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RAPID CITY CONSULTATION

Transcribed by:
Lauren Schechter, CCR

1 >>CHAIRMAN CHAUDHURI: In terms of
2 the recorder, we're ready? Okay. It's 2:03. I
3 think we'll begin. First of all, before we get
4 started, we have arranged the table in as close to
5 a circle as we could make using square tables.
6 But we really want to encourage anybody, including
7 folks from NIGC if nobody else fills in any of the
8 seats to feel comfortable sitting down as part of
9 the circle at any point. We really want to have a
10 frank and open dialogue and discussion.

11 So let's jump right into it. Thank
12 you all for taking the time to be here today to
13 attend today's consultation between the NIGC and
14 tribal leadership and tribal regulatory leadership
15 as well. My name is Jonodev Chaudhuri and I'm
16 Chairman of the NIGC. And I'm honored to be a
17 part of the NIGC team who work so closely with our
18 regulatory partners. Active communication,
19 consultation and dialogue is probably the most
20 important thing we do. And I'm looking forward to
21 a very positive session today.

22 Before we move forward with
23 additional introductions, if we could have my
24 fellow Commissioner introduce himself, and then
25 we'll move into a brief blessing before full

1 introductions.

2 >> DANIEL LITTLE: Thank you, Mr.
3 Chairman. It's nice to actually say that publicly
4 for the first time. Congratulations on your
5 confirmation. I just want to welcome everybody
6 here today. I'm very interested in hearing what
7 you all have to say. These consultations,
8 sometimes they're big and sometimes they're small.
9 But they're all important. And while this is an
10 opportunity to verbally provide comment on any of
11 the issues we're discussing, does not preclude you
12 from further submitting written comments. And I
13 think we'll discuss what the deadline is for
14 submitting any comments.

15 So I just want to welcome you all
16 here and I look forward to hearing what you have
17 to say. Thank you.

18 >> CHAIRMAN CHAUDHURI: Thank you,
19 Dan. We are in Lakota territory. And in keeping
20 with our past traditions we usually try to start
21 our consultations off with a blessing that will
22 help us engage in dialogue with open hearts and
23 open minds. We're very honored to have Mr. Brewer
24 agree to provide us with a blessing today.

25 >> MR. BREWER: First of all, I'd

1 like to just start off by saying congratulations
2 on the appointment last week. It's good to meet a
3 lot of the NIGC people. (Inaudible).

4 Thank you for this day. Thank you
5 for bringing us together. We ask that you let us
6 all have dialogue with open hearts, and our
7 decisions will matter most to our people that's
8 going to affect (inaudible). Blessings on
9 everybody. Give them a safe trip home when this
10 meeting is over. I'm asking that you bring
11 blessings and honor to their families.
12 (Inaudible).

13 >> CHAIRMAN CHAUDHURI: Thank you,
14 Mr. Brewer.

15 So we don't have a lot of folks in
16 the room today. But I want everybody to have an
17 opportunity to speak their mind and to get their
18 comments -- any comments on the record that they
19 want to put on the record. That said, there's no
20 crime in finishing early. So if we have exhausted
21 all comments and discussion early, we will
22 probably move forward with adjourning early. But
23 that said, the most important thing is to be as
24 exhaustive as possible in terms of everybody
25 having an opportunity to present comments.

1 So we'll move forward so we all
2 know with whom we're speaking. We'll move forward
3 with introductions. And rather than introduce all
4 the members of our team at once, we'll just go in
5 a circle and kind of -- even though we're in
6 Lakota territory, we're going to go in the
7 direction of the creeks. We'll first start with
8 our acting chief of staff, Christinia Thomas and
9 we'll go from there. But we always try to
10 recognize former NIGC alumni, and we have Mr.
11 Many-Wound sitting in the corner. Thank you for
12 your previous service to the Commission, and we
13 recognize you're continuing to do good work on
14 behalf of Indian country. With that, Ms. Thomas.

15 >> CHRISTINIA THOMAS: Thank you,
16 Mr. Chairman. My name is Christinia Thomas. I am
17 the acting chief of staff of the National Indian
18 Gaming Commission. I'm also a tribal member of
19 the (inaudible).

20 >> MILES JANSEN: My name is Miles
21 Jansen. I'm a staff attorney with the office of
22 general counsel. I'm a tribal member and tribal
23 member of the (inaudible) Indian tribes of Alaska,
24 descendant Cheyenne, Arapahoe and Oklahoma.

25 >> TOM BOLBON: My name is Tom

1 Bolbon. I'm St. Paul region auditor with the NIGC
2 based at the Rapid City satellite office.

3 >> TROY LUNDERMAN: My name is Troy
4 Lunderman. I'm a general manager with Rosewood
5 Economic Development Corporation and member of
6 (inaudible) tribe.

7 >> Good afternoon. My name is Bill
8 (inaudible) general manager for the (inaudible)
9 casino (inaudible). I think somebody went there
10 yesterday. I'm also a world member of the
11 (inaudible) tribe. I just came here as an
12 innocent bystander to observe. (Inaudible) answer
13 a lot of my questions. But unfortunately none of
14 our elected officials are here. I was hoping they
15 would be here. It would be nice to hear things
16 that went on in NIGC but I might come up with
17 something in my mind before the afternoon is over.
18 Thank you.

19 >> KEN MANY-WOUNDS: Good
20 afternoon, Chairman, distinguished NIGC personnel.
21 I know a lot of you. Some of you I don't know,
22 and it's the first time. Thank you for giving us
23 this opportunity. My name is Ken Many-Wounds.
24 I'm from the standing rock nation of North and
25 South Dakota.

1 >> WILLIAM BURR: William Burr,
2 (inaudible) tribe. Acting in capacity of
3 Executive Director of Indian gaming at the tribal
4 level.

5 >> JENNIFER LAWSON: Jennifer
6 Lawson. I'm a staff attorney with the office of
7 general counsel.

8 >> LINDA DURBIN: Linda Durbin,
9 regional Director St. Paul.

10 >> SHAWNA ELLIS: Shawna Ellis,
11 compliance officer out of St. Paul.

12 >> Robert (inaudible) compliance
13 officer, St. Paul.

