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January 23, 2018
Via Hand Delivery

Jonodev Chaudhuri, Chairman National Indian Gaming Commission
C/O Department of the Interior
1849 C Street NW, Mail Stop # 1621
Washington, D.C. 20240

Re: Standing Rock Sioux Tribe Comments on Audit Submissions and Management and Sole Proprietary Interest

Dear Chairman Chaudhuri:

The Standing Rock Sioux Tribe (“Tribe”) respectfully submits these comments in response to the National Indian Gaming Commission (“NIGC”)’s consultation topics for its meeting of January 23, 2018 at Prairie Winds Casino Hotel in Oglala, South Dakota. As requested, the Tribe hereby submits input on NIGC’s contemplated amendments regarding audit submissions and standards for what constitutes management and sole proprietary interest.

In 1988, Congress established through enactment the “Indian Gaming Regulatory Act,” that Indian Tribes, as governments, have the right to regulate and manage gaming operations on their respective reservations. It also provided a comprehensive regulatory system that involves three (3) levels of government regulation: tribal, federal and state. Through President Obama’s Executive Memorandum of November 5, 2009 and Executive Order 13175, the President reaffirmed tribal rights to consultation before policies or guidance would be adopted that have tribal implications.

AUDIT SUBMISSIONS

The Tribe wholeheartedly appreciates – and supports – the Commission’s stated belief that small charitable gaming operations are burdened not only by requirements to

obtain audited financial statements for submission to the NIGC, but the cost of a CPA review as well. The Tribe wishes to stress its support for the NIGC's stated belief that "the smallest gaming operations would be exempted from the annual financial statement submission requirement" altogether.

With the Tribe working through an unprecedented budget that further restricts what our government is able to do for the most vulnerable among us, our members rely more than ever on creative and community-based opportunities to meet their needs. Small gaming operations on the Standing Rock Reservation work with a purely charitable mind to help ensure our youth are able to experience enrichment in cultural and scholastic arenas, our elderly members are able to afford transportation to appointments and our members who are pulling themselves up from historic poverty levels will not be felled by the lack of basic needs. These operations, while serving a vital purpose to our people, raise funds at a level where any required, formal review or certification would prove not only burdensome but fatal. The people who run these operations do so with no incentive but helping their neighbors at the most local of levels; saddling volunteers - who run such programs purely from their heart and not from a bank account - with such expenditures runs the risk of eradicating these opportunities altogether.

The Commission's suggestion of raising the reviewed financial statement limit to three (3) million dollars gives the Tribe encouragement that the NIGC is well-aware of the need to meet the shifting realities of economic issues on the reservations, and will act with similar reason and pragmatism with the limit under which small gaming operations would be exempted from annual financial statement submissions altogether. While the Tribe cannot speak for some of our more financially-stable friends and relatives in Tribes across the country, we believe the barometer for exempted operations should be set as high as possible to accommodate both those other Tribes, as well as the more modest operations being run for our friends and relatives here at home.

MANAGEMENT AND SOLE PROPRIETARY INTEREST

NIGC proposes regulations setting out standards for what constitutes management and sole proprietary interest. It appears this distinction has become an issue due to the use of professional managers by Tribes under agreements, and how that use may blur the line between Tribes who must have the sole proprietary interest in its gaming establishment(s) and those who manage such establishments.

The Tribe wishes to encourage the NIGC to include in its consideration of this issue that many Tribes – such as the Standing Rock Sioux Tribe – do not enter into such agreements, but alternatively hires individuals – much like any other employee – to perform managerial functions at its Class III establishments. This distinction is carved into the Tribe's laws at Title 23, Chapters 4 and 5 of the Standing Rock Sioux Tribal Code of Justice. Specifically, Chapter 4 delineates requirements for any hypothetical applicant, not the Tribe itself, who seeks – or is awarded – a facility license.¹ Meanwhile, Chapter 5 speaks

¹ Hypothetical, because on the Standing Rock Sioux Reservation, management is hired as employees, and is not a separate entity with a tribal license.

to Management Personnel – like those individuals hired by the Tribe – who are governed by the same licensing standards as any other employee of a Class III gaming enterprise on the Reservation.

These are obviously distinct roles for distinct forms of management. While this distinction may appear obvious given the nature of what the NIGC is currently contemplating, the Tribe urges NIGC to ensure that distinction is clear both in the development of regulations and in the language of any regulations themselves, as the different forms of “management” may lead to confusion. For example, Chapter 4 management entities are often described as having management agreements, while Chapter 5 managers may be employed through a management contract that nevertheless governs them as employees. Those lines themselves may blur to the casual observer.

Therefore, the Tribe requests the NIGC develop regulatory language that clearly distinguishes between management compensated by percentage of profit and management compensated by salary. Managerial employees – like those operating at Standing Rock casinos, who are licensed like other non-managerial employees – do not blur the line of the Tribe’s proprietary interests as might a management firm with its own tribal facility license, nor trigger NIGC requirements specific to the latter under 25 CFR 531. To ensure the continued smooth operation of establishments owned by the Tribe, which employs management rather than licenses to a management entity, the Tribe respectfully urges the NIGC to resist any potential confusion that could arise.

CONCLUSION

On behalf of the Standing Rock Sioux Tribe, we appreciate this opportunity to provide comments to the NIGC. The Tribe looks forward to working with the NIGC as these important matters move forward. Please do not hesitate to contact us if we can provide any additional assistance or information.

Sincerely,



Mike Faith, Chairman
Standing Rock Sioux Tribe