So in terms of staffing, it's hard
14 to predict the future, but we're constantly
15 looking at our staffing levels, and we're
16 constantly doing so with an eye towards being good
17 stewards of tribal funds. I would say just for my
18 part we do have the people power to process these
19 in an effective way. We could always do things
20 better. But as Ms. Lee mentioned, a lot of the
21 processing times involve a back and forth that's
22 part of our technical assistance that has nothing
23 to do with a review lag on our end. It's a
24 technical assistance conversation that we often
25 have with attorneys on the other side of the

39

1 aisle, or the managers themselves. And so we
2 can't hire folks for the management companies. We
3 can only do our part.

4 >> KEN MANY-WOUNDS: I might
5 suggest when somebody submits a management

6 contract that NIGC sits down at a table with them
7 in the room and have a template, which you have.
8 All of these things must be met. So there should
9 be no reason that you should have to resubmit at a
10 later date. There might be some questions. But
11 this is a checklist. When you want to submit the
12 management contract make sure everything is in
13 full and correct to the best of your knowledge.
14 Tell them up front. If there's a problem with the
15 back and forth, kind of like the ordinances, you
16 guys say resubmit it then. There's a cutoff point
17 at some time. You can't just let them string
18 along and string along. So I agree with the
19 amendments. If it's accurate to stay within the
20 five to seven years. If they want to resubmit an
21 amendment to extend that, full background check.
22 I'm all on board with that because things do
23 change over that timeframe, five to seven years.
24 The average cost, my question --
25 let me go back to this -- as stated in your stuff

40

1 that says the management companies have claimed
2 that the regulations, background investigations,
3 and suitability requirements are not applicable.
4 What were their comments to that? They're not

5 applicable based upon what? Because they just
6 don't want to do what the NIGC asked them to do?
7 So what are some of their reasons that they're
8 saying they're not applicable?
9 >> CHAIRMAN CHAUDHURI: To your
10 point about working with folks to get submissions
11 up to par, I don't want to characterize all of the
12 discussions that we've had, but some folks -- some
13 management companies, or some folks who are
14 supportive of amendments would -- often times they
15 try to shoehorn new agreements into existing
16 amendments. And they'll try to suggest that, wait
17 a second, why can't we just do this by amending
18 what we already have without recognizing that
19 backgrounding gets stale. A backgrounding that
20 we've done for a management agreement ten years
21 ago isn't necessarily good information to rely on
22 today. And so without guidance in the form of
23 regulatory language to explain when things -- when
24 backgrounding has to occur, a lot of the times
25 you're left with our fiduciary responsibility to

41

1 make sure that backgrounding is up-to-date versus
2 the other side who wants to just have us rely on
3 ten-year-old information. So that's where some of
4 the disagreements lie. I don't want to

5 characterize all of the comments, but --

6 >> KEN MANY-WOUNDS: I kind of
7 figured that's what it was. They want to get by
8 without having to do it over again. Times do
9 change. I'm all for that.

10 Then it goes on to state that you
11 want to streamline the background investigations
12 and bill management contractors for the
13 investigative costs rather than requiring them to
14 put a deposit. What are going to be the billable
15 hours? What are you going to charge if you're not
16 making them pay up front, or piecemeal it in?
17 What's the billable rate?

18 >> CHAIRMAN CHAUDHURI: People are
19 volunteering to answer. Folks want to be on the
20 hot seat, they're welcome to it.

21 >> I figure Yvonne is on the hot
22 seat enough. Actually we analyzed all of the
23 information on what it cost us. So anything
24 that's a direct cost. So there's a direct cost
25 for the FBI to run the FBI background. That's

42

1 charged back to the management contractor.
2 There's a direct cost for using a company to run
3 credit, and that type of information. That's

4 billed directly back. Internally for the
5 background investigators we actually analyze their
6 time. The last analysis we did we charged \$90 an
7 hour. That's reimbursable for the time that those
8 individuals are spending conducting the
9 backgrounds and completing the recommendations to
10 move forward.

11 >> KEN MANY-WOUNDS: Thank you.
12 That was a pretty good answer. I'm not trying to
13 put anybody on the hot seat. Don't use that term.
14 It's just a question and answer here.

15 >> CHAIRMAN CHAUDHURI: This is
16 actually welcome.

17 >> KEN MANY-WOUNDS: What in the
18 past when the management contract puts in \$25,000
19 deposit and \$10,000 for each member of the
20 management team who owns ten percent or more in
21 the company -- what has the NIGC collected in the
22 past on some of these -- to the highest amount
23 possible? Anybody?

24 >> CHAIRMAN CHAUDHURI: So we do
25 have a billing process.

43

1 >> YVONNE LEE: The \$25,000 per
2 entity and \$10,000 per individual is a deposit
3 that we require up front before we conduct the

4 background investigation. So as the background
5 investigation -- this is current process. Okay?
6 As the investigation proceeds we will bill the
7 management contractors for the actual work that we
8 perform, which is \$90 per hour, plus if OPM -- any
9 direct charge from OPM or the credit check. Then
10 at the end of the investigation, and the
11 management contract let's say is approved by the
12 Chair, then we will use the deposit and apply it
13 on the last bill that we're going to send to the
14 management contractor. And then we will refund
15 the remainder of the deposit to the management
16 contractor.

17 The reason we require deposit is
18 just to make sure that they were willing to pay.
19 Because it's a financial burden to our Agency. So
20 we want to make sure that the management
21 contractor is putting -- it's kind of a security
22 deposit to make sure that there's no interruptions
23 as we perform the work. We were concerned that
24 once the work started and if you are delayed in
25 paying the bill, then we're putting in a position

44

1 that those costs will not be recovered. That's
2 why we require the deposit. But coming up with

3 the deposit we understand imposes a financial
4 burden to some management contractors. That's why
5 we'll be removing it. Right now we will bill the
6 management contractors as the work is completed.
7 I'm giving an example. We completed 20 hours of
8 work and then we will send a bill to you and you
9 will send the money in to cover that 20 hours of
10 work.

11 >> CHAIRMAN CHAUDHURI: I just want
12 to add one last piece on that. The idea is our
13 duty is to the Tribe. Our duty is to the Tribe.
14 These managements companies, in order to have an
15 agreement approved, they got to show suitability
16 of their key officials. And so we watch very
17 closely to make sure that those fees that
18 management company is supposed to pay doesn't get
19 passed through to the Tribe. So we don't charge
20 the tribal nations for this backgrounding. Our
21 duty is to make sure that our responsibility is
22 upheld to the Tribe. However, since folks are
23 asking for the management companies -- the
24 management companies are asking us to make
25 suitability determination for their employees,

45

1 that bill goes directly to them. So we look at
2 agreements very closely to make sure that they're

3 not trying to pass those costs back to the Tribe,
4 you know, through creative ways. That's one of
5 the other reasons why technical assistance is so
6 key with these approvals because every finance
7 agreement is so different. Every management
8 agreement is so different. Especially with all
9 the various new finance methods available today,
10 management contracts out there. It's really fact
11 specific, or contract specific, our review that we
12 have to go through.

13 >> KEN MANY-WOUNDS: I agree one
14 hundred percent. I would opine in to make the
15 \$25,000 deposit so you could put something in
16 escrow. Because what's going to happen is once
17 you bill them, they decide they're not going to
18 pay.

19 >> YVONNE LEE: We'll give I think
20 30 days for you to pay the bill. If you don't pay
21 then we'll stop the investigation.

22 >> KEN MANY-WOUNDS: How do you
23 recoup the money for your man hours? Turn them
24 over to the collection Agency? So NIGC becomes a
25 bill collecting Agency. It is in some ways. I

1 would suggest that would be a recommendation that

2 I would bring to the Commission, drop the \$25,000
3 to a minimal cost. You got to pay to play. If
4 you want to get in Indian gaming, pay up front.
5 Most of these management companies, there are some
6 unscrupulous ones out there, they got money. Then
7 they get creative, like you said, Chairman, in
8 their financing stuff. But if they want to get
9 into the game, make them put some money down. So
10 if they don't want to pay when something goes hay
11 wire, at least you got your money. Then send them
12 the balance.

13 >> CHAIRMAN CHAUDHURI: That's a
14 good comment. I'll be part of, you know -- the
15 information we kind of think through. Yes, on one
16 hand we do have -- there can be debt collection
17 action brought. And that company would be
18 responsible to the US Treasury. But your comment
19 is very well taken about not becoming a debt
20 collection Agency.

21 >> KEN MANY-WOUNDS: You got better
22 things to do. That's my comments on the
23 management. I may have some more once I hear
24 somebody else. Thank you very much.

25 >> YVONNE LEE: Just while you were

1 talking I remembered what we approved last year.

2 I don't remember five years back. I don't know
3 how many people in the room will remember what
4 happened in the last five years. But I do
5 remember last year in 2017 we approved two
6 management contracts and six amendments.

7 >> KEN MANY-WOUNDS: So two in 2017
8 and six amendments?

9 >>YVONNE LEE: Yes. Also to your
10 point, to make the checklist available, we do that
11 have on the website. There's a submission
12 checklist, and there's also a kind of issues
13 checklist. But again, every management contract
14 represents a different business deal. So the
15 checklist is provided to give you an overall
16 guidance. It depends on how complicated, complex
17 the management contract actually is. Different
18 time is required during the review process.

19 >> KEN MANY-WOUNDS: Thank you.

20 >> CHAIRMAN CHAUDHURI: Thank you
21 so much for those comments.

22 >> Mr. Chairman, I got a question.
23 I know you look at the background checks in terms
24 of these contracts, the management contracts. But
25 what about the qualifications or capabilities

1 contractors to do the job? Who looks at that? Is
2 that our decision? Is that yours?

3 >> CHAIRMAN CHAUDHURI: I don't
4 know if you want to address this. But our focus
5 with this piece is on the backgrounding for
6 management agreements. But it's a related issue.
7 Christinia?

8 CHRISTINIA THOMAS: Sir, are you
9 referring to background investigations as far as
10 individuals for casino? Or the ones that we're
11 actually doing --

12 >> For the casinos. But also you
13 look at the contractor, what are you made of? Can
14 you actually do that job or is that up to the
15 nation?

16 CHRISTINIA THOMAS: Nope. That is
17 actually something that we do review. That is a
18 portion of what our background investigators
19 actually look at, and it is a portion of what they
20 make the recommendation for for both the entity
21 and for the individuals.