14 >> KEN BUCK: Ken Buck, compliance
15 officer, St. Paul.

16 >> JIM MCKEE: Jim McKee,
17 compliance officer in the Rapid City satellite
18 office of the St. Paul region.

19 >> MICHAEL HONIG: My name is
20 Michael Honig. I'm associate general counsel at
21 the NIGC.

22 >> ERIC SHEPARD: My name is Eric
23 Shepard. I'm the acting general counsel at the
24 NIGC.

25 >> DEFOYLE FALL: I'm deDoyle Fall.

1 I'm the officer in the Rapid City satellite office
2 of the St. Paul region.

3 >> CHAIRMAN CHAUDHURI: As I
4 mentioned, I'm Muskogee Creek. I'm very honored
5 to be here in the Lakota territory. And we have
6 public affairs well represented. Sarah.

7 >> Sarah Crawford, assisting. I'm
8 out in the DC office.

9 >> CHAIRMAN CHAUDHURI: It's always
10 nice to have home town person -- a new home town
11 person on our team. We already have several. I
12 also want to say thank you to our incredible team
13 at the region. Linda Durbin is our regional
14 Director as she mentioned. But her team put this
15 consultation together and on top of that has been
16 running an excellent training over the last
17 several days. Training being a fundamental part
18 of our emphasis on collaboration and coordination
19 with tribes and tribal regulators. Many thanks to
20 Ms. Durbin and everybody from the regional office
21 here.

22 So I believe Mr. Little has some
23 comments to provide us regarding -- yes?

24 >> KEN MANY-WOUNDS: If I may, Mr.
25 Chairman. Prior consultations that I've ever been

1 involved in, is there going to be a record of this
2 meeting in some way, shape or form? Can you
3 please describe how that record is going to be
4 adhered to?

5 >> CHAIRMAN CHAUDHURI: Thank you,
6 Mr. Many-Wounds. With that I believe Commissioner
7 Little is going to move forward with a general
8 discussion about consultation and provide us some
9 additional background regarding some housekeeping
10 matters. That portion of Mr. Little's discussion
11 may answer some of your questions. Thank you.

12 >> DANIEL LITTLE: Today we're
13 going to be consulting in the manner that we have
14 over the last five years, at least since I've been
15 on the Commission. In accordance with executive
16 order 13175. A lot of you may know me. I worked
17 in Indian gaming for about 15 years now. One
18 thing that I observed prior to joining the
19 Commission was a lot of the tribal leaders were
20 frustrated that a lot of the decisions they felt
21 being made by the Commission were being made
22 without their involvement. While the Commission
23 consultation was more individualized and there
24 wasn't a lot of opportunity for input. So when I
25 came on the Commission and working with at the

1 time Vice Chairman (inaudible) and they decided to
2 change the consultation. We're going to do more
3 inclusive and more involvement. And in accordance
4 with executive order 13175, we decided to do this
5 group type of consultation. And for the most part
6 it's worked out very well. And the purpose of
7 this is we've got an agenda of items that we want
8 to talk about today.

9 This is our opportunity to come and
10 talk to you, listen to your comments, hear your
11 thoughts, or hear your comments, but this doesn't
12 mean this is the end of the discussion. Like the
13 gentleman from Pine Ridge had stated, many of you
14 may not be able to present comments today. And
15 this is an opportunity for you to observe. And
16 that's fine. Perhaps you can take the information
17 you learn and go back to your tribal leadership
18 and put together your thoughts and submit formal
19 written comments to the Commission. That we
20 strongly encourage and I ask you to do so.

21 There will be follow-up
22 consultations on a number of these issues. A
23 couple we have consulted on before. The whole
24 purpose of that is that we are talking to you
25 first before we put pen to paper. That's what I

1 learned growing up in this industry
2 professionally. This is what the tribes have told
3 us they want. And this is what we've been doing
4 over the last five years. I'm a big supporter
5 because I think it's been very successful. And
6 during the reg review process that we went
7 through, we updated a large number of regulations.
8 We utilized discussion drafts. That worked out
9 very well. It was an opportunity to provide our
10 thoughts, great comments from the tribes so that
11 when we entered the formal rulemaking process it
12 went very smooth. You had tribes that had a lot
13 of opportunity to be involved in the process,
14 submit comments, and affect the outcome that the
15 Commission ultimately adopted.

16 So we're going to continue that
17 consultation process throughout this discussion
18 today.

19 Let's see. As the Chairman said,
20 we're going to be here from 2 to 4 today. But if
21 there's no other comments we will end early. This
22 is an official government to government
23 consultation between the national Indian gaming
24 Commission, tribal leaders and their
25 representatives. It's not open to the public and

1 it's not open to members of the media. So if
2 there's anyone in the room that are in those
3 groups, we ask you to please kindly excuse
4 yourself from the room.

5 There will be additional
6 consultations. April 30th in Oklahoma and May
7 20th at the Great Plains Indian Gaming meeting at
8 Shakopee. Feel free to attend either of those.

9 We're open-ended on the comments
10 but I think we are going to settle on an end date
11 for your comments. That will be published, I
12 assume, fairly soon. So look on our website at
13 www.NIGC.gov for more information. So other than
14 that, that's all I really need to add. I'll turn
15 it back over to the Chairman so we can start going
16 over the agenda items.

17 >> CHAIRMAN CHAUDHURI: Thank you,
18 Commissioner Little. I believe you touched on
19 this, but to answer your specific question, Mr.
20 Many-Wounds, yes, the consultation today is being
21 recorded. And I believe will be transcribed in
22 short order. And that's standard practice for our
23 consultations.

24 So with that, we're here today to
25 receive input and engage in dialogue on four

1 specific areas of consultation. With us we have
2 representatives -- our general counsel's office
3 headed up by our acting general counsel as well as
4 representatives from our chief of staff's side of
5 the agency represented by our acting chief of
6 staff. In terms of process, we're going to go
7 through -- since there are only a few of us here
8 today, we're going to go through each of the four
9 topics one by one. So we'll have multiple
10 opportunities to provide input. But we'll provide
11 that input and engage in that dialogue one topic
12 at a time.

