

# PASCUA YAQUI TRIBE

## TRIBAL GAMING OFFICE



February 11, 2011

Tracie Stevens, Chairwoman  
National Indian Gaming Commission  
1441 L Street NW, Suite 9100  
Washington, DC 2005

Dear Chairwoman Stevens:

On behalf of the Pascua Yaqui Tribe of Arizona, the Tribal Gaming Office and the Gaming Enterprise Division, we would like to thank you for allowing us the opportunity to comment on the Notice of Inquiry published in the Federal Register on November 18, 2010.

As we expressed in our verbal comments delivered to the Commission at the January 20<sup>th</sup>, 2011 Consultation in New Mexico, we believe strongly that Indian Gaming is the most regulated form of Gaming in the United States, if not the entire World. Regulatory oversight is accomplished at three levels; Tribal, State and Federal governments. This Regulatory structure, while required by Federal Law, at times, lends itself to the creation of burdensome overregulation.

We agree with the views expressed by many of the Tribe's in their comments emphasizing the role of the Tribe's Gaming Regulators as the paramount authority over Indian Gaming. While the Compacting process has created a myriad of different Regulatory schemes across the Country, the common thread of the adoption of the NIGC Minimum Internal Control Standards (MICS) is prevalent in most, if not all State Compacts and Tribal Gaming Ordinances. For this reason, we would like to begin our comments with this area of concern:

### **MICS and Technical Standards: Part 542 – Class III Minimum Internal Control Standards**

- We believe strongly that the MICS should be guidelines, as opposed to Regulations. Our position is that in order for Tribe's to fulfill their role as the "ultimate" Regulator over Gaming, it is vital that Tribe's create internal control standards that reflect the communities in which they serve.
- The idea that the current MICS were adopted as a "one-size-fits-all" has been in our opinion, a fundamental flaw in the application of the MICS. While the MICS [and most State Compacts] allow for the creation of Tribal Internal Controls [TICS] to supersede the MICS, that right is only granted as long as the "control" is no less stringent than the existing MICS.
- Herein lies the problem: as stated in my oral presentation in New Mexico, one section of the MICS dealing with Surveillance requirements states that "...ALL (emphasis added) surveillance activity must be logged"; while theoretically this may be appropriate, in reality and in practice, it is doubtful that "all" surveillance activity is logged. However, if a Tribe were to create their own

TICS addressing this issue, it is doubtful that you could create a standard that is more stringent than the current standard, as it could be reasonably argued that anything less than the logging of “all” activity is less of a control than the current Minimum. So in practicality, the current process does not really allow for Tribe’s to develop meaningful TICS.

- Our position is that the MICS should be a guideline as a foundation for a Tribe to develop their own Standards.
  - We believe the term “Minimum” should be stricken and the reference should be to Internal Control Guidelines.
  - The revision to, or development of controls should be based on a Risk Model, as opposed to a “Standards” Model. Starting from a standpoint of asking the question “What is the risk(s) we are trying to mitigate”, sets up a completely different paradigm in the creation of meaningful controls. By adopting a “risk based” approach to control development, you allow for the inclusion of unique circumstances or conditions that vary from Tribe-to Tribe and/or property-to-property.
  - Finally, the movement to a risk based philosophy allows the Tribe’s to create TICS free of constraints such as identified in the Surveillance example cited above. It also allows for controls to become “living” documents that are reviewed and changed/modified as the risk environment changes, reflecting a more “real time” approach to Regulation.

#### **MICS and Technical Standards: Part 543 - Class II Minimum Internal Control Standards**

- Our comments regarding Class II Standards mirror those cited above for Class III Standards.

#### **Background Investigations for Licensing: Part 556 – Fingerprinting for Non-Primary Management Officials and Key Employees**

- We fully support and encourage the NIGC to amend their Memorandum of Understanding (MOU) with the Federal Bureau of Investigation to allow for the processing of fingerprints for other than Key Employees.
- We believe that the ability to conduct criminal history background investigations [FBI fingerprint checks] via the NIGC processing system on ALL categories of persons licensed by a Tribal Gaming Authority is both prudent and appropriate.

#### **Fees – Part 514**

- We believe that changing the assessment of NIGC Fees to coincide with a Tribe’s Fiscal year is prudent and appropriate. This would align the payment of fees consistent with the annual “closing-of-the-books” and probably would result in more timely payment of fees.
  - The transition could be accomplished by initially having a tribe pay fees prorated from their last payment date to the end of the current fiscal year, and then paid on a fiscal year annual basis going forward.

- We agree with comments made by other Tribe's that the definition of "gross gaming revenue" should be in accordance with GAAP, as long as such definition does not create a less favorable [i.e. increase in fees] over those assessed under the current definition.
- We strongly support the notion that a late payment system should be implemented regarding the payment of fees, as opposed to the issuance of a Notice of Violation (NOV). We believe that a stepped approach of increasing penalties over a defined late payment schedule, leading ultimately to the issuance of a Notice of Concern (NOC) and finally a NOV, would be more appropriate and meaningful. This approach would also eliminate an immediate Administrative cost for the NIGC in having to issue a NOV at the onset of late payments. In essence, we don't advocate any regulatory structure that imposes the "death penalty" as the first line of defense.

#### **Part 502 – Definitions of this Chapter**

- We believe the adoption by NIGC of the Generally Accepted Accounting Principles (GAAP) definition of Net Revenue – Management Fees to be appropriate.
- We do not believe that the definition of Net Revenues – Allowable Uses requires revision to include a statement that cash flow should be considered when allocating funds. This is such a basic tenant in accounting, that it is hard to imagine a scenario when cash flow would not be considered. The inclusion of such a broad statement seems unnecessary.
- We do not believe that Slot Participation Contracts should be included in the definition of "Management Contracts".

#### **Potential New Regulations – Tribal Advisory Committee**

- We support the concept of a Tribal Advisory Committee; however the make-up of such a Committee must be representative of the Tribe's they represent. In this regard, we would encourage the NIGC to adopt a system that allows for Tribal appointment of a Committee representative, as well as the ability for the NIGC to appoint a limited number of members.
- The challenge will be to determine the number of Committee members and how to select a group that is representative of all of the Tribe's, without having to have a representative from each and every Tribe.

#### **Annual Audits: Request for Revision on External Audits**

- We believe the NIGC should have the ability to allow for an automatic extension of the 120 day filing requirement, similar to the type of extension that is granted by the IRS with regards to Income Tax filing. The 120 day timeline can be difficult to meet in the event of "unusual circumstances" [i.e. the building burns down, natural disaster, etc.]. Currently, there is no provision to address special circumstances and all late filings are classified the same, regardless of circumstances. While we do not advocate extending the current 120 day timeframe, we believe that there are legitimate circumstances that should warrant an extension and not result in a "late" filing and/or penalty.

Once again, we appreciate the opportunity to express our views on these very important matters and hope that you can constructively use them to make meaningful changes to NIGC regulations.

Sincerely,

A handwritten signature in black ink that reads "Tom Wilson". The signature is fluid and cursive, with the first name "Tom" and last name "Wilson" clearly distinguishable.

Tom Wilson  
Interim Executive Director  
Pascua Yaqui Tribal Gaming Office

Cc:

Pascua Yaqui Tribal Council  
Wendell Long, CEO Sol Casinos  
R. Rolando Flores, Attorney General Pascua Yaqui Tribe