22 >> Thank you. I just want to make
23 sure because there are characters out there who
24 say they can do this and do that but to actually
25 know that. I just want to make sure that's

1 reviewed carefully. Thank you.

2 >> CHAIRMAN CHAUDHURI: Thank you

3 for clarifying that. Because let's see, I guess I

4 didn't quite hear the question. Thank you.

5 When you get to be my age, you

6 start losing your hearing.

7 >> What?

8 >> CHAIRMAN CHAUDHURI: Yes, sir.

9 >> Chairman, on behalf of the

10 Oglala Sioux Tribe I'd like to welcome you to Pine

11 Ridge. We have some comments. We got them down

12 on paper here, on the subjects. And right now the

13 management contracts, I would like for Elizabeth

14 to read our comments for the record, and then we

15 will submit these to you when we're done here.

16 >> CHAIRMAN CHAUDHURI: Please.

17 >> That's not what I asked. No,

18 I'm just kidding.

19 >> ELIZABETH HOMER: Chairman, you

20 have to listen to me, I guess. And thank you for

21 allowing me to do that. Thank you, NIGC, members

22 of the Commission, for conducting this

23 consultation session on these topics. I think

24 that these are very interesting discussions to

25 have. I might throw out some maybe some other

1 ideas, or maybe different ways that we might get
2 to the place that I think that you're trying to
3 get to.

4 So let me just say that we
5 appreciate the Commission's efforts to bring
6 greater efficiency to the management contract
7 process. Particularly as this has been an area of
8 long standing concern, and lots of head banging
9 and screaming going all the way back to those
10 years a long time ago when I was on the NIGC.
11 However, we do have some concerns with the new
12 proposal to treat any extension of a management
13 contract term beyond the permitted five or seven
14 years as a brand new submission. And we would be
15 very interested in kind of what was driving, you
16 know, your concerns in this regard. Because I
17 think that the question of suitability
18 determinations, you know, I completely agree to go
19 ahead and background the management contractors
20 and their entity every five years is probably a
21 good idea. However, we have to also consider that
22 the tribal gaming regulatory agencies are, you
23 know, backgrounding the management teams every
24 year to two years as well. So it's not like this
25 long period of time is going by that nobody is

1 looking at the backgrounds of, you know, the
2 management contractors and/or their employees on
3 site at the casino.

4 Nonetheless, if it's your goal to
5 maintain updated suitability determinations, we
6 think that maybe the more efficient process is to
7 work with tribal gaming regulatory agencies and
8 kind of piggyback onto those tribal processes that
9 are ongoing during that five or seven years
10 period.

11 Also, instead of requiring term
12 extensions to under go the same review and
13 approval process as a new management contract
14 submission, one alternative would be to instead
15 impose a renewal process. Akin to what you're
16 doing right now already under your current
17 regulations. And I also had a question about
18 that. The current regulations have been in place
19 for a long time. And they've been -- at least I
20 haven't heard that they weren't working in terms
21 of the renewals or the, quote unquote, amendments.
22 If that's not the case, those of us who kind of
23 follow these issues would be really interested in
24 what those problems and issues are so we can
25 provide you maybe perhaps better comments than

1 today.

2 We want to -- so we would instead
3 impose a renewal process focusing on the
4 background investigation information as set out in
5 part 557. Unless there are significant revisions
6 to a previously approved management contract it
7 isn't clear why a lengthy review of the entirety
8 of the management contract is necessary. So we
9 think that maybe if you're committed to going
10 forward with this kind of process, maybe you could
11 build in some, you know -- if there aren't
12 significant amendments, the review wouldn't have
13 to be as extensive. Those kinds of ideas.

14 We also suggest that the Commission
15 consider an expedited process for the renewal of
16 management contracts. We understand the
17 Commission's interest in updating the background
18 investigations and suitability determinations. We
19 are not clear as to the benefit of treating a
20 renewal of a previously approved management
21 contract as an original submission. Then
22 subjecting it to the very intensive and time
23 consuming management contract review and approval
24 process. I think that what I'm saying is we're
25 open to, you know, some kind of process to address

1 what we perceive to be your core concerns. But to
2 treat it as a brand new submission just seems that
3 might -- that might not achieve the goal of
4 efficiency, of expediting the reviews.

5 As for the proposed changes to
6 background investigation fees in section 537.3, we
7 have a few reservations about supporting this
8 proposal on transparency grounds. We just -- we
9 find it interesting, and we think it's worthy of
10 consideration. But as we understand the current
11 process, it is a deposit-based system with up
12 front payments required and the possibility of the
13 imposition of additional fees if the deposit
14 doesn't fully cover the background investigation.
15 Under the proposed changes the Commission would be
16 introducing a billing system based on the time and
17 expense with the background investigation. Our
18 concern is with the proposed revision -- our
19 concern with the proposed revision is that the
20 fees are open-ended, making it difficult for
21 applicants to determine in advance the cost of the
22 investigation.

23 We would be in a much better
24 position to provide meaningful input on this topic
25 if we had data concerning the average cost of the

1 background investigation, which I think that you
2 guys do have some of that. We suggest that the
3 Commission consider performing a cost benefit
4 analysis in relation to the proposal, and if the
5 analysis supports the revision we would urge that
6 there be a periodic publication of a fee schedule.
7 So we would have something, or the proposed
8 management contractors would have something that
9 they could project what the cost of the
10 application process is going to be.

11 So that's our comments on this
12 subject matter.

13 >> CHAIRMAN CHAUDHURI: Thank you
14 so much for those comments. Just a couple of
15 thoughts, a couple of reactions. Again, all these
16 comments are going to be part of the consultation
17 record comments that we consider as we weigh the
18 Commission's decision-making. But let me just
19 kind of share thoughts from just my perspective.
20 I can't speak for the other Commissioners. But
21 since part of my responsibility as Chair is to
22 approve management agreements, approve amendments,
23 you know, a lot of them come across my desk.

24 One thing I do want to say is

25 without regulatory guidance, the argument is often

55

1 made by folks who want almost automatic approval
2 of existing contracts is that hey, this is the
3 same contract that we've been operating under for
4 seven years. What's the big deal? The question
5 was posed what's the intent behind all this? The
6 intent is simply IGRA. And IGRA has a five- to
7 seven-year window for agreements. And the five-
8 to seven-year window, you know, reflects the idea
9 that if a Tribe isn't going to be continuing to
10 manage its own activities, another management
11 agreement approval process is appropriate. That's
12 kind of the underlying rationale behind it. So
13 there isn't a lot in IGRA about automatic
14 renewals. There's a five- to seven-year
15 timeframe.

16 That doesn't mean that we as an
17 Agency haven't tried to work with folks in every
18 way that we can think of to not create artificial
19 roadblocks to management. That's why we have
20 worked with folks in terms of amendments and
21 extensions. But it isn't to say that that
22 approach hasn't worked. It's just regulatory
23 guidance so that it's not just up to the sole
24 discretion of the Chair. You know, as well

25 meaning as I think I may be, I know that I'm

56

1 certainly not perfect. I don't know if any Chair
2 has ever been perfect. Guidance is helpful. And
3 in the absence of guidance, what do we have? We
4 have IGRA. And IGRA has the five- to seven-year
5 timeframe. So the flip side of the question could
6 very well be asked, if we're talking about nominal
7 changes, or really no changes to the terms, and
8 everybody is on the same page with the new
9 suitability determination, what would be the
10 additional -- what would be the difference between
11 an extension and a review of the new contract?
12 And one potential benefit could be adherence to
13 the law. So that's the thought process behind
14 that one.

15 In terms of the billing, the
16 concern about creating a billing process, we
17 already have that in place. Yes, there's 25 grand
18 deposit. But any expenses incurred after the 25
19 grand still has to be billed. So we wouldn't be
20 creating a new process. But those comments are
21 absolutely well taken. And we're certainly happy
22 to talk about where we're coming from as we
23 consider any of these approaches. But where we

24 are coming from in terms of the management
25 agreement thoughts is IGRA's five- to seven-year

57

1 --

2 >> ELIZABETH HOMER: I don't want
3 to poke you too hard. But it just seems to me
4 that the focus on the term, the five or seven-year
5 term, what's been happening is that these have
6 been treated as amendments. My suggestion is
7 rather than think of it as an amendment, think of
8 it as a renewal and have a special regulatory
9 provision for renewals. And that way you could
10 work out different level of intensity. I mean, if
11 you have a management contract that you approve,
12 there's no changes to it, basically you could do a
13 compare documents to verify that. Then going
14 through a lengthy 90, 180, 360-day process, you
15 know, doesn't seem like it's achieving your desire
16 for efficiency.

17 >> CHAIRMAN CHAUDHURI: Thank you
18 for that. That actually raises a great
19 opportunity to talk about some of the things that
20 we're doing, or we're considering just on the
21 administrative side of things to streamline
22 processes internally. This doesn't rise to the
23 level of regulation. But this relates to working

24 day in and day out to see how we can do things

25 better. Let me explain what I'm talking about

58

1 with that.

2 So in terms of renewal process, as

3 I mentioned before, a lot of the processing time

4 that occurs with management agreements either

5 relates to backgrounding, which, you know, is hard

6 to -- I mean, we can't shortcut that. We can't

7 shortcut the backgrounding. But it's also the

8 technical assistance side of things. But you're

9 right, if the language is somewhat the same, or if

10 it's an identical agreement, there's no reason why

11 that shouldn't result in shorter timeframes. But

12 I don't think that necessarily requires a renewal

13 process. We do that anyway. You know, there's

14 not an automatic timeframe where we decide to wait

15 a certain amount of time when we're reviewing an

16 agreement. We're looking for issues that

17 potentially involve our fiduciary responsibility

18 to ensure that it's a solid agreement. And we

19 streamline where we can.

20 Separate and apart from this

21 proposal, we're looking at backgrounding and I

22 don't -- Christinia, do you want to talk about how

23 we're looking at the various types of
24 backgrounding situations that come before us to
25 try and figure out how best to process these

59

1 things? This is something that we're thinking of
2 doing -- that we aren't thinking of; we're trying
3 to do better administratively. That's not really
4 -- I mean, doesn't require regulatory change.
5 >> CHRISTINIA THOMAS: What you're
6 talking about is the actual background process and
7 what we follow internally with the staff.
8 Everybody picked up a handout packet. There was
9 the draft regulatory changes, and then there's a
10 table I guess for lack of a better term for it,
11 that has three different levels of backgrounding
12 broken up. Thanks for the visual. This table,
13 just to explain what this is, if you look at the
14 level one on this table, for both the entity
15 background and for the individual background,
16 currently regardless of the level of an entity, or
17 regardless of the level of the individual, we're
18 backgrounding everybody at the level one part,
19 which is pretty extensive for those that have very
20 indirect financial costs associated with the
21 management agreement, or for those entities that
22 have very indirect ties to a management agreement.