13 So to start us off, we have our
14 general counsel's office here to provide an
15 overview in conjunction with the chief of staff's
16 office regarding those four topics. At this point
17 I'll turn it over to Mr. Shepard.

18 >> ERIC SHEPARD: Thank you. I'm
19 just really going to turn it over to associate
20 general counsel Michael Honig who is going to talk
21 about this topic which is the privacy act, so that
22 no one has to hear me speak the whole time.

23 >> Michael Honig: We'll do the
24 most exciting one first, which is the privacy act.
25 The NIGC is proposing to make several revisions to

1 our privacy act regulations. We want to make
2 clear at the outset this doesn't make any
3 requirements or changes on tribes and how they
4 collect, process any information. This is all
5 NIGC's internal processes. The proposed
6 regulations govern the submission requirements for
7 requests that we receive from the public, and then
8 how we process and respond to those requests. It
9 really will have negligible if any impact on
10 tribes.

11 So we've not updated the privacy
12 act regulations since 1992. So they're out of
13 date, and they need to be fixed. With these
14 proposed changes we hope to eliminate old and
15 burdensome procedures and incorporate better
16 practices we've learned over the years to increase
17 the efficiency of our internal processes. I'm not
18 going to list every single change we're making.
19 I'm just going to kind of hit the broad strokes.
20 But changes include consolidation of procedures
21 governing how an individual may request access to
22 information from the agency; the creation of
23 policies for how the NIGC will process requests in
24 conjunction with other federal agencies. We're
25 going to streamline our agency procedures to

1 coincide with our freedom of information act
2 regulations. So right now the things like
3 deadlines are out of wack. So we're going to
4 bring everything in basically so that they work
5 better together. We're going to update the list
6 of records that are exempt from disclosure under
7 the act. The proposed regulations will also
8 create new provisions that more clearly explain
9 how the agency complies with specific aspects of
10 the privacy act. This will include procedures for
11 requesting accountings of record disclosures and
12 providing notice to individuals in cases where it
13 is required to disclose records, in cases of
14 emergency, or pursuant to a court order. So
15 that's it in the broad strokes.

16 We put the actual proposed changes
17 up on our website so you can see in more
18 specificity exactly what we're planning to do.

19 >> CHAIRMAN CHAUDHURI: Thank you,
20 Mike. So at this time we would like to move
21 forward with engaging in dialogue. Anybody that
22 has a comment regarding the privacy act topic,
23 please feel free to weigh in at this time.
24 Certainly nobody is under any obligation to
25 provide comments. But feel free. Going once.

1 Going twice. Okay.

2 Moving forward, and again we have
3 four topics to cover -- at the end of this we'll
4 provide an additional opportunity, since there are
5 so few of us, to bring up -- to come back to any
6 of the topics that we missed. But we'll move
7 forward to the second topic on our list, which
8 involves our NEPA manual. For that we have
9 another representative of the office of general
10 counsel here, Miles Jansen who will provide us
11 some background on that.

12 >> MILES JANSEN: Thank you, Mr.
13 Chairman. NIGC is planning on adopting a NEPA
14 policies and procedures manual that will conclude
15 a categorical exclusion or CATEX for the approval
16 of management contracts. Previously the NIGC
17 determined that the approval of a management
18 contract under IGRA is a major federal action that
19 requires NEPA review. Such review takes the form
20 of an environmental assessment, or EA, or
21 environmental impact statement, EIS, both of which
22 are very costly and time consuming to tribes.

23 By adopting the CATEX, tribes would
24 not be required to prepare an EA or an EIS except
25 in the case of extraordinary circumstances. The

1 policy and procedure manual NIGC now seeks to
2 adopt is limited in its scope. In addition to
3 setting forth the procedures, applying a CATEX, it
4 will also define extraordinary circumstances under
5 which a CATEX would not be appropriate, and also
6 the policies and procedures to be followed in
7 order to conduct a NEPA review if that would be
8 necessary.

9 By adopting the manual, the
10 Commission hopes to end the uncertainty
11 surrounding NEPA review requirements and save
12 tribes both time and money.

13 >> CHAIRMAN CHAUDHURI: Thank you,
14 Miles. We'll move forward with comments at this
15 time. But I should add because this meeting is
16 being transcribed, whenever we provide comments if
17 we could state our name and our association for
18 the record, that will help keep the transcription
19 in order.

20 >> KEN MANY-WOUNDS: Thank you, Mr.
21 Chairman. Ken Many-Wounds for the record. My
22 personal opinion or comments on this, this is long
23 overdue. This is something that's been needed.
24 With the (inaudible) tribe back in 1992, we had to
25 go through this process. And believe you me, it

1 was a nightmare. It's a nightmare for NIGC
2 because I think you guys catch the brunt of it
3 because it's so time-consuming within your house.
4 When it gets in your hands -- so my personal
5 opinion, I don't see any tribes that would object
6 to doing something like this because it's going to
7 streamline the process. It's less headache on
8 both sides of the fence here. So I applaud the
9 Commission for looking at putting these things
10 together for a drastic change in this requirement.
11 Thank you.

12 >> CHAIRMAN CHAUDHURI: Thank you
13 so much for that comment. Any additional comments
14 on the NEPA side of these consultations?

15 Okay. With that, moving forward,
16 we'll move on to the third topic of consultation
17 which involves our proposal to provide some
18 nonmandatory guidance regarding Class 3 Minimum
19 Internal Controls. For that piece we have our
20 acting chief of staff, Christinia Thomas, to
21 provide us additional background.

22 CHRISTINIA THOMAS: Thank you, Mr.
23 Chairman. The NIGC's Class 3 Minimum Internal
24 Controls Standards, or MICS, were promulgated in
25 1999 and then revised in July of 2002.

1 A lot has changed in the gaming
2 industry since 2002 and the MICS have not kept up
3 with those changes. Due to the Colorado River
4 Indian Tribe, or CRIT decision, the NIGC does not
5 have the authority to promulgate or update the
6 Class 3 MICS as regulations. However, we feel
7 there's still a need to have them.

