



October 15, 2018

Via U.S. Mail & E-mail

Valerie Devol
15205 Traditions Lake Parkway
Edmond, Oklahoma 73013
vdevol@devollaw.com

Re: Review of loan documents for the Fort Sill Apache Tribe of Oklahoma

Dear Ms. Devol:

This letter responds to the request on behalf of the Fort Sill Apache Tribe of Oklahoma Economic Development Authority (Authority), an agency and instrumentality of the Fort Sill Apache Tribe of Oklahoma, for the National Indian Gaming Commission's Office of the General Counsel to review certain financing agreements identified below. Specifically, you have 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 Agreement") all of which are unexecuted, but were represented to be in substantially final form:

- **Credit Agreement** by and among Fort Sill Apache Tribe of Oklahoma Economic Development Authority as Borrower; Bank of America, N.A., as Administrative Agent and L/C Issuer; the Other Lenders Party Hereto; Merrill Lynch, Pierce, Fenner & Smith Incorporated as Joint Lead Arranger and Sole Bookrunner; BBVA Compass and U.S. Bank National Association as Joint Lead Arrangers and Co-Syndication Agents, and Umpqua Bank as Documentation Agent, marked on the top right "NICG Draft: April 8/20/18" and marked on the bottom left "SMRH:227706352.8";
- **Exhibits to the Credit Agreement**
 - **EXHIBIT A** – Administrative Questionnaire;
 - **EXHIBIT B** – Assignment and Assumption;
 - **EXHIBIT C** – Committed Loan Notice;
 - **EXHIBIT D** – Compliance Certificate;
 - **EXHIBIT E** – Draw Term Note;
 - **EXHIBIT F** – Guaranty;
 - **EXHIBIT G** – Perfection Certificate;

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- **EXHIBIT H** – Reallocation Offer;
- **EXHIBIT I** – Revolving Credit Note;
- **EXHIBIT J** – Tax Exempt Note;
- **EXHIBIT K** – Term Note;
- **EXHIBIT L-1 – L-4** – U.S. Tax Compliance Certificates;
- **EXHIBIT M** – Security Agreement;
- **EXHIBIT N** – Opinions;
- **EXHIBIT O** – Subordination Agreement (items A through O, the Exhibits);
- **Tribal Agreement** between the Fort Sill Apache Tribe of Oklahoma and Bank of America, N.A. as Administrative Agent for the Lenders marked at the top right “NIGC Draft 8/20/18” and marked bottom left “SMRH:227745649.5”;
- **Security Agreement** among the Fort Sill Apache Tribe of Oklahoma Economic Development Authority as Borrower; Fort Sill Apache Hospitality, LLC and each of the other subsidiaries of the Borrower that become party hereto as an Additional Grantor, in favor of Bank of America, N.A. in its capacity as administrative agent and as collateral Agent for the benefit of the Secured Parties; marked at the top right as “NIGC Draft 8/20/18” and marked at the bottom left as “SMRH:227750273.3”;
- **Deposit Account Control Agreements** among the Fort Sill Apache Tribe of Oklahoma Economic Development Authority, Bank of America, N.A., as collateral agent for the Secured Parties, and Arvest Bank; marked at the top right “SMRH Draft 9-5-18”;
- **Deposit Account Control Agreement** among the Fort Sill Apache Tribe of Oklahoma Economic Development Authority, Bank of American, N.A., as collateral agent for the Secured Parties, and Arvest Bank; marked at the top right “SMRH Draft 9-27-18”.

The Financing Agreement contains 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 a management contracts and does not require the approval of the Chair. It is also my opinion that it does not violate IGRA’s sole proprietary interest requirement.

It is my understanding that the Agreement is 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 Loan Document 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

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be withheld.¹ 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),² 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*.³ Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter."⁴ 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.⁵ 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 Rea L. Cisneros at (202) 632-7024.

Sincerely,



Michael Hoenig
General Counsel

cc: By e-mail only:
Valerie Devol (e-mail: vdevol@devollaw.com)

¹ 25 C.F.R. § 517.7(c).

² 5 U.S.C. § 552(b)(4).

³ 975 F.2d 871 (D.C. Cir. 1992).

⁴ 25 C.F.R. § 517.7(c).

⁵ *Id.*