



September 7, 2018

VIA FIRST CLASS MAIL

James R. Floyd, Principal Chief  
Muscogee (Creek) Nation  
1008 East Eufaula Street  
Okmulgee, Oklahoma 74447

**Re: Review of financing agreements for the Muscogee (Creek) Nation**

Dear Principal Chief Floyd:

This letter responds to the August 26, 2018 request of Mr. Robert Rosette, on behalf of the Muscogee (Creek) Nation, for the National Indian Gaming Commission's Office of the General Counsel to review financing agreements between the Muscogee (Creek) Nation and BOKF, NA dba Bank of Oklahoma. The documents are additional to loan transaction documents I previously opined on in a letter dated August 9, 2018. Specifically, you have asked for my opinion whether the financing agreements are management contracts requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act and whether the agreements violate IGRA's requirement that the Nation have the sole proprietary interest in its gaming operation.

In my review, I considered the following submissions (collectively, "the Financing Agreements") which are unexecuted, but were represented to be in substantially final form:

- Guaranty Agreement by the Gaming Operations Authority Board of Muscogee (Creek) Nation in favor of BOKF, NA dba Bank of Oklahoma;
- Joinder Agreement between Gaming Operations Authority Board of Muscogee (Creek) Nation.

The Financing Agreements add the Gaming Operations Authority Board of the Muscogee (Creek) Nation as a guarantor to the previously reviewed Loan Agreement and a party to the previously reviewed Security Agreement.

The Financing Agreements contain terms similar to other agreements the Office of General Counsel has already reviewed and analyzed. Some of these letters may be found on the NIGC website. Applying the same analysis here, it is my opinion that collectively the Financing

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Agreements do not materially alter or impact management or proprietary interest issues and therefore do not change my August 9, 2018 letter.

It is my understanding that the Financing Agreements are represented to be in substantially final form with respect to terms affecting this opinion, and if such terms change in any material way prior to closing or are inconsistent with 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 that 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.<sup>1</sup> 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),<sup>2</sup> 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*.<sup>3</sup> Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter."<sup>4</sup> 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.<sup>5</sup> 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 Suzanne Nunn at (202) 632-7013.

Sincerely,



Michael Hoenig  
General Counsel

cc: Robert A. Rosette (rosette@rosettelaw.com), Counsel for the Nation  
Jason Coutant (JCoutant@cwlaw.com), Counsel for Bank of Oklahoma

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<sup>1</sup> 25 C.F.R. §517.7(c).

<sup>2</sup> 5 U.S.C. § 552(b)(4).

<sup>3</sup> 975 F.2d 871 (D.C. Cir. 1992).

<sup>4</sup> 25 C.F.R. § 517.7(c).

<sup>5</sup> *Id.*