



February 25, 2011

*Via First Class and electronic mail*

Randall Majel, Chairman  
Pauma Band of Mission Indians  
P.O. Box 369  
Pauma Valley, CA 92061

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Re: Review of financing documents for the Pauma Band of Mission Indians

Dear Chairman Majel and Mr. Radoff:

This letter responds to your December 10, 2010 request on behalf of the Pauma Band of Mission Indians (Band) for the National Indian Gaming Commission's Office of General Counsel to review the Band's financing documents with Bank of America N.A. (Bank). Specifically, you have asked for my opinion whether the documents are management contracts requiring the NIGC Chairwoman's approval under the Indian Gaming Regulatory Act. You also asked for my opinion whether the financing documents violate IGRA's requirement that a tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following submissions (collectively, "the Financing Documents"):

- an undated draft "Second Amended and Restated Credit Agreement," with exhibits, between the Band and the Bank;
- an undated draft "Second Amended and Restated Security Agreement" between the Band and the Bank;
- an undated draft "Escrow Agreement," with exhibits, between the Band and the Bank;
- an April 8, 2008 "Deposit Account Control Agreement With Activation," with exhibits, between the Band and the Bank;

- a July 15, 2009 “Deposit Account Control Agreement With Activation,” with exhibits, between the Band and the Bank; and
- a July 15, 2009 “Deposit Account Control Agreement Without Activation,” with exhibits, between the Band and the Bank.

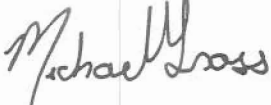
The Financing Documents submitted by the Band contain terms similar to other agreements the Office of General Counsel has already reviewed and analyzed. *See* [www.nigc.gov/Reading\\_Room/Management\\_Review\\_Letters.aspx](http://www.nigc.gov/Reading_Room/Management_Review_Letters.aspx). Applying the same analysis here, it is my opinion that the Financing Documents are not management contracts and do not require the approval of the Chairwoman. It is also my opinion that they do not violate IGRA’s sole proprietary interest requirement.

It is my understanding that the drafts provided are represented to be in substantially final form. If they change in any material way prior to closing, this opinion shall not apply.

I anticipate that this letter will be the subject of Freedom of Information Act (FOIA) requests. Since we believe that some of the information in this letter may fall within FOIA exemption 4(c), which applies to confidential and proprietary information the release of which could cause substantial harm, I ask that you provide me with your views regarding release within ten days.

I am also sending a copy of the submitted Financing Documents to the Department of the Interior Office of Indian Gaming for review under 25 U.S.C. § 81. If you have any questions, please contact NIGC Senior Attorney John R. Hay at (202) 632-7003.

Very truly yours,



Michael Gross  
Associate General Counsel, General Law  
(Acting General Counsel)

cc: Paula Hart, Director, Office of Indian Gaming (via agency mail w/ incoming)  
Charbel Lahoud, Esq. (via e-mail: [clahoud@sheppardmullin.com](mailto:clahoud@sheppardmullin.com))