23 In addition to creating these
24 separate levels for the backgrounds, we are
25 removing the OPM process completely out of it.

60

1 OPM, that charge alone is about \$3,000 per
2 individual, and we're at the mercy of another
3 Agency to actually do that particular background.
4 And they can take anywhere from a year to two
5 years to actually finalize that particular thing,
6 where we can actually do it much quicker. We can
7 run the FBI fingerprints right through the Agency.
8 There are other resources out there to be able to
9 give information that OPM was giving at a much
10 significantly reduced cost.

11 These costs are actually to the
12 management contractors. It's not a cost to the
13 Tribe. So putting these in place speeds up not
14 only background portion, but it actually makes it
15 more efficient and not as costly as what it's been
16 to date. So kind of going back to your point,
17 Liz, about trying to come up with an average,
18 right now we can't give you an average because
19 we're changing the process. We can tell you that
20 we're saving about \$3,000 per individual
21 background. But it wouldn't be very accurate to

22 do an average because this is just now breaking
23 down the different levels where every entity and
24 individual before was all run at the same level.
25 >> CHAIRMAN CHAUDHURI: Just to

61

1 follow up on that, say we have an identical
2 agreement. And by the way, a lot of folks will
3 say hey, it's the same agreement. Then you look
4 at the terms and it's not quite the same
5 agreement.

6 >> ELIZABETH HOMER: That's why I
7 suggested to compare documents.

8 >> CHAIRMAN CHAUDHURI: I can't
9 tell you how many times we've heard from
10 management companies saying just approve this.
11 We've been doing this for ten years. Well, you
12 just also changed the amount of compensation that
13 you receive. So people will say it's the same
14 agreement all the time when it's not necessarily
15 the same agreement. But let's just say it's an
16 identical agreement.

17 I can pretty safely say that will
18 affect the time lines involved because, you know,
19 we're not looking for slowing down the process at
20 all. We're looking for adherence to IGRA's
21 intent, and making sure that we're doing our due

22 diligence on the suitability. And that's where
23 this is coming from. But these are excellent,
24 excellent questions. But one of the reasons I
25 love these consultations, because it's a chance to

62

1 talk about this face-to-face.

2 >> ELIZABETH HOMER: Bravo on the
3 OPM.

4 >> I just wanted to add I really
5 appreciate that everyone is showing today these
6 are suggestions and ideas. Nothing is meant to be
7 set in stone. Just because we wrote it down, that
8 was just to give us a starting point for
9 discussion. So we do really appreciate all these
10 questions. That helps us to think through and
11 helps us all to think through as a group too. So
12 thank you.

13 >> Want to take five? Get coffee?

14 >> CHAIRMAN CHAUDHURI: That's a
15 perfect transition. I never want to short change
16 conversations but sometimes we take a break for
17 rest room, what have you. We're about an hour and
18 a half into it, or almost an hour and a half. I
19 don't want to short change any comments. But we
20 can always come back to this topic. But maybe

21 this is a good time for a short -- yes, sir.
22 Okay. Once we're finished with this topic we'll
23 take a short break, and thank you for announcing
24 the refreshments in the back. That's great.
25 >> Mr. Chair, going back to what

63

1 Ken talked about with the fee, I guess when you
2 are talking about trying to weigh these deposits
3 and stuff, you know, I look at it that are you
4 guys trying to change your guidelines to benefit
5 these contractors? I don't know why you're trying
6 to change that. Because to me the business
7 standpoint of it, why submit yourself to trying to
8 become a collection Agency or anything where you
9 can always lower these deposit amounts where you
10 still have that amount. (Inaudible) right offhand
11 you're saying \$20 and \$90. That's \$1800 you can
12 submit to. Why don't you lower it to at least
13 5,000 rather than having to submit yourselves to
14 having to look at that. But to me, again, like
15 Ken said, if you want to try to do this and have
16 to pay to play.

17 >> CHAIRMAN CHAUDHURI: Thank you,
18 sir. Mr. Many-Wounds, do you want to add onto
19 that?

20 >> KEN MANY-WOUNDS: No, not to his

21 comment. And I didn't tell him to say that
22 either.
23 >> CHAIRMAN CHAUDHURI: I think
24 that's an excellent point. Back to Vice Chair's
25 comment. Nothing is set in stone. That's one of

64

1 the potential tweaks that was suggested by part of
2 our team, saying hey, we've got to bill folks
3 anyway. We've got to go through this process. A
4 lot of times people will -- it becomes an issue at
5 the front end of the negotiations when people are
6 submitting these what they want to claim is an
7 amendment, what we come back and say, well, this
8 is really an agreement. A new contract. So we're
9 just -- I think the thinking when that was
10 suggested as a possible revision was hey, we've
11 got to bill anyway. This is an additional process
12 that adds one more layer of complication. But
13 I'll just be up front. Part of me doesn't have
14 any problem with folks putting some money up front
15 into a deposit. But that's something that we want
16 to hear from folks on. We haven't discussed and
17 decided on as a Commission. But in a previous
18 life I was an attorney. And, you know, there are
19 what are called retainers that sometimes you pay

20 when you retain an attorney. And you're billed
21 against that, or you're billed with that being
22 held as a deposit. So I'm familiar with that idea
23 of holding money aside. But whether or not it's
24 helpful to tribes to streamline that process,
25 that's what we want to hear from folks on. And if

65

1 there are comments or concerns that it's not,
2 we'll take that into account. We'll definitely
3 take it into account. I can assure you on that
4 piece absolutely no decision has been discussed or
5 made that I'm aware of at the Commission level.

6 >> I totally agree with that and
7 appreciate that. I just want to hear more about
8 when you're saying it shows a level of engagement
9 from the potential partner. Is now the time to
10 share more about that, the necessity for that,
11 kind of where that comes from? Is there any, you
12 know, decision a role the Tribe wants to play, the
13 Tribe can play a role in terms of engaging someone
14 too.

15 >> KEN MANY-WOUNDS: I have one more
16 quick comment, Chairman. Ken Many-Wounds again.
17 Christinia, on the colorful chart here, do you
18 have any idea, because as Elizabeth mentioned in
19 the past management contracts, that's why

20 management contractors are so pissed at NIGC.
21 Because it took years. Not months, years. And it
22 cost the tribes a lot of money. So streamlining
23 this is good. In these various levels here, do
24 you have any kind of a consensus of how long it
25 would take to do any of these three levels in any

66

1 of these six boxes so that somebody might buy into
2 this streamlining better? That would be my
3 question. Lining.
4 >> I like that. Lining.
5 >> KEN MANY-WOUNDS: Tongue tying.
6 But anyway, that's my question. It looks good.
7 But if there could be somewhat of a timeframe so
8 these people know what they get going into this --
9 >> CHAIRMAN CHAUDHURI: That hand
10 out, again, I want to make it clear that's not a
11 regulatory tweak. We're just trying to explain
12 how we're thinking of internal operational changes
13 to make sure that specifically the division of
14 finance has clearer guidance about how they
15 process and track these operation -- these
16 applications. But I think if we made up some
17 timeframes, we wouldn't be truthful. I think we'd
18 have to do our best and start tracking it under

19 the new approach.

20 >> KEN MANY-WOUNDS: Anything would

21 be better than the way it works now.

22 >>YVONNE LEE: It is difficult to

23 provide a time line because it depends on how big

24 the entity is. If you're talking about a huge

25 corporation, it takes a long time. And if you're

67

1 talking about a shop that's owned by one owner,

2 then that's fairly easy. So it's hard for us to

3 put in the time there when every case is

4 different.

5 >> KEN MANY-WOUNDS: Understood.

6 >> CHAIRMAN CHAUDHURI: Any other

7 comments on this topic? Okay. How about it's

8 2:30 right now? An hour and a half. It's almost

9 perfect. Maybe we could take a -- since we're

10 talking about IGRA's five to seven period, maybe a

11 five to seven minute break, something like that,

12 and reconvene in five to seven minutes.

13

14 >> CHAIRMAN CHAUDHURI: Just to

15 keep things moving, again with the spirit of this

16 being we want folks to feel comfortable, you know,

17 sharing their perspective, I don't want to move

18 too fast. But I do want to get moving along.

19 Before we move on to the next topic, any final
20 comments on the management agreement piece? Okay.

21 With that, we'll move on to the
22 next topic. For that we have subject matter
23 expert Christinia Thomas here to talk about audit
24 submissions. Christinia, take it away.

25 CHRISTINIA THOMAS: Thank you,

68

1 Chairman. Under IGRA and current NIGC
2 regulations, gaming operations regardless of
3 income are required to submit an annual audited
4 financial statement completed by a certified
5 public accountant to the Commission within 120
6 days of their fiscal year end. These audits may
7 be encompassed within an existing independent
8 tribal audit system. Submission of the annual
9 audit report is critical to the NIGC's mission to
10 protect the integrity of Indian gaming and provide
11 a certain level of assurance as to the safekeeping
12 of tribal gaming revenues. The audit report
13 prepared and submitted on a timely basis is
14 evidence of among other things the integrity of
15 the gaming operations and more specifically of the
16 adequacy of the books and records, the functioning
17 of the internal financial controls and the

18 disclosure of the information having a bearing on
19 the financial statements.

20 The Commission, however, recognizes
21 that small or charitable gaming operations often
22 struggle with the cost of these requirements.
23 With this in mind, the Commission is seeking
24 feedback and recommendations on whether changes
25 are needed to the audit submission regulations,

69

1 specifically we want input on what level or levels
2 of audit should be required for smaller gaming
3 operations or charitable gaming operations.

4 To benefit this consultation, I
5 will briefly provide some background information
6 before turning it back over to the committee.

7 The gaming operation earning less
8 than 2 million in gross gaming revenue annually
9 can request from the Commission Commission to
10 submit a CPA reviewed financial statement if it
11 has submitted an audited financial statement for
12 three consecutive years. A reviewed financial
13 statement must be completed by an independent CPA
14 and conform to the statement on standards for
15 accounting and review services of the gaming
16 operation. In fiscal year 2016 only 80 operations
17 earned less than two million in gross gaming

18 revenue. Of those 80 only six submitted the
19 lesser financial statement of review. Small or
20 charitable gaming operations often produce less
21 than 100,000 in gross gaming revenue annually.
22 Some less than 10,000. Contracting a CPA firm to
23 perform an annual audit can prove cost prohibitive
24 and as a result may deter tribes from pursuing
25 these gaming opportunities.

