



March 13, 2017

Via U.S. Mail & Email

Zeke Fletcher
Counsel to the Borrower
Tonkawa Tribe of Indians of Oklahoma
One Rush Buffalo Road
Tonkawa, OK 74653

Jerrod Compton
Senior Vice President
Corporate Banking
One Williams Center, 8th Fl.
Tulsa, OK 74172

Re: Review of financing agreements on behalf of the Tonkawa Tribe of Indians of Oklahoma

Dear Mr. Fletcher and Mr. Compton:

This letter responds to the request on behalf of the Tonkawa Tribe of Indians of Oklahoma for the National Indian Gaming Commission's Office of General Counsel to review several loan documents. Specifically, you asked for an opinion whether these agreements are management contracts requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act. You also asked for an opinion whether the agreements violate IGRA's requirement that a tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following documents (collectively "the Financing Agreements") submitted as attachments to an e-mail sent on behalf of the Tribe:

- Loan Agreement, marked as C&W REVISED DRAFT 01.05.2017
- Security Agreement, marked as C&W DRAFT 01.05.2017
- Promissory Note, marked as C&W DRAFT 01.05.2017

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The Financing Agreements contain terms similar to other agreements the Office of General Counsel reviewed and analyzed; please refer to the agency's website. Applying the same analysis here, it is my opinion that collectively the Financing Agreements are not management contracts and do not require the approval of the Chair. It is also my opinion they do not violate IGRA's sole proprietary interest requirement.

It is my understanding that the Financing Agreements are represented to be in substantially final form with respect to terms affecting this opinion. If such terms change in any material way prior to closing or are inconsistent with the assumptions made herein, this opinion shall not apply. Further, this opinion is limited to the Financing Agreements listed above. This opinion does not include or extend to any other agreements or documents not submitted for review.

Please note it is my intent that this letter be released to the public through the NIGC's website. If you have any objection to this disclosure, please provide a written statement explaining the grounds for the objection and highlighting the information that you believe should be withheld. 25 C.F.R. § 517.7(c). If you object on the grounds that the information qualifies as confidential commercial information subject to withholding under Exemption Four of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(4), please be advised that the information was voluntarily submitted and, as such, that any withholding should be analyzed in accordance with the standard set forth in *Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992). Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter." 25 C.F.R. § 517.7(c). Please submit any written objection to FOIASubmitterReply@nigc.gov **within thirty (30) days of the date of this letter.** After this time elapses, the letter will be made public and objections will no longer be considered. *Id.* If you need any additional guidance regarding potential grounds for withholding, please see the United States Department of Justice's Guide to the Freedom of Information Act at <http://www.justice.gov/oip/doj-guide-freedom-information-act-0>.

If you have any questions, please contact NIGC Staff Attorney Mary Modrich-Alvarado at (202) 632-7003.

Sincerely,



Michael Hoenig
General Counsel