



Iowa Tribe of Oklahoma

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NATIONAL INDIAN GAMING
COMMISSION
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April 28, 2015

Jonodev O. Chaudhuri, Acting Chairman
Daniel J. Little, Associate Commissioner
1849 C Street NW
Mail Stop #1621
Washington, DC 20240

Re: Comments in Response to the National Indian Gaming Commission's February 26, 2015 Notice of Consultation

Dear Commissioners,

The Iowa Tribe of Oklahoma ("Tribe") appreciates the opportunity to provide comments on the topics presented in the National Indian Gaming Commission's (NIGC) February 26, 2015 Notice of Consultation (Notice). We applaud the NIGC for reaching out to tribal governments early in the decision-making process and seeking tribal input prior to the formal rulemaking process. Such efforts are consistent with the policies of Executive Order 13175 and in furtherance of the special government-to-government relationship between federal and tribal governments.

In the comments below, we offer our thoughts and suggestions on the proposals outlined in the February 26, 2015 Notice, specifically the proposed NEPA manual, Class III MICS, and the Buy Indian Act. We hope our comments prove useful to the NIGC as it considers whether to move forward with its proposals and if additional revisions are necessary to ensure that its rules are fair, reasonable, and minimally intrusive.

PROPOSED NEPA MANUAL

Overall, the proposed NEPA manual is a much improved and simplified version in comparison to the draft manual circulated for public comment in 2009 (2009 Manual). We applaud the NIGC for reducing the manual to a size more appropriate to the limited responsibilities of the NIGC in relation to NEPA. These changes will bring greater clarity and consistency to the interpretation and implementation of the NIGC's responsibilities under NEPA.

We also support the NIGC's new policy on the extent of NEPA coverage for management contract related activities. Unlike the 2009 Manual, which limited the applicability of the categorical exclusion to only those contracts that did not involve physical construction or plans

to increase patronage, the currently proposed version expands the categorical exclusion to include *all* management contract approval activities, regardless of the underlying activity.

Although we believe that the exclusion should go further to *completely* exempt management contract activities from NEPA compliance, we view the proposed approach as a workable compromise and a step in the right direction. Given the NIGC's limited role in management contract approvals, our position has always been that the NIGC's involvement in approving management contracts does not rise to the level of a major federal action. The determination of whether an activity constitutes a major federal action is contingent on whether a project is federal or non-federal in nature, and the amount of control that the federal agency can exercise over the proposed action/project.

An Indian gaming management contract is not a federally initiated, operated, or owned project. Tribal governments do not receive any federal funding to develop, construct, or operate their gaming facilities. Moreover, the NIGC is not in control of the project, nor may it exert significant influence on any construction or environmental mitigation terms of the contract. Tribal governments can build and operate gaming facilities on their lands without an approved management contract and no federal funding is granted as part of or subsequent to the approval process. The NIGC's only involvement with an approved management contract is to enforce its terms, require contract modifications, or void the contract if the statutory requirements are not met.

Under these circumstances, we submit that management contract approvals should not be subject to NEPA compliance. Nonetheless, as noted above, the proposed approach is an acceptable compromise and will have a positive impact in clarifying the actions that trigger NEPA coverage.

Another area of improvement in the proposed NEPA manual is the revised definition of "Controversial" in Section 1.2.7, which now clarifies that the term "does not refer to the mere existence of opposition to a proposed action." We note, however, that further revisions are necessary to clarify that a "substantial dispute" will only be deemed present when a dispute arises within the *scientific community*. Given the highly technical and specialized nature of NEPA compliance, the NIGC should only consider input from scientific experts who are better equipped to assess the potential impacts of a proposed action on the human environment.

Furthermore, we believe the definition of "Controversial" could be further improved by clarifying that the term does not refer to a preference among the alternatives. The "extraordinary circumstances" exception is intended to apply to substantial disputes over the environmental *impacts* of a project, not disputes as to the preferred or optimal approach.

Finally, we note that Section 1.5 of the proposed NEPA manual incorrectly implies that the NIGC has "sufficient control and responsibility to condition approvals of a non-federal *entity*." The NIGC has the authority to approve management contracts for proposed gaming projects, but not the authority to approve the entities involved in the contract. We ask for clarification as to the intended meaning behind this statement.

BUY INDIAN GOODS RULE

We support the NIGC's proposed Buy Indian Goods Services policy, which establishes uniform procedures for the procurement of supplies and services from eligible tribally owned businesses. Under IGRA, the NIGC has the express authority to "procure supplies, services, and property by contract in accordance with applicable Federal laws and regulations" and "enter into contracts with Federal State, tribal, and private entities. We are encouraged by the NIGC's initiative to enhance procurement relationships with tribal governments and, in turn, help generate critical revenues to support governmental programs and services to tribal members.

CLASS II MICS

As noted above, we appreciate the NIGC's efforts to engage with tribal governments in the early decision-making stages of its proposed rules and policies. Among other benefits, early tribal involvement gives both tribal governments and the NIGC additional time to consider alternative regulatory approaches that may better accommodate the interests and concerns of tribal governments. It also allows the NIGC to consider any unintended consequences that may have been overlooked by the agency. Early consultation is especially important in the context of the Minimum Internal Control Standards, which require the input of experienced regulators and operators with first-hand experience in the day-to-day operation and regulation of tribal gaming.

In its Notice of Consultation, the NIGC seeks comments on its proposal to withdraw 25 C.F.R. Part 542 and issue the Class III MICS as non-mandatory guidance. Having considered this proposal, we have some preliminary concerns about its potential impacts on tribal-state compacts and the tribal-state relationship more broadly. Under our own tribal-state compact with the State of Oklahoma, we are required to comply with tribal internal controls standards that equal or exceed the NIGC Class III MICS in 25 C.F.R. Part 542. The withdrawal of 25 C.F.R. Part 542 could raise questions regarding the enforceability of this provision and trigger new compliance concerns from the state.

In light of this, we believe further consultation is necessary to fully understand the potential impacts of the NIGC's proposal.

CONCLUSION

In closing, we would like to thank you for this opportunity to submit comments on the topics identified in the February 26, 2015 Notice of Consultation. We look forward to continuing to work closely with the NIGC on these and other matters of mutual importance.

Sincerely,



Gary Pratt
Chairman
Iowa Tribe of Oklahoma