70

1 NIGC reviewed statutes and
2 regulations from a number of jurisdictions and
3 agencies concerned with financial entities,
4 including the State of Nevada, the federal deposit
5 insurance corporation and the department of the
6 Interior. We found no consistency in the audit
7 requirements. For example, Nevada gaming
8 regulations require audits of financial statements
9 for operations grossing more than five million.
10 But maintain the right to require audits compiled
11 statements or reviews of financial statements of
12 those operations whose gross revenue is less than
13 five million. Interior exempts nonfederal
14 entities from their audit requirements if the
15 entity spends less than 750,000 per year. As NIGC
16 considers altering its own regulations, it

17 recognizes that there are currently 95 tribal
18 gaming operations that produce less than three
19 million in gross gaming revenue.

20 Further, the Commission is aware
21 that tribal operations comply with most
22 regulations from their own governments as well as
23 state and federal entities. Our hope through this
24 consultation session is to discuss opportunities
25 or receive feedback and recommendations on how to

71

1 amend this regulation while still ensuring we are
2 supporting the financial stability and maintain a
3 high level of protection of tribal gaming
4 operations. With that I will turn it back over to
5 the Commission.

6 >> Thanks for the overview of it.
7 I'll be very brief and hope to open it up for
8 discussion. But I think this particular issue is
9 of interest to me in how to really engage with
10 operations and so tribes can make that decision
11 about getting to that lesser financial review
12 statement. I think that the hope is that is more
13 understanding of what's taking place on the ground
14 in Indian country, in operations, and we'll work
15 more closely with what tribal leadership is
16 looking for their to improve their capacity, like

17 in auditing. I agree with that. Thank you.
18 >> I'll also be brief. I wanted to
19 highlight this one in particular focuses on how
20 we're trying to meet the needs of smaller and
21 rural operations. We're trying to think outside
22 the box. There's only a certain universe of
23 things that we can do to make this process easier
24 and more efficient. We're really open to ideas on
25 this one. Any questions?

72

1 >> CHAIRMAN CHAUDHURI: Just to add
2 to my colleagues' statements. On one hand we
3 recognize that being supporters of the integrity
4 of Indian gaming is an important service to Indian
5 country, simply because as I mentioned before, the
6 challenge of one facility represents a challenge
7 of all facilities. So wherever there's a
8 challenge -- or there are difficulties with
9 compliance that represents a challenge to all.
10 Integrity is absolutely important. But at the
11 same time, we recognize that there's much that can
12 be done to support smaller operations.
13 So any changes on the auditing
14 side, the submission side, we're looking at
15 coupling with making sure that we continue to do

16 whatever we can through the technical assistance
17 side to make sure that the integrity of the
18 industry is maintained.

19 What I mean by that is at no point
20 do we suggest reducing auditing requirements
21 should take away from our collective interest in
22 maintaining and ensuring the integrity of Indian
23 gaming. It's important to everybody, but also we
24 recognize that if the bottom line as an operation
25 is miniscule, the submission requirements are very

73

1 costly. We're looking at doing what we can to
2 work with folks while still preserving integrity.
3 With that, I don't know if -- we've got some
4 questions on this.

5 >> I think they're pretty
6 open-ended. Maybe I'll just highlight this last
7 one that speaks to the Chairman's point. Your
8 operation is adequately prepared for the annual
9 audit this year. Do you think you would benefit
10 from training on how to prepare for a financial
11 audit so that it can be performed more efficiently
12 saving the Tribe money? Training is a really
13 great way that we can help the regulated
14 community. I'm excited about that. I really want
15 to hear about something that would be helpful to

16 folks.

17 >> CHAIRMAN CHAUDHURI: We'll open
18 it up to the floor.

19 >> MARION WOLF: Hi. Marion with
20 Three Affiliated Tribes Gaming Commission. This
21 is a big issue with my -- actually, it's not our
22 facility. We have only one charitable
23 organization, nontribal, that she -- called
24 American Legion post 290. She has like three
25 different sites that she conducts. It's like bar

74

1 bingo (inaudible). Maybe Blackjack was at two of
2 the facilities, grandfathered in. They go and
3 then pull tabs. Just recently in the last couple
4 -- 2015 I got the conference call and we're going
5 to start regulating. We regulate. I guess the
6 training that you're offering as far as financial,
7 would that eliminate us going through the CPA for
8 the review? Because I gave the numbers to Tom.
9 We pay a pretty -- that little organization
10 doesn't make as much as what we pay out as --
11 whenever they give that 60 percent. It goes right
12 back into our fee for a CPA. (Inaudible) with me
13 that's my biggest thing. I know this
14 organization. I've been on the Gaming Commission

15 for 22 years coming up. This little organization
16 has been there before me. And we have a class II
17 auditor that actually audits all our class II --
18 that facility, plus our little pow wow of bingos
19 and raffles. So they do the paperwork. We
20 adopted the state's forms and reporting. They
21 fill all that out. We bring it into our office, I
22 have my class II auditor audits that. And we do
23 the financial part. The money that we owe back to
24 them or what they owe back to us. And then we
25 turn around and we hire the CPA to review. And

75

1 it's costing us, you know, must have paid maybe
2 25,000 for one year for this little organization.
3 So I guess I'm asking this financial assistance,
4 yeah, that would help. If it would eliminate the
5 CPA review because with us, just that one little
6 organization -- it's not even a tribal
7 organization. That's the thing. So it doesn't
8 hurt, you know, the Tribe. But we do license
9 them. And Tom was just -- it's just going to
10 change -- I feel like it's going to change all the
11 time. Because he was just telling me that this
12 one person -- she has this organization, or this
13 organization, she takes care of all her little
14 sites. Well, now I'm told that I might have to do

15 a review for each site. You know? I guess I just
16 -- I don't know if anybody else -- I was asking
17 around back in North Dakota the different ones,
18 are they up against what I am? Or is this -- or
19 any tribes around here, do they do the same thing
20 or report? It is new. And I was told that. We
21 should have been doing this for all these years.
22 But it's just a bunch of money that we have to pay
23 that. It just doesn't make sense to me.
24 >> CHAIRMAN CHAUDHURI: Excellent
25 question. Excellent points. That's what we're

76

1 struggling with. We really are asking for
2 suggestions about. So on one hand, we're all in
3 it together. So we have to make sure that the
4 integrity is preserved. On the other hand, there
5 are a lot of not just charitable operations.
6 There are a lot of gaming operations in Indian
7 country that barely make payroll. And
8 effectively, the jobs program. What can we do to
9 support IGRA's mission to support tribal
10 self-sufficiency, and jobs and payroll is a huge
11 part of that? While at the same time protecting
12 integrity of Indian gaming. So one of the
13 thoughts was looking at these threshold revenue

14 amounts, and, you know, taking a slightly
15 different approach, more on the technical
16 assistance side of things to work with folks
17 rather than just relying on audit submissions.
18 But there are down sides with every approach.
19 Those audits are an important way that we do our
20 regulatory work. I don't know -- Christinia, if
21 you want to weigh in on -- I'm not trying to -- if
22 you're good. But Christinia is looking at me like
23 no, we're good. But that's what we're -- so you
24 asked about whether or not we see this in other
25 regions.

77

1 The charitable gaming aspect is I
2 think more predominant in this region than other
3 regions that we work with. So this is a good
4 question to ask at this consultation, because
5 especially since we have so many regulators here
6 in the room. I think we all appreciate the
7 importance of making sure that the Tribe is really
8 receiving the revenue in the operations, and that
9 charitable operations are truly charitable. We
10 all recognize that. At the same time, the costs
11 are in many cases prohibitive. So I guess I'm
12 answering with another question. In terms of your
13 experience with this organization, the confidence

14 level that you have had about whether or not
15 things are being run consistent with tribal rules,
16 I'd be curious to see -- because the audit is to
17 help us to do our job to maintain integrity. But
18 we always try to defer to the tribal regulators as
19 the primary regulators where possible. So I guess
20 I'll answer with a question.

21 >> MARION WOLF: Yes. We do. We
22 have full confidence. She reports once a month.
23 We have -- the tenth of each month she reports and
24 sends everything in. Bingo, all the reports that
25 she's supposed to be sending. Plus her fees.

78

1 She's pretty much clock work every month. And I
2 think all the numbers and everything -- that we
3 submit to the CPA, it's been -- you know, they had
4 no problems with figuring anything out that she
5 had submitted as far as to us. Yeah. I guess
6 it's just -- I don't know, maybe the fee -- as far
7 as what they make in a month or year, we can go by
8 that as far as going through the CPA. I guess I
9 just -- that part of it I'm hoping that we can get
10 that eliminated. I don't know. But I'm pretty
11 confident in our little charitable organization
12 with sending the reports and the fees, and getting

13 licensed and all her little employees, bingo
14 callers and such. We license pretty much all her
15 staff.

16 >> CHAIRMAN CHAUDHURI: I don't
17 know if there's anybody from a regional team. I
18 think in the introductions, we have the regional
19 attorney Steve Iverson here with us, and we also
20 have the regional Director, all of the auditing
21 and compliance functions represented from the
22 region. Since this is -- we do see this more in
23 this region than else where, if anybody has
24 anything else they'd want to weigh in on that, I'd
25 be curious. Linda is avoiding eye contact now. I

79

1 just noticed that.

2 At some point the compliance comes
3 down to relationships too. So making sure that we
4 are open to the -- I mean, we're open to concerns
5 of our regulatory partners. I mean, that's part
6 of the important work that we do, regardless of
7 what thresholds we set for audits. But if folks
8 think that integrity can still be maintained while
9 creating a specific route for charitable gaming,
10 we're open to that discussion. Certainly haven't
11 come to any conclusions on this end.

12 >> MARION WOLF: Does anybody have

13 charitable gaming that you have to report? Or
14 willing to?
15 >> CHAIRMAN CHAUDHURI: I won't
16 name any tribes in particular but we are aware of
17 other charitable gaming operations in the region.
18 Or interests or pursue -- interests in pursuing
19 charitable gaming I should say. Tom.
20 >> A couple of points. Marion,
21 thank you for sharing your experience. Let's
22 remember that there's a term in accounting and
23 auditing called inherent risk. And there is much
24 greater inherent risk when you're talking about
25 millions of dollars than you are talking about

80

1 thousands of dollars. The other issue is, and
2 it's something that I guess the point is we don't
3 really -- to tell you the truth, if I was involved
4 in licensing some of these smaller gaming
5 operations, I wouldn't want the NIGC to know about
6 it because they're aware of the costs of
7 submitting these annual financial statements.
8 They're prohibitive for these smaller operations.
9 So we don't really know how many are out there.
10 They very well may be avoiding reporting to us.
11 Specifically for that reason.

