



June 6, 2012

Via U.S. Mail

John L. Berrey
Chairman

Downstream Development Authority of the Quapaw Tribe of Oklahoma
P.O. Box 765
Quapaw, OK 74363-0765

Re: Review of loan documents for the Quapaw Tribe of Oklahoma

Dear Chairman Berrey:

This letter responds to the request on behalf of the Quapaw Tribe of Oklahoma (Tribe) and the Downstream Development Authority of the Quapaw Tribe of Oklahoma for the National Indian Gaming Commission's Office of General Counsel to review several agreements related to financing for the Tribe's gaming enterprise, Downstream Casino Resort. Specifically, you have asked for an opinion whether these agreements are management contracts requiring the NIGC Chairwoman'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 submissions (collectively, "the Financing Documents") all unexecuted, but represented to be in substantially final form:

- Credit agreement marked on top of front page as "NIGC REVIEW DRAFT 5/25/12" and bottom left as (b) (4) (Credit Agreement);
- Promissory note marked at top right at "NIGC REVIEW DRAFT 5/17/12" and at bottom left as (b) (4) in favor of Wells Fargo;
- Promissory note marked at top right at "NIGC REVIEW DRAFT 5/17/12" and at bottom left as (b) (4) in favor of CIT Bank;
- (b) (4)
- Security agreement marked at top right as "NIGC REVIEW DRAFT 5/17/12" and bottom left as (b) (4) (Security Agreement);

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- Annex G to the Security Agreement, form of control agreement regarding deposit accounts received on June 6, 2012, marked at bottom left as (b) (4)
- Credit agreement (FF&E) marked on top of front page as "NIGC REVIEW DRAFT 5/25/12" and bottom left as (b) (4)
- Promissory note marked at top right at "NIGC REVIEW DRAFT 5/17/12" and at bottom left as (b) (4) in favor of Wells Fargo;
- Promissory note marked at top right at "NIGC REVIEW DRAFT 5/17/12" and at bottom left as (b) (4) in favor of CIT Bank;
- (b) (4)
- Security agreement (FF&E) marked at top right as "NIGC REVIEW DRAFT 5/17/12" and bottom left as (b) (4) FF&E Security Agreement);
- (b) (4)
- Control agreement regarding deposit accounts received on May 24, 2012, marked a bottom left as (b) (4)

The Financing Documents 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. Applying the same analysis here, it is my opinion that collectively 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 Financing Documents 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 Documents listed above. This opinion does not include or extend to any other agreements or documents not submitted for review.

I anticipate that this letter will be posted to the NIGC's website. Prior to posting, NIGC will notify you and give you an opportunity to identify and request that information subject to the exemptions under FOIA be redacted or withheld. A list of the FOIA exemptions may be found at 25 U.S.C. § 552(b).

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I am also sending a copy of the 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 Melissa Schlichting at (202) 632-7003.

Sincerely,



Lawrence S. Roberts
General Counsel

cc: Paula Hart, Director
Office of Indian Gaming
(via US Mail w/ incoming)

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