8 Many tribes still rely on the MICS
9 and in some cases the MICS are part of a tribal
10 state compact or the tribes' gaming ordinances.
11 During our last regulatory review process we asked
12 for comment on how we should proceed with regard
13 to the Class 3 MICS. We received a lot of great
14 responses. Some wanted us to implement new
15 regulations, while some wanted us to withdraw the
16 regulations and do nothing.

17 We have reviewed all the comments,
18 and the Commission decided that it is time to
19 propose issuing the Class 3 MICS as guidance.
20 These will be advisory only, and unforcible by the
21 NIGC but will allow us to make sure the MICS keep
22 up with the advances in the gaming industry and
23 provide guidance to the tribes that do rely on the
24 MICS.

25 The plan is to, one, develop

1 updated Class 3 MICS guidance; two, publish them
2 for comment; three, consider all the comments and
3 revise as necessary; and finally, publish guidance
4 and at the same time withdraw the regulation.
5 Because it will be guidance instead of regulation,
6 we'll be able to be much quicker and adapting to
7 changes in the industry.

8 >> CHAIRMAN CHAUDHURI: Thank you,
9 Ms. Thomas. So let's move forward with any
10 comments on that.

11 >> KEN MANY-WOUNDS: Thank you, Mr.
12 Chairman. Ken Many-Wounds. I hope I'm not the
13 only one that's going to monopolize the mic.
14 (Inaudible). Going back to what Christinia said,
15 1999 the Minimum Internal Controls were adopted
16 for Class 3. I don't think there's anybody in
17 this room possibly that was around in 1999. I
18 was. When it came out, they were a joke at that
19 point in time. They were ill written. They were
20 all over the map. You had to turn from page one
21 to 25 to figure out what was going on from that
22 one section, and vice versa. It was all over the
23 place. So in 2002 they were -- prior to that, the
24 first MICS advisory committee was put together
25 where tribes were then allowed to have comment and

1 input on how to draft these Class 3 minimum
2 internal control standards other than having --
3 excuse me, I know there's a lot of attorneys in
4 here, no disrespect intended -- the attorneys who
5 wrote them didn't know what they were writing. It
6 never worked in the casino. It never worked in
7 the regulatory field. It took Nevada,
8 Mississippi, Michigan, New Jersey to throw them
9 onto a piece of paper, cut and paste here and
10 there. And when we went out to provide training
11 on these, NIGC took it in the rear end big time.
12 So it was decided real quickly we needed to redo
13 these. And over time they have been changed
14 periodically. Various administrations within NIGC
15 have tweaked these. It's a good thing, keeping up
16 with the industry standard as Christinia has
17 indicated.

18 My personal opinion on this is NIGC
19 has no authority based upon the Colorado River
20 Indian case to be involved in any way, shape or
21 form with Class 3 Minimum Internal Control
22 Standards. That's vested between the states and
23 the tribal government within that compact
24 language. It's unfortunate that some of these
25 states put those internal controls within their

1 compacts. My opinion: Big mistake. Now they
2 have to be held accountable to them. Where other
3 tribes didn't do that, they just adopted them,
4 developed -- adopted the internal controls,
5 developed their tribal internal controls and went
6 on with this. So since 2002 when these MICS had
7 been out there and every year since that period of
8 time, the outside financial audit has been
9 conducting an AUP using the NIGC checklist that
10 have been developed in monitoring and in making
11 the tribes adhere to these Class 3 Minimum
12 Internal Controls, which in the CRIT case
13 everybody thought they were okay. NIGC had
14 authority to do that. But we know otherwise now,
15 seven, eight years after the fact.

16 Where I'm getting at is that the
17 tribes -- probably the greater majority of them,
18 and I cannot put a finger or percentage of number
19 of tribes who have followed them, developed them,
20 have had to adhere to them, where findings have
21 been identified within the outside independent
22 audits. These have been turned in on an annual
23 basis to the NIGC for their auditors to review or
24 not review or whatever happens with them. They
25 used to be reviewed -- I think they still are.

1 But the tribes have been following
2 them. I do not see the essence of the NIGC
3 wasting the tribes' valuable fees that are paid
4 that make up the NIGC budget on manpower, man
5 hours, to devise something that is guidance or
6 guidelines only. And the reason I say that is the
7 tribes have been following their Minimum Internal
8 Controls, developed them since 2002 up until 2013,
9 leading into 2014. That's a period of 12 years.
10 They have done their due diligence. We don't need
11 NIGC writing guidance for us any longer. We have
12 sophisticated our knowledge, our ability. We've
13 defined and honed our skills to regulate Class 3
14 in conjunction with the states who do what the law
15 says they have the capability of doing. NIGC
16 should just back off based upon the CRIT case,
17 leave well enough alone, and let the tribes
18 regulate what was intended through the CRIT case
19 as well as the way IGRA is written where Class 3
20 belongs to the tribes.

21 I could go on and on, but that's
22 the gist of my comments. The tribes are
23 sophisticated enough, have the knowledge to
24 regulate their own Class 3 gaming. You've
25 designed part 543, extracting -- cut and pasting

1 out of 542 into 543. That's a lot of that stuff
2 has come right out of 542. 542, your auditors
3 have said it, your training in the last three
4 days. They've thrown out 542. 543 goes to
5 another level on Class 2 stuff. It includes
6 gaming machines which used to have its own
7 separate checklist, separate internal controls.
8 It has now been included under the face of bingo el
9 where Class 2 gaming facsimile devices represent.
10 So they're covered. And 543 is even over and
11 above in most cases 542, which I'm not going to
12 comment if it's good or bad until we get into the
13 nuts and bolts of seeing how these new system of
14 internal controls have to work hand in hand with
15 the ticks. You set up another level. In some
16 cases it's good. Some cases, my opinion, it's
17 over bearing. But it's yet to be seen how these
18 things play out. I think it's a good checks and
19 balances developing that system internal controls
20 to match the ticks or to define how those ticks
21 are to be implemented. But there's no reason to
22 waste your time, our money, in the fees that are
23 paid to write guidances when they don't hold
24 water. So thank you, Mr. Chairman.

25 >> CHAIRMAN CHAUDHURI: Thank you

1 so much for those comments. Never feel sideways
2 about monopolizing the mic, especially when we
3 have four commenters in the room. Every comment
4 is appreciated.