12 >> I was going to go along with it.
13 I think my understanding -- I think that the
14 question was provide technical assistance to come
15 out and help with the financials? Is that -- if
16 you train somebody to come out to do the
17 financials, would that be sufficient for NIGC or
18 would we still have to hire a CPA to certify those
19 documents? Because my understanding is that the
20 money she's making is going to pay for CPAs. So
21 it's really not beneficial for them. And anybody.
22 So I think the question was if you came out and
23 trained somebody for the paperwork to be turned in
24 to NIGC, would that suffice for the Commission so
25 that we don't have to spend what little money we

81

1 have on a CPA?
2 >> CHAIRMAN CHAUDHURI: Good
3 question. That's exactly the point that we're
4 trying to work through. Back to Tom's point on,
5 you know, there almost being an incentive not to
6 tell the NIGC if charitable gaming is going on.
7 We recognize that the best regulation of Indian
8 gaming comes when we work together, we share
9 information where possible, we're fellow
10 regulators. So we want to move away from
11 disincentives to share information to more

12 incentives to share information. And frankly
13 that's the only way we can do our job at NIGC. We
14 have to -- we have to have good relationships with
15 our fellow regulators. And so we do have an eye
16 towards creating strong incentives to share
17 information. But the idea of the costs involved,
18 this all goes back to the idea of if tribes are
19 the primary regulators, what can we do to support
20 -- I mean, audits are great in terms of most of
21 the compliance work that we do relies on our audit
22 function. That's the best snapshot we have for
23 the regulatory health of an operation. And a lot
24 of our work , you know -- that's one of the best
25 tools we have as an Agency.

82

1 But at the same time, we also
2 understand that if there's a small bingo night to
3 benefit a youth group, I mean, that's not
4 necessarily the type of compliance concern that
5 IGRA was developed or was necessarily drafted to
6 address. So how do we empower our tribal
7 partners, our regulatory partners while at the
8 same time doing what we can to play a supporting
9 role for integrity? That's the trick. Whether
10 it's a specific training course that complements a

11 change in the thresholds, or what can we do to
12 make sure integrity is maintained but still
13 empowering tribes? This is a great discussion.

14 I think there are about three hands
15 back there. And also Ms. Homer.

16 >> Just a comment. I was looking
17 at your proposal in terms of three million
18 dollars. (Inaudible) financial statements up to
19 three million. My question is do you have CPAs on
20 staff in your financial office where you review
21 these documents? How does that work?

22 >> Maybe I'll give a little
23 additional background --

24 >> Excuse me, the reason I ask that
25 is because a lot of times it's up to -- we have

83

1 qualified staff within the property here, for
2 example. Why can't we self-audit? If we have
3 qualified expertise, we can self-audit our
4 financial statements and send them to you for
5 another review if you have qualified people as
6 well. If you have CPA people on board, it might
7 make the process even more effective. That's just
8 a comment.

9 >> CHAIRMAN CHAUDHURI: You want to
10 address that?

11 >> CHRISTINIA THOMAS: I can
12 address that. I do want to give a little
13 additional background. IGRA has a requirement
14 that independent audits are conducted. That's a
15 requirement in IGRA. It's not even a change of
16 the word. It says independent audit. It can be
17 part of a bigger tribal audit program. So the
18 Agency historically has defined what that audit
19 requirement is within the regulations under
20 571-12. 571-12 when you break that out is
21 actually where it requires the CPA to do an
22 independent audit of the financials. It also has
23 the review component within 571-12 where if you
24 actually do three years of the full CPA audited
25 financials and then submit those, then you can do

84

1 the lesser review to be submitted as well. So
2 we're still going to require some type of audit.
3 How that audit is defined is within 571. So what
4 we're asking for, what we're trying to get
5 clarification on is how the agencies defining the
6 audit submission requirements best help tribes if
7 we were to make changes to that particular
8 language.

9 >> CHAIRMAN CHAUDHURI: To follow

10 up on Christina's point, if the Tribe is the
11 primary regulator, Tribe has gaming already, and
12 is submitting an audit already, will adjusting
13 these thresh holds help -- for instance, say
14 there's charitable gaming function that's going on
15 that the Tribe is licensing. Is there a
16 definition tweak that can be made to wrap
17 oversight of that function by the Tribe into
18 whatever is being submitted already? Are there
19 other thresholds that we should be considering?
20 Keep in mind, I don't want to go off topic too
21 much, but part of our role at the Agency, in
22 addition to day to day compliance work, as the
23 only Agency that regulates gaming of any kind and
24 certainly the only Agency specifically charge d
25 with implementing IGRA, we do have a

85

1 responsibility to communicate to other parts of
2 the federal government as well as the Hill,
3 Congress, the health of the gaming industry. So
4 our ability to speak truly to say yes, as the
5 Agency that's mandated to ensure the integrity of
6 Indian gaming, we're doing our job. Nobody -- I
7 mean the industry is working. We take that
8 responsibility seriously. And we say that all the
9 time. We talked about Indian game going the most

10 -- the best regulated and most regulated gaming
11 industry in the world. And we believe it when we
12 say that. So we feel that our ability to say that
13 is a service to tribal nations because that
14 protects against other changes to the law that may
15 not be as protribal as folks may want. So we take
16 seriously our role as regulators to say we're
17 protecting integrity. But at the same time we
18 also recognize that if an operation is barely
19 making payroll, we've got to figure out ways to
20 really support economic development without
21 creating unnecessary roadblocks. So that's kind
22 of what we're getting at with all of this.

23 It seems to me that last piece I
24 just shared was about as clear as mud. But I
25 think folks know what we're trying to say.

86

1 >> I just wanted to hit on the
2 second point about asking if we actually have CPAs
3 within the Agency. Yes, we do. We have
4 individuals that are CPAs underneath the
5 compliance division. But I'm going to go back to
6 the independent language that's in IGRA. IGRA
7 requires an independent audit to be conducted.
8 NIGC is actually a party of that particular audit.

9 So for us to do the review it's no longer
10 independent. So we would have our own individual
11 licensed CPAs within our audit team do those
12 reviews. They could actually lose their CPA
13 license. We've thought about this. We've talked
14 about this internally on whether or not it would
15 work, and how it would work. While I'm explaining
16 it, you could blame the attorneys for the reasons
17 I'm giving you. Because they're the ones that
18 kind of came back and said because we're a party
19 of that particular audit we would no longer be
20 looked at as independent.

21 >> CHAIRMAN CHAUDHURI: I forget
22 which order, but Liz.

23 >> ELIZABETH HOMER: I think these
24 are really good ideas. I think you guys are
25 really on the right track here. The only comment

87

1 that we would make is that why not leave it to
2 tribal gaming regulatory agencies to make those
3 calls and establish those kinds of -- that
4 particular kind of standard? Or to, you know,
5 shape it some way that makes sense there. Because
6 if it's not something of a great federal interest
7 here, it really is of a tribal interest. And it
8 seems to me it would make sense to leave it to the

9 Tribe. That way if a Tribe wanted to be stricter,
10 it could. If it wanted to take advantage of your
11 proposal, they could do that as well. So I think
12 there's a way to make this work for everybody.

13 >> CHAIRMAN CHAUDHURI: Thank you.

14 Mr. Many-Wounds?

15 >> KEN MANY-WOUNDS: I guess I'm in
16 the stuff that was sent out. The sentence reads
17 that the smallest gaming operations would be
18 exempt from the annual financial statement
19 submission requirement, comma, allowing other
20 small operations to submit audited or CPA compiled
21 rather than reviewed. So if the tribes audited
22 their stuff internally, the way I read this, they
23 could just send it to you guys. Am I reading that
24 wrong the way it's worded?

25 >> CHAIRMAN CHAUDHURI: We're

88

1 looking for comments.

2 >> KEN MANY-WOUNDS: My comment
3 would be somewhat along -- you let the local
4 TGRAs, they have internal auditor. That's a
5 requirement. They do the audits. They compile
6 the financial statements and they can be submitted
7 according to this wording, unaudited. They could

8 submit them right directly from the TGRA to the
9 NIGC. Your CPAs thus review them and if there are
10 any false or short coming, then you come back and
11 tell the Tribe. That's a technical assistance
12 route then.

13 >> CHAIRMAN CHAUDHURI: Steve, I
14 don't know if you want to be put on the spot. But
15 in terms of the workability of that, and
16 consideration of IGRA's independent auditing
17 requirement, if you want to defer to others, feel
18 free. I'm just thinking we need to get this guy
19 speaking a little bit.

20 >>STEVEN IVERSON: Nobody is going
21 to know my voice. This is Steve Iverson. I agree
22 with Christinia's comment. I don't know that that
23 would comply with IGRA's requirement of an
24 independent audit. Again, I'm not a subject
25 matter expert on this one, but it's my reading of

89

1 IGRA, it might create a problem.

2 >> CHAIRMAN CHAUDHURI: That part,
3 in terms of -- Steve -- without getting into too
4 many details that probably compliance -- our
5 compliance division is a lot more in the weeds on,
6 where you can see this really benefiting, some
7 tribes have multiple small facilities. Some

8 tribes are four or five small facilities. And
9 right now, you know, we require submissions from
10 basically all the facilities, even when one of the
11 facilities might just be making payroll. Whether
12 or not things can be wrapped into some of the
13 joint submissions, that would be a -- talking
14 about multiple facilities within one Tribe, that
15 could be on one surface a minor change in the way
16 we've been doing business. But I imagine that
17 could benefit quite a few tribes.

18 >> That have multiple -- but this
19 is charitable though. It would be separate.

20 >> CHAIRMAN CHAUDHURI: We're
21 talking about looking at the thresholds for both
22 small operations and --

23 >> I guess we're separate though.

