



April 21, 2020

VIA EMAIL

Townsend Hyatt
Orrick, Herrington & Sutcliffe LLP
1120 NW Couch Street
Suite 200
Portland, OR 97209-4163

**Re: Review of Deposit Account Control Agreement for the
Poarch Band of Creek Indians**

Dear Mr. Hyatt:

This letter responds to your March 17, 2020, request, on behalf of the Poarch Band of Creek Indians for the National Indian Gaming Commission's Office of General Counsel to review a Deposit Account Control Agreement between the PCI Gaming Authority, Credit Suisse AG, Cayman Islands Branch, as collateral agent, and Capital One, National Association. Specifically, you ask for my opinion whether the DACA constitutes a management contract requiring the NIGC Chairman's approval under the Indian Gaming Regulatory Act. You have also asked for an opinion whether the DACA violates IGRA's requirement that a tribe have the sole proprietary interest in its gaming operation.¹

On May 24, 2019, I advised the Tribe that it was my opinion that certain documents submitted by the Tribe ("2019 Credit Documents") were not management contracts and did not violate the sole proprietary interest requirement of the Indian Gaming Regulatory Act.² In addition, on September 27, 2019, I determined that the DACA among the Tribe, the PCI Gaming Authority, Credit Suisse AG, Cayman Island Branch, as a collateral agent, and the Bank of American did not constitute a management contract nor did it violate IGRA.

In my review, I considered the following document submitted on behalf of the Tribe, which was unexecuted, but was represented to be in substantially final form:

- Deposit Account Control Agreement, marked as "NIGC Submission Draft 3/12/20".

The DACA submitted to the Office of General Counsel on March 17, 2020, contains terms similar to other agreements that this Office has reviewed and analyzed that are available on the NIGC

¹ 25 U.S.C. 2701 et seq.

² *Id.*

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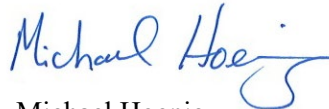
website. Applying the same analysis here, it is my opinion that the DACA, is not a management contract and does not violate IGRA's sole proprietary interest requirement.

It is my understanding that the DACA is represented to be in substantially final form with respect to terms affecting this opinion. If the DACA changes in any material way prior to closing, this opinion shall not apply. Further, this opinion is limited to the DACA, and does not include or extend to any other agreements or documents not submitted for review.

Please note that it is my intent that this letter be released to the public on the NIGC website. If you have any objections to this disclosure, please provide a written statement explaining the grounds for the objection and highlighting the information that you believe should be withheld.³ If you object on the ground that the information qualifies as confidential commercial information subject to withholding under Exemption Four of the Freedom of Information Act (FOIA),⁴ please be advised that any withholding should be analyzed under the standard set forth in *Food Marketing Institute v. Argus Leader Media*.⁵ Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter."⁶ 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.⁷ If you need any additional guidance regarding potential ground for withholding, please see the United States Department of Justice's Guide to the Freedom of Information Act at <https://justice.gov/oip/doj-guide-freedom-information-a-0>.

If you have any questions, please contact Rea Cisneros, Associate General Counsel at (202) 632-7003 or by email at rea.cisneros@nigc.gov.

Sincerely,



Michael Hoenig
General Counsel

cc: Jeffrey Trattner, Assistant Attorney General for the Poarch Band of Creek Indians

³ See 25 C.F.R. § 517.7(c).

⁴ 5 U.S.C. § 522(b)(4).

⁵ 139 S. Ct. 2356 (2019).

⁶ See 25. C.F.R. § 517.7(d).

⁷ *Id.*