



October 26, 2020

Via Email

Peter Yucupicio, Chairman
Pascua Yaqui Tribe
7474 S. Camino De Oeste
Tucson, AZ 85757

Re: Review of Financing Documents on behalf of the Pascua Yaqui Tribe

Dear Chairman Yucupicio:

This letter responds to the request on behalf of the Pascua Yaqui Tribe for the National Indian Gaming Commission's Office of General Counsel to review the Seventh Amendment to the Credit Agreement as well as the Conforming Credit Agreement which incorporates all previous amendments. Specifically, you asked for an opinion whether these agreements are management contracts requiring the NIGC Chairman'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 (Financing Documents), all of which are unexecuted, but were represented to be in substantially final form:

- Seventh Amendment to Credit Agreement, marked in upper right-hand corner with SMRH DRAFT 8/17/2020;
- Credit Agreement Dated August 27, 2015, Conformed Through First Amendment, Second Amendment, Third Amendment, Fourth Amendment, Fifth Amendment, Sixth Amendment, and 8/17/2020 Draft Seventh Amendment, marked in upper right-hand corner with Deal CUSIP: 70258NAD3;
- Exhibit D-Form of Compliance Certificate, unmarked; and
- Exhibit H-Form of Distribution Certificate, unmarked.

The Financing Documents contains terms similar to other agreements the Office of General Counsel has reviewed and analyzed; please refer to the agency's website. 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 Chairman. It is also my

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opinion they do not violate IGRA's sole proprietary interest requirement. It is my understanding 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 the 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.

Please note that it is my intent to release this letter 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.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,² please be advised that any withholding should be analyzed under the standard set forth in *Food Marketing Institute v. Argus Leader Media*.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, I will make the letter public and will no longer consider objections.⁵ For additional guidance regarding potential grounds for withholding, please see the United States Department of Justice's Guide to the Freedom of Information Act at <https://www.justice.gov/oip/doj-guide-freedom-information-act-0>.

If you have any questions, please contact NIGC Senior Attorney Maria Getoff, via email at maria_getoff@nigc.gov.

Sincerely,



Michael Hoenig
General Counsel

cc: Peter Larson, Outside Counsel to Pascua Yaqui Tribe (via email)
Amanda Lomayesva, General Counsel, Casino DelSol Resort (via email)

¹ See 25 C.F.R. § 517.7(c).

² 5 U.S.C. § 552(b)(4).

³ 139 S. Ct. 2356 (2019).

⁴ See 25 C.F.R. § 517.7(d).

⁵ *Id.*