24 So I don't mind your quoting we need to audit
25 according to IGRA. But it's just the amount I

90

1 guess that they -- if the -- the amount to go to
2 review to audit or CPA, is it two million? And we
3 know they don't make two million. They do
4 probably 100,000 for the year. I guess it would
5 just be -- that's what I'm trying to get at, if
6 the amount could somehow be changed as far as

7 getting a CPA review. But we'd always have our
8 audits on hand that we do internally. I guess
9 that was maybe something that she had mentioned.
10 I guess I don't know -- I just want to be -- I
11 know you talked about the and/or separate for
12 these facilities. What we do is we're totally
13 separate from the Tribe, totally separate from the
14 casino. They issue our Class III and we do our
15 little Class II. So we wouldn't be able to, and I
16 wouldn't want to combine them with our casino
17 because they're not part of our casino at all as
18 far as gaming.

19 >> CHAIRMAN CHAUDHURI: Excellent
20 point. That's why we're trying to solicit
21 feedback. I think there were other hands back
22 there. Any other comments or concerns? We had
23 some other questions just to spur kind of -- move
24 the conversation along. But I think we covered a
25 lot of this. One of them was do you think the two

91

1 million dollar threshold still adequately captures
2 the universe of small gaming operations? Do you
3 have any questions about the process or
4 regulations, or any suggestions as to how the NIGC
5 can improve its regulation regarding annual audits
6 for small or charitable gaming operations? I

7 think we covered most of that ground. But again,
8 I want to make sure that everybody has an
9 opportunity to share comments or concerns. Okay.

10 With that, again, we'll have a
11 catch all at the end. But we'll move on to the
12 third topic. Steve's answer was so short to the
13 last question, we're just going to have him be the
14 subject matter expert on this next one. That's
15 discussion about management and sole proprietor
16 interest definitions. Steve, take it away.

17 >>STEVEN IVERSON: Hello, everyone.
18 Good afternoon. I'm Steve Iverson, staff training
19 at NIGC. I'm originally from Rapid City. So I'm
20 happy to be here. I live in Baltimore but I'm
21 happy to come out for this consultation. Thanks
22 for having us.

23 As Ms. Lee previously discussed,
24 IGRA provides that a tribal gaming operation owned
25 by the Tribe may either be managed by the Tribe or

92

1 by a management contractor subject to a management
2 contract approved by the NIGC Chair. NIGC
3 approval applies to any arrangement in which
4 contractor manages all or part of Indian gaming
5 operation to provide better clarity. The

6 Commission is considering developing regulations
7 clearly setting out its standard for what
8 constitutes management as well as criteria for
9 evaluating when a sole proprietary interest
10 violation has occurred.

11 With this in mind I'll provide some
12 background for these terms and pass it to the
13 Commission to open it to the floor for questions
14 and discussion. To assist tribes in determining
15 whether an activity constitutes management, NIGC
16 bulletin number 9405 explains that the term
17 encompasses activity such as planning, organizing,
18 directing, coordinating, or controlling all or
19 part of a gaming operation. In addition, the NIGC
20 Office of General Counsel issued an opinion letter
21 expanding on these terms by providing examples of
22 management activities. However, to date the
23 Commission has not issued a regulation formally
24 defining management. The Commission believes that
25 in consultation with tribes, developing the

93

1 regulatory definition consistent with past
2 interpretations would help provide greater
3 clarity, greater certainty to the tribal gaming
4 industry regarding what constitutes management.
5 The Commission also recognizing that the 7th

6 circuit court of appeals that is also recommended
7 that the Commission provide more certain guidance.

8 We'll talk about sole proprietary
9 interest. A stated purpose of IGRA is to ensure
10 that the Indian Tribe is the primary beneficiary
11 of the gaming operation. Seeking to serve this
12 purpose, IGRA requires that tribal gaming
13 ordinances provide that tribes have the sole
14 proprietary interest and responsibility for the
15 conduct of any gaming activity unless the gaming
16 activity is individually owned. To determine
17 whether a third party has received a proprietary
18 interest in a tribal gaming operation in violation
19 of the so proprietary interest mandate, the NIGC
20 considers the term of the relationship, the amount
21 of the revenue paid to the third party, and the
22 right of control or gaming activity provided to
23 the third party. The Commission has previously
24 consulted on developing guidance or regulations
25 concerning sole proprietary interests in 2008 and

1 also in 2010. Courts have had the opportunity to
2 consider and discuss this issue, noting and
3 upholding NIGC's formulation of the criteria to
4 evaluate such violations. The Commission believes

5 that a regulation consistent with past NIGC
6 enforcement actions and litigation would provide
7 better certainty to the tribal gaming industry
8 regarding what constitutes a violation of the sole
9 proprietary interest mandate. The draft
10 regulations that we've provided to you today as a
11 handout incorporate these interpretations for your
12 consideration. As an addition to the Commission's
13 compliance regulations. I'll pass it over to the
14 Commission and open it up for comments and
15 discussions.

16 >> SEQUOYAH SIMERMEYER: Thank you
17 for the run down of this topic. Before we turn it
18 back over, I wanted to briefly state that my
19 thinking -- the reasons why this is a helpful
20 conversation to have is because of both the
21 clarity that's come about through case law on this
22 topic, and kind of recent emphasis in this area.
23 We -- I think it beneficial as a full Commission
24 because particularly for management that might
25 want to appeal to the Commission, having the sort

95

1 of clarity that helps provide more transparency,
2 as a matter of good governance it's an important
3 role for us to play as a federal partner. I think
4 also that this helps us to have a discussion about

5 whether or not regulations are the appropriate
6 vehicle to kind of communicate that. As was kind
7 of described, guidance exists as well, but will
8 regulations help provide the certainty that might
9 help to reduce costs associated with some
10 management agreements that come about, or the
11 reviews of management in those agreements. It's
12 helpful for that conversation as well. But again,
13 just kind of looking for feedback, and that part
14 of the conversation, I appreciate that this is
15 part of the dialogue.

16 >> I agree with Commissioner
17 Simermeyer's points on that. We're really looking
18 for how to be more transparent and clear in this.
19 This isn't a departure from our previous positions
20 on it. We're looking at codifying be helpful for
21 tribes, the industry, and how exactly should that
22 look if so? Look forward to hearing from you.

23 >> CHAIRMAN CHAUDHURI: Thank you.
24 Just to agree with my colleagues, as I mentioned
25 before, protecting against gamesmanship on the

96

1 backs of tribes is a key initiative of ours that
2 flows from IGRA's mandate that tribes be the
3 primary beneficiaries of their operations; that

4 tribes retain a sole proprietary interest in their
5 operations. Getting it on paper, you know, there
6 are so many sources of law out there, whether it's
7 court decisions, internal opinions, getting it in
8 one place that is easily referenced, it's not
9 changing where we've come down as an Agency. But
10 we're sending a message that, you know, here are
11 some examples, issues that run afoul of that
12 primary beneficiary responsibility, or that sole
13 proprietary interest responsibility. I think it
14 just brings more clarity to the industry. So
15 that's why we're trying to codify and put down in
16 one simple place what examples have qualified both
17 in terms of our work and court work. That's where
18 we're coming from with this one.

19 With that, comments, questions,
20 concerns about these proposals? Ms. Homer.

21 >> ELIZABETH HOMER: I was looking
22 at the client to make sure that I can still talk.

23 Well, I like the idea, or we all
24 like the idea of bringing some clarity, because
25 this is one of the -- what is management and what

97

1 is sole proprietary interest? Those have been
2 kind of flummoxing the NIGC and tribes for three
3 decades. Think about it. This is 30 years of

4 IGRA. And we still haven't quite got this one
5 figured out. However, I think of all the things
6 that are being proposed right now, this deserves
7 the most caution. We have to be really cautious
8 about making these changes; and not defining
9 management in an overly broad manner. And
10 focusing the management question on the management
11 of the gaming activity, and the gaming operation.
12 I noticed that in the definition, there are a
13 number of activities that arguably at least are
14 not strictly management activities. For example,
15 planning or coordinating accounting systems or
16 marketing functions, these things standing alone
17 do not necessarily implicate management at gaming
18 activities of the gaming operation. And I think
19 that we want to be careful not to discourage
20 tribes from hiring professional expertise in areas
21 where they may need it, in really complex areas
22 like accounting, and like marketing and
23 surveillance, for example, those kinds of things.
24 And I guess what the concern is, if you have this
25 really broad definition of management, then every

1 contract that a Tribe enters into for professional
2 services becomes a management contract, and then

3 do we have to have that submitted to the NIGC for
4 approval because it's a management contract? I
5 really -- I'm not saying that this is where, you
6 know, you're going. But when I read this, this is
7 where I was afraid you were going with this, and
8 that it would encompass a lot more contracts. If
9 we were submitting all of our professional
10 contracts to the NIGC for approval, you all would
11 be overwhelmed. Just one Tribe. Much less all of
12 Indian country. So I have a concern that the word
13 management needs to, you know -- needs to focus in
14 on what actually is management. I don't think
15 training is management. I think that if we want
16 to hire -- what's that guy's name, George Joseph
17 to come in and do the cheats and scams, and we do
18 a contract with him, then we should be able to do
19 that without fear that that's going for become a
20 management contract. And I know some of you don't
21 like George Joseph. But that's neither here nor
22 there.

23 The other thing about this is, I
24 make the point that any regulatory definition of
25 management should focus on actual narrowly

1 tailored management functions, and -- this is an
2 important and -- and be tied to the nature of

3 compensation in the contract. That is whether
4 compensation is on a time limited fee for services
5 basis, versus a percentage of the revenue basis.
6 I think once you get an interest, a percentage
7 interest, then you are on either sole proprietary
8 interest or management contract grounds. But if
9 the regulation eliminates contract review for time
10 limited legitimate fee for service contracts, then
11 I think we'd all feel a lot better. We don't have
12 to make that worry. So I would put an and there.

13 With respect to the proposed sole
14 proprietary interest regulations, we support the
15 NIGC's effort to bring clarity on this question.
16 But as with proposed definition of management, we
17 do have some concerns with the broad scope and
18 impact of the proposed regulatory language. We
19 believe that the regulation should be narrowly
20 tailored to focus on the specific harm that the
21 Commission is seeking to prevent. That is the
22 possibility of a third party receiving an interest
23 in the gaming operation akin to that of an owner
24 of the gaming operation.

25 So we think that the regulation

1 should be clear in distinguishing between issues

2 concerning unlawful management and those regarding
3 the Tribe's ownership or equity interest in its
4 gaming operation. We think that is the pathway
5 for coming up with a reasonable rule and set of
6 definitions that will work for everybody. And not
7 risk, you know, creating these kind of
8 unanticipated consequences of having every single
9 contract that the tribal gaming does have to be
10 federally reviewed. That's the concern.