5 I want to give other members of
6 NIGC an opportunity to weigh in. But let me just
7 -- because we do want this to be a dialogue, let
8 me just respond very briefly. We definitely
9 recognize not only the legal limitation that CRIT
10 provides with regard to Class 3 MICS, we
11 understand some of the policy considerations
12 you've raised regarding NIGC's appropriate rule
13 and when it comes to Class 3 MICS. So we're
14 mindful of that.

15 But the approach that I think is
16 being proposed -- try to be as clear as possible
17 that in recognizing that the CRIT decision
18 notwithstanding, and other policy decisions
19 notwithstanding, many compacts do reference the
20 MICS, and they haven't been updated for many, many
21 years. The idea is what can be done to continue
22 to be helpful within our appropriate regulatory
23 authorities to still help support tribal efforts
24 to ensure a strong regulatory structure on the
25 ground. So the perspective I think we're all

1 coming from is doing what we can within
2 appropriate authorities to be a supportive partner
3 with that. We are very mindful of our
4 limitations, and we work very hard not to go
5 beyond that. But I tried to make the point that
6 these proposals are in keeping with those
7 considerations.

8 But I've got a question to you, Mr.
9 Many-Wounds. Given the fact that the Class 3 MICS
10 haven't been updated for many, many years, in
11 terms of efforts that tribal regulators have made
12 to work with them, have you seen any difficulties
13 that either you or your regulatory colleagues have
14 faced in terms of some of the outdated aspects of
15 what's currently on the books?

16 >> Great question Mr. Chairman. I
17 think a lot of these TGRAs with the minimums that
18 are the foundation when they have run across
19 issues such as newer technology, other things that
20 come into play, they have designed and implemented
21 written internal controls that are above and
22 beyond the foundation that's already established
23 from the original MICS, and the tweakings that
24 have gone on through the years by going out,
25 getting training, networking with other TGRAs.

1 Again I can't say everybody has done that. But
2 the casinos or the TGRAs that want to be in
3 compliance, that have great integrity and
4 accountability of the tribal assets have taken
5 that extra step and developed written internal
6 controls that are higher standards than the MICS
7 542 stands today. That would be my response.

8 >> CHAIRMAN CHAUDHURI: Thank you.
9 Before requesting additional comments on this
10 topic, any other members of our team want to weigh
11 in at all? Okay.

12 Any additional comments on this
13 topic?

14 >> Thank you, Chairman. Bill
15 (inaudible), general manager (inaudible) tribe.
16 Kind of background on myself. I used to work for
17 Union Health Service for 28 years of my life. I
18 ran hospitals. I was the CEO for about 20 of
19 those 28 years. I was trying to make 30 years but
20 I basically got burnt out. I retired about three
21 years ago. Unfortunately I can't get any money
22 because I'm too young yet so I have to wait.

23 But I know what you're talking
24 about in terms of regulations. We're inundated
25 with many regulations in Indian health services

1 especially Medicare services. Very difficult
2 challenges. One things about regulations and
3 rulemaking is that you always have to look at your
4 environment. Things change. I think back in 1999
5 I think when gaming first came into play, there
6 was probably a lot of unforeseen factors to
7 consider when you develop these regulations.
8 Probably back then they didn't know these things
9 were going to happen. Unfortunately they did,
10 like the Colorado River case and so forth. But I
11 always believe that whoever regulates the gaming
12 industry will always need guidance or assistance
13 of some kind. I think this week was probably the
14 most valuable thing I've participated in since
15 I've been involved in gaming for two years. One
16 as a general manager and one as a financial
17 manager at the casino. Thank you for having that
18 training.

19 Regarding Ken's comments, I do
20 agree that we really do work hard at the tribal
21 level and try to find ways to streamline our
22 policies and procedures and how to best fit our
23 organization so we can basically what, stay out of
24 trouble? Stay in compliance? I think that's the
25 name of the game, to stay out of trouble. Because

1 we know gaming involves millions and millions of
2 dollars and we have to have strings attached. I
3 don't care how you look at it. Even those of us
4 in health care, we dealt in Medicare dollars.
5 Millions and millions of dollars, there are
6 strings attached. They're attached for some
7 reason, because you don't want criminal activity,
8 taxpayers money, I could go on and on. But I
9 understand what's being said here. But I kind of
10 like your concept of trying to have some type of
11 guidance. But again I think participation from
12 tribes in how you develop that guidance is needed
13 because everything is different. You always have
14 to look at the environments that you're serving.
15 Thank you, Chairman.

16 >> CHAIRMAN CHAUDHURI: Thank you
17 for those comments. Mr. Many-Wounds?

18 >> KEN MANY-WOUNDS: Bill raised a
19 good question. With these guidance that's being
20 proposed, will there be tribal input such as MICS
21 advisory committees, that whole gamut of setting
22 these out, having strategic meetings and
23 alignments of the various people, people selected
24 to serve on this committee, which costs money to
25 do that. That's the bottom line. Serious money.

1 And that's what I guess my biggest -- being a
2 proponent against doing something like this.
3 What's this going to cost if they were going to go
4 down this road and it's only guidance? I'm sure
5 you can't come up with a figure right off the top
6 of your head. But it's time consuming. Is it
7 cost effective?

8 >> CHAIRMAN CHAUDHURI: I'll turn
9 it over in a second. But let me address that.
10 You had mentioned a tribal advisory committee.
11 Well, we reserve judgment regarding the most
12 effective way to do this. However, we also
13 recognize a lot of what comes with formal tribal
14 advisory committee. So additional legal
15 requirements kick in. But also you're talking
16 about money, as you mentioned, the expense
17 involved in formation and running -- I mean, and
18 continued operation of a tribal advisory
19 committee. But also time. And we recognize that
20 the time element of a tribal advisory committee
21 approach. That said, reserving kind of judgment
22 exactly in terms of what form the input will be
23 received, as Ms. Thomas already referenced, I just
24 want to echo this. It is and always has been part
25 of our game plan to engage in full scale dialogue

1 regarding the guidance and receive as much
2 possible input from Indian country as possible.
3 So there will be comments received. There will be
4 comments received through consultations such as
5 today's consultation before we even start talking
6 about the nature of the guidance. Once the draft
7 guidance is developed, we certainly anticipate a
8 draft being circulated for additional comment.
9 That isn't necessarily the same approach as a
10 tribal advisory committee. And we think that
11 there are some benefits frankly to not going the
12 tribal advisory committee approach. Probably the
13 most important of which is no matter how -- well,
14 our main goal is to receive as many comments as
15 possible, no matter how wonderful the members of
16 the advisory committee may be on a given matter.
17 We are open to receiving comments from all tribes,
18 and all tribal regulators in the process. And so
19 that's one of the other aspects of the tribal
20 advisory committee that may suggest going a
21 different approach. But I'll turn it over to
22 Commissioner Little who is giving me the sign.

