



MUCKLESHOOT TRIBAL COUNCIL

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February 11, 2011

The Honorable Tracie L. Stevens, Chairwoman
The Honorable Steffani A. Cochran, Vice Chairwoman
The Honorable Daniel J. Little, Associate Commissioner
National Indian Gaming Commission
1441 L. Street, NW, Suite 9100
Washington, DC 20005

RE: NIGC Notice of Inquiry - November 17, 2011

Dear Commissioners:

This is sent in response to the Notice of Inquiry received by this Tribe. We are extremely pleased about the thoughtful approach the NIGC is taking under its new leadership and appreciate the opportunity to comment on various topics essential to the continued viability of Indian Gaming.

Attached you will find the summary of comments prepared by staff of Muckleshoot's Gaming Agency and Gaming Operations who are extremely knowledgeable on Indian Gaming issues. We hope you find the information helpful as you determine regulatory priorities for the coming years.

Sincerely,

A handwritten signature in cursive script that reads "John Daniels Jr." is written over the printed name "Virginia Cross".

~~Virginia Cross~~, Chairperson
Muckleshoot Tribal Council

**MUCKLESHOOT INDIAN TRIBE RESPONSE TO NOTICE OF INQUIRY
AND REQUEST FOR INFORMATION DATED NOVEMBER 17, 2011**

IV. Regulations Which May Require Amendment or Revision

A.) Part 502 – Definitions of This Chapter

(1) *Net Revenues.* **Further clarification required** **Priority - Low**

- Should certain definitions be changed?

(1)(a) *Net Revenues-management fee:* Conforming accounting definitions to Generally Accepted Accounting Principles (GAAP) would, as a general rule, make far more sense than trying to maintain definitions that vary from GAAP. That said, it is noted while both Net Revenue and Net Income are measures of earnings, they have very different meanings from an accounting standpoint. Revenues generally refer to top line earnings (i.e., before expenses), while Income refers to bottom line earnings (i.e., after expenses). Accordingly, if the goal is to determine the earnings against which management fees may be taken, it might be easiest to refer to them as “Net Income before Management Fees” and require footnote disclosure of the same.

(1)(b) *Net Revenues-allowable uses:* The determination of what funds can be used for the IGRA specified allowable uses should be left up to the Tribe. Minimum bankroll requirements under the MICS already provide guidance on cash reserves that the Casino must retain.

NIGC should not have responsibility to oversee Tribal debt obligations. Lenders, Tribal Casino operators, management companies and Tribal government officials have the responsibility to assure that Tribes: 1) Don't incur more debt than they can repay; 2) Retain sufficient funding to repay outstanding principal and interest when due; and, 3) Limit by originating documents the amount of funding that can be otherwise removed from the operation for non-operational activities. If the above steps haven't been put in place any Federal regulations, by their nature would be a retroactive review, after the damage has been done. There are enough motivated and interested parties on all sides of the issue – particularly after recent well publicized defaults by Tribes – to assure that debt obligations are structured in a way to assure repayment. While lenders and Management companies may not be motivated to assure the overall long-term financial integrity of the gaming operation, they are motivated in the short to medium-term to assure its continued operation.

(2) *Management Contract:* **No clarification required** **Priority - Low**

- Should the definition of *management contract* be expanded to include any contract, such as slot lease agreements, that pays a fee based on percentage of gaming revenues?

The simple answer to whether the definition of the term management contract should be changed is NO. The NIGC's role would best be limited to identifying areas/management contracts where problems have occurred in the past and allowing Tribes and the market to patrol itself.

B.) Part 514 – Fees: Clarification required Priority - Medium

- Comment on whether the Commission should consider revising this part to base fees on the gaming operation's fiscal year by changing "calendar" to "fiscal."

We have no position on this.

- Should the Commission consider amending this part to define *gross gaming revenue* consistent with the GAAP definition of this term?

Yes, as identified above, we believe it is appropriate to have commission terminology match to the extent possible Generally Accepted Accounting Principles (GAAP).

- Should the Commission consider amending this part to include fingerprint processing fees?

We believe that the fingerprint processing fee should be documented in its regulations.

- Should the Commission consider a late payment system in lieu of a Notice of Violation?

We believe it is more appropriate to establish a late payment system in lieu of a Notice of Violation (NOV). The Notices are often picked up by local press that interpret them as a violation that calls into question the integrity of Tribal Gaming, as opposed to the simple failure to pay a bill or file a Statement that may have been overlooked by a change of personnel. The commission can develop other effective options for encouraging timely payments. As suggested in the Commission's questions, an NOV could be issued in instances of gross negligence or wanton behavior or if the dollar amount not paid would result in an economic benefit to the Tribe from its failure to pay.

- How should the Commission consider making changes to this section?

Provided the rulemaking process is followed, we have no opinion on how the Commission determines how the changes are formulated for this section.

C.) Part 518 – Self-regulation of Class II Clarification required Priority - Low

- Commission is seeking comment on whether this part should be revised, how the Commission should prioritize its review of part 518 in the regulatory review process, and whether the Commission should utilize standard notice and comment rulemaking, a Tribal Advisory Committee to assist in its regulatory review of this part, or another process.

We do not believe the Certificate of Self-regulation is worth the effort. While there are reductions in fees, all reporting and other duties appear essentially unchanged with or without the Certification.

D.) *Part 523 – Review and Approval of Existing Ordinances or Resolutions* **Priority - Low**

- Should the Commission consider eliminating part 523 as obsolete?

We believe it is likely that this section is obsolete and should be eliminated. As it is likely obsolete, its retention or elimination should be of a low priority.

E.) *Management Contracts*

1) Part 531 Collateral Agreements **No clarification required** **Priority - Low**

- Should the Commission consider whether it has authority to approve collateral agreements to a management contract?

The Commission's authority is to review Management Contracts and is clear within the current statute. We believe you do not need to consider collateral agreements that don't relate to gaming activities.

2) Part 533 – Approval of Management Contracts **Priority - Low**

- Commission seeks comment on whether an amendment would clarify the trustee standard by adding the following two grounds for possible disapproval under § 533.6(b): The management contract was not submitted in accordance with the submission requirements of 25 CFR part 533, or the management contract does not contain the regulatory requirements for approval pursuant to 25 CFR part 531.

We have no position on this subject and we would give it a low priority for Commission attention.

3) Part 537 – Background Investigations for Persons or Entities with a Financial Interest in, or Having Management Responsibility for, a Management Contract **Priority - Low**

- Should the contractor be required to submit the Class II background information when the contract is only for Class III gaming?

We have no position on this issue at this time. We would also give this a low priority for Commission attention.

F.) *Proceedings Before the Commission* **Priority - Low**

- Should the Commission consider more comprehensive and detailed procedural rules, especially in areas such as motion practice, that are largely unaddressed by the present rules?