11 >> CHAIRMAN CHAUDHURI: Excellent
12 comments. I have a couple of reactions but I
13 definitely want to open it up to the team since
14 their subject matter expertise definitely exceeds
15 mine on much of this. I'm coming from things -- I
16 can only speak for myself on this. I'm coming
17 from things in terms of some very basic
18 principles. One, you don't want to create
19 unnecessary roadblocks to economic development.
20 So you don't want to create processes where you
21 don't need to. At the same time, you want to
22 uphold IGRA's spirit of ensuring that tribes are
23 the ones benefiting from their operations. Tribes
24 are the ones that own and control operations. And
25 never want the entire landscape to suffer because

1 of a few bad apples, but certainly in the work

2 that we do at NIGC, whether it's through
3 management agreement approval process, or the
4 compliance functions that we perform, we have seen
5 all sorts of folks -- most of the actors in Indian
6 country are good actors. But we've seen the bad
7 apples. And we've seen folks who would leverage
8 the relationship with the Tribe to enrich
9 themselves at the Tribe's detriment. That's
10 almost the definition of an IGRA violation.

11 So how do you create guidance that
12 avoids roadblocks while at the same time making
13 sure that you have as much teeth as possible to go
14 after the bad apples? That's kind of where we're
15 coming from with trying to work on language that's
16 helpful. Let me talk a little bit about the
17 points that were raised.

18 First, in terms of being
19 overwhelmed by the legal work required, and we
20 have our legal eagle here, I'll defer to Office of
21 General Counsel on the nuances of the law. But we
22 do a lot of this day to day anyway. Ever since
23 the lake of the torches case, when it comes to
24 management agreements, the financial industry has
25 pushed tribes to give assurances that certain

1 contracts aren't management agreements before
2 they'll engage in financing. And the way that
3 tribes have responded to that is they work with
4 NIGC, and they send contracts to us that are
5 critical to financing agreements so that we can
6 opine that our Office of General Counsel can issue
7 an opinion on whether or not these contracts are
8 management agreements. So we get a lot of
9 financing documents sent to us on a -- I don't
10 want to say daily basis, but almost a daily basis.
11 And if an agreement isn't a management agreement
12 after our office conducts its review, we issue
13 what's called a declination letter. We'll issue a
14 letter saying that this agreement is not a
15 management agreement based on our review. That
16 frankly is an important service that we provide
17 that's not really governed by IGRA. That's a
18 service that we provide that supports the
19 integrity of the industry, and also it recognizes
20 the importance of these finance agreements to
21 economic development in Indian country. It's not
22 governed by IGRA though, and it does take a lot of
23 our time, and a lot of the Office of General
24 Counsel's time. I'm not saying that these
25 recommendations would get rid of that

1 responsibility, but if there are clear bench marks
2 that a lender can be on notice of that are in the
3 rules, that are in regulations, that don't require
4 a case by case legal analysis of every contract,
5 the thought is some of these agreements, these
6 nonmanagement agreements, will be vetted between
7 the tribes and the lenders before they even come
8 to us. So providing guidance to the lending
9 industry, providing guidance to the gaming
10 industry, the hope is that that guidance will
11 actually help free up financing in Indian country,
12 and will help cut down the uncertainty and the
13 timeframes involved, at least on these kind of
14 collateral -- not collateral, these nonmanagement
15 agreement contracts.

16 So that's one point about us being
17 overwhelmed. I mean, absolutely that -- I mean,
18 it's the case that when it comes to reviewing
19 contracts, it is a time intensive process. But
20 the more clarity there is for all players, the
21 easier it is to review a document because a lot of
22 that gets vetted before documents even come to us.

23 On the toll proprietary interest
24 side, it absolutely makes sense. Looking at what
25 the harm is, and kind of figuring out what the

1 violation is, it absolutely makes sense. But we
2 never had a really workable regulatory definition
3 of sole proprietary interests. And the practical
4 result of that has been it's kind of in the eye of
5 the beholder in many ways. Whoever happens to be
6 in the Chair position has a lot of authority to
7 look the other way, or to abuse the Agency's
8 authority. I would never cast -- I mean, cast
9 aspersions on anyone who sits in the Chair's seat.
10 And I would never suggest that, you know, my
11 judgment is better than anybody before me or after
12 me. But it does make it difficult on appeal to --
13 when the full Commission reviews an appeal, to
14 determine whether or not it was appropriate
15 exercise of Chair authority to bring an
16 enforcement action when you don't really have a
17 workable definition. So very much I'm sensitive
18 to the idea of not over regulating, and not
19 creating incentives not to -- I mean, creating
20 challenges to enter into contracts with other
21 parties.

22 But the reverse of that, the
23 reverse argument would be, well, if there aren't
24 attributes of management, there really won't be an
25 issue. And if folks are worried about -- if folks

1 are worried about -- I understand that --

2 >> It's a broad definition.

3 >> CHAIRMAN CHAUDHURI: Think of

4 how broad it is without a definition. Without a

5 definition it's up to the Chair. And that's not

6 to say that any Chairs made a bad decision in that

7 regard. I think every Chair that has sat in this

8 seat has done their best to make a reasonable

9 decision. But without a definition, basically if

10 it looks like a duck it's a duck. And I tried to

11 exercise my judgment the best that I can. And I

12 certainly don't want to inhibit the Agency's

13 ability to make reasonable decisions. But if

14 everybody is aware of the rules, everybody can

15 work together to play within the rules. But if

16 it's really up to one person's decision-making,

17 that --

18 >> There is a definition of

19 management contract.

20 >> CHAIRMAN CHAUDHURI: I was

21 talking about SPI, sole proprietary.

22 >> I agree with that. I do think

23 that has to be clarified. As you say, you guys

24 are in jeopardy. All I'm saying is in clarifying

25 it, focus in on the equity/ownership, the term

1 proprietary. Because I think that's where the key
2 to the answer to this issue is. I can't give you
3 the answer. I'm not saying I know the answer.
4 But I think focusing in on preventing someone from
5 getting an ownership, or something akin to an
6 ownership through some kind of contractual
7 mechanism, you know, lies. Like evergreen
8 provisions. So the contract never ends. AT&T is
9 terrible about evergreen provisions. But those
10 are the kinds of things that as you look at this
11 regulation, think about what makes these stinky
12 arrangements? That's because somebody gets in,
13 they insinuate themselves, and then you can never
14 get rid of them because their contract just goes
15 over and over. Those are the kinds of things I'm
16 suggesting. I'm not saying no, don't do this,
17 we're scared. I'm saying be careful about
18 defining management too broadly because it could
19 discourage us from getting legitimate help from
20 experts if we have to wait for review of the
21 contract before we can get a training going. And
22 I don't think that that's what you guys mean. But
23 when you just read this, you know, I could make as
24 a lawyer wanting to be the bad guy, I could make
25 those arguments. So could a future Chairman who

1 is not you could apply that in a much narrower,
2 more paternalistic way. So don't get me wrong,
3 our comments are not designed to say no, don't do
4 this, or this is a bad idea. It's rather kind of
5 let's think about what the boundary should be, and
6 the right balance between overly broad and
7 nothing.

8 >> CHAIRMAN CHAUDHURI: The
9 comments are very much appreciated because I think
10 that's the purpose of our discussion, to figure
11 out what the boundaries should be. I think we can
12 all agree that guidance is a helpful thing. Even
13 in the business environment, just so you know what
14 the rules are, what that guidance is. That's the
15 trick.

16 >> ELIZABETH HOMER: The devil was
17 in the details.

18 >> CHAIRMAN CHAUDHURI: Additional
19 comments? Additional comments, concerns? Well,
20 if we may, and let me turn to my colleagues,
21 before we move to kind of the catch all section,
22 do you have any final thoughts on the topics
23 themselves?

24 >> I certainly agree that actual
25 details in the regulation are going to be the most

1 important part of this. So we really welcome
2 written comments. We already have some which is
3 amazing. Our first day at consultation we already
4 have these amazing written comments. We do really
5 appreciate that. But we do have the comment
6 period open until February 28th. So if anybody
7 has anything to add after thinking through things
8 today, please do let us know if you think there
9 are specific ways that we could write this or
10 other things from your attorneys or your auditors
11 or wherever we can get suggestions from, we're
12 really happy to keep considering that throughout
13 this process. I am looking forward to our
14 discussion too if folks aren't too tired or
15 pressed for time.

16 >> I'll echo that and say thank you
17 for the feedback that came today. These are sort
18 of discrete topics. But if you look at some of
19 them, just this past (inaudible) right here,
20 whether it's this or whether it's the auditing,
21 some of this looks to what the relationships are
22 that tribes create through operators with third
23 party groups, like CPA firms, or with financial
24 institutions, and trying to look at what the

25 burdens of those relationships might be. Those

109

1 relationships are very important partners in terms
2 of growing Indian gaming. But we don't want our
3 regulations I think to stand in the way of making
4 those partnerships more burdensome. It's taking
5 away from the benefit that IGRA intended, which
6 was to help the tribes. Thank you.

7 >> CHAIRMAN CHAUDHURI: Thank you.

8 I'm so glad we mentioned the comment period.

9 Again, I want to emphasize the point that the
10 comment point goes through the end of February.
11 But at no point do I want anybody to think that we
12 have, you know, made any decisions about where we
13 want to go with these outside of wanting to do as
14 much as we can in the next few months, and wanting
15 to hear from Indian country as much as possible as
16 we try to close -- I mean, run through the tape as
17 best as possible.

18 Some of these things, whether it's
19 the definition of sole proprietary interest, or
20 some of the other things that we discussed, as has
21 been pointed out, there are things that other
22 folks have considered taking on for the last 30
23 years but have chosen not to, and can't make any
24 promises after the next few months after hearing

25 from Indian country. We may choose not to take

110

1 certain things on. But we want to do what we can
2 to not shy away from making our decisions while we
3 have the opportunity to do good. And that's what
4 we're trying to do. And so that's the spirit of
5 where we're coming from.

6 February 28th, it's not because
7 we're trying to ram anything through, but there
8 are certain time lines in place when you're
9 considering a new rule, whether it's public notice
10 and comment, or the -- what's the other one -- on
11 the Federal Register notice period and the
12 publication period. When you think about
13 everything that's required to get a rule
14 finalized, we work backwards from that date, it's
15 not a lot of time to work with. So we're not
16 trying to be predecisional, or say this is where
17 we are going. But if we are going to get things
18 done, that's why we had to set a pretty aggressive
19 timeframe to do it.