23 >> DANIEL LITTLE: Thank you, Mr.
24 Chairman. Mr. Many-Wounds, thanks for kind of
25 raising the issue earlier about the whole idea of

1 why we're doing this, and -- I kind of look at
2 this, and it is one of the reasons we're trying to
3 gather information here, to learn here before we
4 make a decision on what we're doing. But I kind
5 of look at putting guidance out there as another
6 form of technical assistance we provide to tribes.
7 We've been such a hallmark of where we've been in
8 the last five years and what we're doing. We make
9 a lot of recommendations in the form of bulletins
10 and guidance that we put up. It's been a long
11 history of the Commission to do things of that
12 nature.

13 But as you look at what we do with
14 543, a long process, tribal advisory committee
15 that was very, very valuable. But when you look
16 at 543 and kind of where the areas of 542 -- we
17 can rely a lot on 543. We can use that as, you
18 know, a potential template for all the areas that
19 -- we don't necessarily -- we just need to pull
20 the references of 542. And then from my
21 calculations there's only three major areas --
22 gaming machines, table games, and Keno, that we'd
23 actually have to discuss that would not have
24 overlap with the 543. So I'm not really thinking
25 it's going to be a huge lift. It's going to take

1 some time but it's not -- if we decide not to
2 utilize the tribal advisory committee, it would
3 not be the huge cost that 543 was. And when I do
4 reference huge costs, I'm not just saying the
5 costs of the Commission. I do know that tribes
6 and I want to acknowledge the fact that tribes
7 spent millions of dollars of their own money to,
8 you know, assist in the process to update 543.
9 And that's one of the reasons why I think we do
10 have a good regulation that was so successful. So
11 thank you for that comment.

12 >> CHAIRMAN CHAUDHURI: Thank you
13 for those points, Commissioner Little. I
14 definitely agree with those. Any additional
15 comments regarding this portion of the
16 consultation before moving forward?

17 Okay. With that we'll move forward
18 to our fourth and final consultation topic. One
19 which I think we're all very excited about, and
20 it's the Buy Indian goods and services regulation
21 that we are proposing. We refer to it as BIGS for
22 short. But for that we have Mr. Shepard to give
23 us some additional background on that topic.

24 >> ERIC SHEPARD: The Commission is
25 considering adopting Buy Indian goods and

1 services, or BIGS regulations that provide a
2 preference to qualified Indian owned businesses
3 when the Commission purchases goods or services at
4 fair market price. This is in keeping with the
5 Commission's mission, and is being done as a means
6 of promoting tribal economic development and
7 tribal self-sufficiency through increased
8 employment opportunities and strong tribal
9 governments. This proposed regulation is an
10 attempt by the Commission to codify what the
11 agency is already doing to give preference as much
12 as practicable to qualified Indian owned
13 businesses when purchasing goods or services at
14 fair market prices.

15 I want to make it clear that the
16 BIGS regulations are for the Commission's own
17 procurement of goods and services only. It does
18 not mandate Indian tribes to purchase from Indian
19 owned businesses. It affects only the Commission.

20 The proposed regulations are nearly
21 identical to the Bureau of Indian Affairs Buy
22 Indian act regulations on which the BIA previously
23 held consultations. There is one key difference,
24 which is that the authority in the BIA's
25 regulations was derived from the Buy Indian act

1 itself while the Commission's authority is derived
2 from the Indian gaming regulatory act. In the
3 future it might become necessary for the
4 Commission to seek delegated authority from the
5 Secretary of the Interior to use the Buy Indian
6 act because that act provides for higher level of
7 Indian preference. But right now the Commission
8 is proceeding solely under its authority provided
9 under IGRA.

10 >> CHAIRMAN CHAUDHURI: Thank you,
11 Mr. Shepard. In short, we're doing what we can
12 given available authority. So with that, we'll
13 move forward with comment.

14 >> Thank you, Mr. Chairman. Ken
15 Many-Wounds. I've read this. First and foremost
16 you're going to provide training once you
17 implement this? Because it's going to be a heck
18 of a time trying to figure out what rules, what
19 dollars to get somebody even possibly into the
20 system. If you provide training, I'm all for it
21 so that somebody out there has a competitive
22 advantage or not an advantage, but the same
23 competitive field out there for people, small
24 businesses who want to possibly supply goods to
25 the NIGC, they're not left in the dust. They get

1 the same opportunity as bigger known companies out
2 there because there are some small entrepreneurial
3 ships out there that they're not going to have the
4 knowledge, the expertise. So if training was
5 provided, I don't know how you could do it, but
6 thought process suggests recommendation if it's
7 ever implemented that it's a level playing field
8 from the small to the large. That would be my
9 first comment.

10 >> ERIC SHEPARD: That's an
11 excellent point. We hadn't I think gotten quite
12 that far down the road but that is something we
13 definitely need to consider.

14 >> KEN MANY-WOUNDS: Again, Mr.
15 Chairman, I think this has been a long time
16 coming. This was discussed years and years and
17 years ago but I think your administration here is
18 the first one to actually bring it to the table
19 and put some words on the paper. I applaud the
20 effort. I would be behind it. I would support
21 it, my one individual support would lead to, but
22 if it was a level playing field where people could
23 be competitive, I would be all for it.

24 The next thing is goods and
25 services is covered everything from pens, papers,

1 to trash cans, to staplers, to staples. Does it
2 cover the whole gamut of products used in the NIGC
3 office?