20 So with that, since we're all in
21 this room together, and I know we've had specific
22 topics, this is really an opportunity also to hear
23 from the folks in this area. Separate from the

24 topics that we've discussed, if there is any
25 thoughts or questions that anybody may have, we

111

1 are always open to hearing perspectives about how
2 we can do our job better. And so we'll just open
3 it up for free discussion if there are any
4 thoughts or concerns, or if you want to address
5 any of the topics previously discussed, that's
6 fine too. But we'll just open it up at this
7 point. Mr. Many-Wounds.

8 >> KEN MANY-WOUNDS: Many new here.

9 I don't know about your statement about February
10 28th. How are we looking at your fast tracking
11 it? My question is based upon -- I've been --
12 we're the first region out of the blocks. You're
13 going to do these week after week after week, I
14 think for six weeks here, one right after the
15 other. How long is it going to take to get the
16 other regions and this one transcribed so that we
17 can look at this if you have stuff on the website
18 so that we can see the comments coming from there
19 so we can possibly comment on those comments or
20 add additional comments by the February 28th
21 deadline? Because that is fast tracked. And I
22 understand all the rules and regulations that you
23 explained. But transcribing can't wait a month to

24 see what happened here today. We can't wait a
25 month after the fact for what happens in Portland

112

1 next week. We need to be able to see that stuff.
2 So can you give us any indication of how fast that
3 stuff is going to be transcribed, put on the NIGC
4 website so we can see other regions' comments?
5 That's key to this.

6 >> CHAIRMAN CHAUDHURI: That's a
7 good question. Generally as fast as humanly
8 possible. But in terms of the actual logistics,
9 Christinia?

10 >> CHRISTINIA THOMAS: This region
11 is actually the most difficult when it comes to
12 transcribing because we can't get a
13 transcriptionist here. Rita will send a tape out.
14 We can usually get a transcript back within a week
15 to get it posted. The other places that we're
16 doing consultations we actually have a
17 transcriptionist in the room which means we'll
18 probably get a transcript within two or three days
19 after that consultation actually takes place.

20 >> KEN MANY-WOUNDS: The next
21 question is posting it.

22 >> CHRISTINIA THOMAS: That should

23 be relatively quick too.

24 >> KEN MANY-WOUNDS: So within a
25 week's time then.

113

1 >> CHRISTINIA THOMAS: Hopefully it
2 will be less. At the Commission we've been
3 talking about how we can send out updates more
4 quickly. And we've talked about email blasts to
5 people, whenever there is an update in realtime
6 you'll know right away. This is what we have
7 updated. So if that's useful to you folks, we'll
8 do that for sure. And I think for last round of
9 consultations we were able to get the transcripts
10 up pretty fast. I'm not too concerned about that
11 but we'll certainly keep a very close eye on it to
12 make sure as you say that if you do get a chance
13 to respond and potentially put in more comments.
14 We do appreciate that kind of back and forth with
15 it.

16 Just another point on the deadline.
17 We don't want to cut this too short. If we find
18 this is too big a topic, in any way we will not
19 move forward with it if it feels rushed to people.
20 We're not committing that this is the end of the
21 conversation. We're just committing that we'd
22 like to produce results, not just have it drag on

23 and on. That's kind of what we're thinking about
24 with the time line.
25 >> KEN MANY-WOUNDS: With the NIGC's

114

1 highly developed IT department now that you spent
2 lots and lots of money on, why can't we do
3 something blast instead of an email blast, we're
4 in the 21st century, why can't we have an open
5 from your IT department, where we can all hook up
6 or we can see you guys face-to-face and you can
7 tell us the updates and stuff? IT department cost
8 these tribes a lot of money.

9 >> It's not a bad idea.

10 >> That's a great idea. With all
11 these things, processes shouldn't stand in the way
12 of getting to the substance and meat of the
13 discussion, which I appreciate and I know your
14 comments are coming from. We don't want to lose
15 the thoughts that have come out here.

16 >> KEN MANY-WOUNDS: Absolutely not.

17 >> I can't speak for the exact
18 operation if it will work but it's an excellent
19 point. As the Vice Chair said, we actually in
20 leading up to this have had a few conversations
21 about let's be as efficient as possible to make

22 sure information gets out. So thank you for
23 making those points about making sure that we can
24 stay on track with process.

25 I will say you made earlier

115

1 comments about fast tracking this. I do want to
2 make the point about in my line, I think I share
3 this with my colleagues, the motivation behind
4 having something like this is that it differs from
5 the consultations that this full Commission has
6 been involved in in the past. These aren't quite
7 as open-ended dialogues about what do you think
8 about management contracts, what do you think
9 about mixed guidance for Class III operations?
10 These are looking at kind of more concrete and
11 specific things. So they're a little bit
12 different in that way.

13 Also, I think it's important in
14 general that you finish what you start. We're
15 going to start something, and it's for proposing
16 regulations, keep that in mind in terms of how we
17 move forward with something. But as the Vice
18 Chair just said, and I totally agree with that,
19 we're not going to go faster than what's going to
20 be helpful. Because at the end of the day the
21 intent of this is to kind of improve NIGC's

22 relationship with Indian country and how we do our
23 work more efficiently and in line with IGRA. But
24 thank you for your ideas about process because we
25 can always do that. There's many prongs in my

116

1 mind in terms of our objective with technology.
2 One is improving how we do business. We've got a
3 good IT department with NIGC. So ideas for how to
4 do it better, we can definitely follow up. So
5 thanks.

6 >> KEN MANY-WOUNDS: I'm not going
7 to condemn the IT department but show us how good
8 you are now. We're out here in rural America. A
9 lot of money spent. Let's get connected with
10 Indian country through the Internet and have this
11 stuff going on. That's my challenge to NIGC now.

12 >> CHAIRMAN CHAUDHURI: Thank you,
13 Mr. Many-Wounds. Just for purpose of the
14 transcript, as you were mentioning this idea about
15 kind of an update, a virtual update, I think all
16 three of us were looking at each other and shaking
17 our heads and nodding. That's a great idea. We
18 do have one telephonic option plan for the DC
19 consultation. We're going to have a call in --
20 that's correct, right? We're going to have a call

21 in. But what you're talking about is an update
22 after. I don't see any reason why we can't do
23 that. If the full Commission is shaking their
24 heads, we can work with our team to follow up on
25 that. I think that's a great suggestion.

117

1 >> SEQUOYAH SIMERMEYER: I don't
2 want to get (inaudible) and I apologize. But I
3 just want to say a broader thought as thinking
4 about this. I think we've all put a lot of
5 thought into how consultation works and the pros
6 and cons and benefits of it. And I definitely
7 agree with supporting some sort of virtual update
8 on this. I do want to say one thing that I know
9 that this Agency and other agencies try to take
10 into account is one of the benefits of having a
11 consultation series like this is that there is a
12 bit of diplomacy that takes place. I think in the
13 back of all of our minds is we want to be
14 respectful in terms of how we're having our
15 dialogue. We want to be sure we're inclusive. We
16 want to be sure we're formal where it's
17 appropriate. There's a great balance, like in
18 this discussion here, with technical expertise and
19 tribal leadership. It's all a great conversation.
20 I think everyone has to be at the table. But by

21 example, providing a dear tribal leader letter is
22 an important formality, even though it might be
23 slow to get a snail mail letter. But ways that we
24 can make things more efficient I think we should
25 definitely absolutely use technology to do that.

118

1 >> CHAIRMAN CHAUDHURI: Thank you.
2 And virtual discussions, that's kind of like where
3 our rural outreach and technology initiatives kind
4 of meet. It's what we kind of envisioned all
5 along. Yeah. But to echo Commissioner
6 Simermeyer's point, I think there is something
7 very important about us sitting down in person and
8 having this conversation in person. For our part,
9 it's an incredible honor to be here in a community
10 that's been so important to the history of Indian
11 country, in the hemisphere as well as the future
12 of Indian country in this hemisphere. Thank you
13 for this comment. Any additional comments?

14 At this time I'd like to ask
15 President Weston if he'd like to share any closing
16 thoughts or comments before we close-out? Again
17 it's been a profound honor to be invited to
18 Oglala's homeland. But before we conclude I
19 wanted to turn it over to you, sir.

20 >> PRESIDENT TROY WESTON: Two
21 hours? I just want to say thank you. Thank you
22 for the opportunity for people to be heard. I
23 believe this is opening a door, like we talked
24 about earlier, in trying to make sure that our
25 casinos, or tribal membership are being heard.

119

1 Because everything that we do affects how we
2 portray the rest of our lives for our children and
3 our grandchildren. Especially with the states
4 fighting us on everything that we have to fight
5 for. This is an eye opener. It really is.
6 Because even if we feel -- some of us feel like
7 being streamlined, you made it clear that it is --
8 it can, it will be stopped if it's not being
9 heard; if it's not helpful. But my message is to
10 make sure that you find and see all of Indian
11 country. And not just go to whomever, you know,
12 and make it up. I think Ken said it best. Maybe
13 have one of them -- have those big monitor
14 meetings. I know all of the tribes -- I know my
15 Tribe has it. We can do the Internet meetings,
16 save you -- save us money. Because right now we
17 know money is tight in Indian country. And we
18 have to look for different opportunities to be
19 able to try to survive. That's one of them.

20 That's an opportunity.
21 But what I really want to say is,
22 you know, we need to look at opportunities to try
23 to be able to assist one another. I want to thank
24 Liz for being here on behalf of our Tribe. I've
25 got Bill over there, our manager, our Commission.

120

1 I thank you, every one of you, for all of you for
2 doing what you do. I don't know if your tribes
3 give you that acknowledgement very often. But I
4 want to say thank you to each and every one of you
5 because it does mean a lot. And it goes a long
6 way when you pat somebody on the back and just say
7 thank you. So I want to say thank you to you.
8 Thank you very much.

9 (Applause).

10 >> CHAIRMAN CHAUDHURI: Nothing to
11 say after that except thank you. Thank you to the
12 entire Oglala nation. Thank you.

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121

1 C E R T I F I C A T E

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4 I, LAUREN SCHECHTER, do hereby
5 certify that the foregoing is a true and accurate
6 transcript of a tape recording in this matter.

7 I do further certify that I am
8 neither of counsel nor attorney for any party in
9 this action and that I am not interested in the
10 event nor outcome of this litigation.

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16 _____
17 Certified Shorthand Reporter for the State of
18 New Jersey

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