4 >> ERIC SHEPARD: Yes. We cover
5 everything, including travel, making sure that we
6 go to tribal --

7 >> Travel agencies?

8 >> ERIC SHEPARD: We're locked into
9 the federal travel agency. But preference would
10 be at staying at tribally owned properties, that
11 level of preference as well.

12 >> Okay. So if you have
13 consultation, it would be bid or awarded to a
14 possible Indian owned hotel, casino. I got you.

15 >> CHAIRMAN CHAUDHURI: We also are
16 mindful of our stewardship responsibilities for
17 travel funds. There's still fair market value
18 requirement in there so that we also maintain our
19 responsibilities with the funds we receive.

20 >> Thank you. Ken Many-Wounds
21 again. So in competitive bidding for let's say
22 hotels, it would have to be a bid that would be
23 under the GSA hotel rate so to speak to be
24 competitive? Or are you guys going to stay in
25 line with that? That's travel. But if you're

1 going to stay at a hotel, there are GSA rates to
2 be adhered to.

3 >> ERIC SHEPARD: It wouldn't
4 require tribes to out bid us on hotel rates. The
5 GSA rates sort of are what they are. But when we
6 book hotel, if the employee has a choice between
7 staying at the holiday Inn down the road or at the
8 tribal facility, they should stay at the tribal
9 facility. And for conference locations, that
10 would probably be the bigger one we do go out to
11 bid and solicit proposals from folks, this would
12 really apply pretty strongly to that.

13 >> Can we bid on the Chairman's
14 suits?

15 >> CHAIRMAN CHAUDHURI: I'm not
16 sure what to read into that! My wife is always
17 telling me I've got to get a new wardrobe. I hope
18 you haven't been talking to her about it. I'm
19 already in enough trouble.

20 >> KEN MANY-WOUNDS: Thank you
21 again, Chairman, for the explanation. Again, I
22 would support something like this. I think the
23 tribe is long overdue. I think they would welcome
24 the opportunity to obtain some of their fees back.
25 That's my point.

1 >> CHAIRMAN CHAUDHURI: Thank you
2 very much for those comments, Mr. Many-Wounds.

3 >> TROY LUNDERMAN: Troy Lunderman.
4 I guess with that, some of these tribes do have
5 corporations that can do all this. If you're
6 going against a private business or a mom and pop
7 shop that we have the same product, of course the
8 corporation can offer lower prices than a personal
9 business owner. How do you guys play into that?
10 Right off the top, it's really not fair, you think
11 on paper -- so what would be when you guys look at
12 that, what would decide that?

13 >> CHAIRMAN CHAUDHURI: I'm happy
14 to have others weigh in, but let me say there's
15 nothing on the books right now. That's true --
16 we're not the only agency that is in that
17 position. But we try to do what we can. Already
18 this will be another step forward in terms of
19 doing everything we can within our appropriate
20 authorities to work with folks who come from
21 Indian country, who frankly help pay our fees to
22 do what we can to continue to collaborate.

23 Now, there will always be ways for
24 vendors and tribal enterprises to not just work
25 better with us, but with other agencies who may

1 have similar types of preference rules. But
2 ultimately we can't necessarily get into the
3 business decisions that the tribes make. We
4 definitely stay out of that way. But for the
5 folks who have fair market options available, we
6 will make an effort as an agency through our BIGS
7 rule to support Indian goods and services.

8 >> Chairman, Bill (inaudible). I'm
9 familiar with a lot of federal regulations when it
10 comes to procurement. I'm sure you're all aware
11 of FAR, Federal Acquisition Regulation. That
12 thing is a nightmare to deal with. When I was in
13 health services we basically developed a manual
14 that kind of coincided to follow the FAR to try to
15 streamline how we procure services, especially
16 when it came to big purchases like doctors,
17 nurses, and so forth with contracts. I applaud
18 the Commission, Chairman, for trying to develop
19 something to Buy Indian act. I'm not sure if you
20 have your own set of procurement manuals or
21 guidelines which you follow. I'm not sure if you
22 strictly follow the FAR but you might want to
23 consider developing something that coincided with
24 the FAR to try to streamline your processes in
25 terms of acquisitions. But I think the Buy Indian

1 is a good starting point, so I applaud for that.

2 Thank you, Chairman.

3 >> CHAIRMAN CHAUDHURI: Thank you,
4 sir.

5 >> ERIC SHEPARD: Thank you very
6 much. That put what we're trying to do here I
7 think in better context than I did. This would
8 actually be the Commission's FAR regulations.
9 Thank you.

10 >> CHAIRMAN CHAUDHURI: Thank you
11 so much for those comments. Additional comments
12 on this topic before we move forward? Okay.

13 So I believe we've received
14 comments now -- I mean, we covered the four topics
15 of consultation. I do want to give one last
16 opportunity regarding those four topics since we
17 went in order if there are any specific comments
18 regarding one of those topics that maybe just came
19 to mind that you would like to put on record.
20 Also bearing in mind this isn't the only
21 opportunity to get comments on the record either.

22 >> TROY LUNDERMAN: Troy Lunderman.
23 I guess with the Class 3 guidance, I look at it as
24 far as tribes and money, if it's not a necessity,
25 if there's nothing that you guys can do, I don't

1 think the tribes should be paying money for it.
2 If it is a guidance, I think maybe that's
3 something that you guys can do, wherever it's at,
4 and bring it to the tribes to look at. I think
5 just as far as fundingwise, we know what
6 conditions our tribes are in. We know what these
7 casinos do for our people. If it's not about
8 regulation, if it's basically opinion and stuff to
9 me is a waste of money. That money could be spent
10 somewhere else. That's just how I feel.

11 >> CHAIRMAN CHAUDHURI: Thank you
12 very much for that comment. Again, I'll let
13 others weigh in on this. Just in terms of the
14 context from which we're looking at the proposal,
15 even -- separate and apart from the enforcement of
16 Class 3 MICS, we do see significant benefit
17 consistent with IGRA in supporting tribal efforts
18 to support the regulatory structure of Indian
19 gaming across the board. And so we do see
20 ourselves as an active partner with tribes and
21 tribal regulators who seek to strengthen the
22 structure of their operations. So separate and
23 apart from being able to enforce the specific
24 Class 3 MICS, we see a broader responsibility that
25 we have to support Indian country regulators and

1 tribal governments. And so from my perspective at
2 least, I see providing mandatory -- I mean,
3 nonmandatory -- nonmandatory -- decidedly
4 nonmandatory guidance as consistent with our
5 overall efforts as Commissioner Little mentioned,
6 aimed at providing appropriate training and
7 technical assistance to support the regulatory
8 structure of the industry.

9 That's the tie in, at least for me.
10 I don't want to speak for fellow Commissioner.

11 >> DANIEL LITTLE: I do definitely
12 understand your concern. I think where I keep
13 falling back on is that we do get a lot of
14 requests for technical assistance. And it's not
15 just technical assistance for Class 2. It's all
16 over. So we do a lot of Class 3 technical
17 assistance. And we do hear from tribes that they
18 do need help in these areas here. So you know,
19 it's something that -- it's voluntary. They're
20 asking for it. So we've been doing our best to
21 try to accommodate them.

22 >> CHAIRMAN CHAUDHURI: Yes, sir.

23 >> KEN MANY-WOUNDS: Thank you, Mr.
24 Chairman. Ken Many-Wounds. In lieu of what
25 associate Commissioner little has just said, then

1 my suggestion would be that you provide this
2 technical assistance to these individual tribes on
3 a case-by-case basis without developing a full
4 blown guidance for them. Handle it on a
5 case-by-case basis so that there's not man hours,
6 an exorbitant amount of money spent on
7 development, the implementation as guidance with
8 all these things. Handle it case by case. If
9 it's requested from a tribe that needs technical
10 assistance Class 3, provide it to them. Don't
11 make us all have to -- I guess don't see it being
12 a good thing when you guys are traveling around
13 the country. I think you're going to get a lot of
14 resistance. That's just my gut feeling on this.
15 Class 3 -- Class 542 in a lot of regulators' minds
16 today doesn't exist with your 543 implementation
17 as of last year or six months ago. 542 should be
18 taken and stricken from the NIGC website as of the
19 implementation of 543. They should be
20 disappearing. They should have disappeared. They
21 don't exist in anybody's mind any longer. That's
22 just my take.

23 DAN LITTLE: Thank you.

24 >> Mr. Chairman, Bill (inaudible)

25 -- I'm relatively new to this industry, and Class

1 3, and Class 2, and on and on. But whether or not
2 this week in terms of 543, I think that's where it
3 is, I think that needs to be (inaudible). And a
4 lot more technical assistance and training
5 provided ongoing all the time. I think 543 is
6 kind of answered a lot of my questions this week,
7 and I think it needs to continue to be looked at
8 and how we can continue to improve that particular
9 regulation within title 25. I think we need to
10 continue working in that direction with 543.

11 Thank you, Chairman.

12 >> CHAIRMAN CHAUDHURI: Thank you,
13 sir. I just want to point out, as the second part
14 of the proposal, bringing down the existing
15 language regarding 542 is still part of the
16 proposal because that language isn't framed as the
17 type of nonmandatory guidance that we're talking
18 about. It's framed as 542 minimum internal
19 controls. And so -- until that's taken down --
20 well, as it stands right now, the plain language
21 of that very well could be interpreted as being
22 inconsistent with some of the case law,
23 specifically the CRIT decision. So the idea is if
24 that's taken down, outside of case by case
25 assistance, what would be the intended --

1 unintended consequences among those communities
2 that reference or that maybe have compacts
3 referencing those regulations?

4 So let me just say, I very much
5 appreciate those comments. There are impacts that
6 result from any one course of action. I mean,
7 there are impacts that result from doing nothing
8 to impacts resulting from doing a number of
9 different things. And that's what we're looking
10 at, and that's why we appreciate the input.

11 >> KEN MANY-WOUNDS: Now -- Ken
12 Many-Wounds again. Going back, I believe in the
13 California case, former chief of staff recommended
14 to a lot of these California tribes to put those
15 Class 3 minimum internal controls into your
16 compacts. Now they don't know what to do. But
17 that again was on the advice from a NIGC
18 representative at that time several, several
19 administrations back, which the compact is a state
20 government to government relationship. Those
21 tribes took the advice or the guidance at that
22 time of NIGC. Now they're in a pickle. And it's
23 not the other tribes' fault. It's really none of
24 their concern. So again, case by case, Mr.
25 Chairman, I understand my comment taking it off

1 the website. I understand what you're saying
2 where there are tribes still affected by this.
3 But it shouldn't be -- it's those tribes who put
4 that language in there that in my opinion they
5 didn't get sound advice. What they did to
6 themselves, they did it to themselves. Now they
7 have to figure out a way to undo what they have
8 done. That's going back and negotiating probably
9 new compacts with the elimination of that Class 3
10 language. But will that be done? That will be a
11 big fight in California. Not all California
12 tribes did that. Just certain ones did it. So
13 again, my comments -- yours are well taken about
14 my comment wiping it off the website in lieu of
15 brother and sister tribes out in California. I
16 suppose it's got to stay up there for a while so
17 they can try and protect themselves for a while
18 but it's of no concern to (inaudible).

19 >> CHAIRMAN CHAUDHURI: Thank you
20 for those comments, Mr. Many-Wounds. Additional
21 comments? Okay.

22 With that I think we've had a very
23 healthy dialogue. As I mentioned before there's
24 no penalty for finishing early. And there is
25 certainly no requirement that we get all comments

1 available on the record today. Written comments
2 are certainly acceptable and appreciated. But
3 with that, unless there are any requests
4 otherwise, I think we'll conclude today's formal
5 consultation. Thank you so much for taking the
6 time to be here today.

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C E R T I F I C A T E

I, LAUREN SCHECHTER, do hereby
certify that the foregoing is a true and accurate
transcript of a tape recording in this matter.

I do further certify that I am
neither of counsel nor attorney for any party in
this action and that I am not interested in the
event nor outcome of this litigation.

Certified Shorthand Reporter for the State of
New Jersey

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