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**AGUA CALIENTE BAND OF CAHUILLA INDIANS
TRIBAL COUNCIL**

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February 18, 2011

The Honorable Tracie L. Stevens
National Indian Gaming Commission
1441 L St. NW, Suite 9100
Washington D.C. 20005

Dear Chairwoman Stevens:

As the Secretary-Treasurer of the Agua Caliente Band of Cahuilla Indians, I submit these comments in response to the National Indian Gaming Commission's Notice of Inquiry regarding the potential need to revise existing regulations or promulgate new regulations. This response identifies those areas which are of greatest importance to the Tribe and we look forward to continuing this dialogue in the months to come.

REVISIONS TO EXISTING REGULATIONS

I. Part 502: Definitions

With respect to the definition contained in the regulations regarding "net revenues," we urge NIGC to adopt generally accepted accounting principles in promulgating regulations. This ensures a consistency of application for Indian tribes and ease of administration for the NIGC. In the context of "allowable uses" for such "net revenues" we strongly oppose a regulatory attempt to micro-manage a given Tribe's usage of net revenues. IGRA already provides for limitations on a tribe's usage of these funds and further expansion of these limitations improperly infringes on tribal sovereignty. This Commission honors and respects tribal sovereignty and such a revision undercuts that longstanding approach toward Indian Country. Similarly, we oppose an attempt to expand the definition of "management contract." A revision of this sort unnecessarily adds to the administrative process and creates the potential for further delay. Instead, we suggest publication of guidelines for management contractors, lenders, developers and others stating that NIGC retains the authority to review non-management contracts. This has a two-fold purpose of protecting tribes and contracting entities from contracts that include management responsibilities.

II. Part 514: Fees

In this section, we believe that NIGC should consider a late payment system in lieu of NOV's for late fee payments. A revision of this sort could include an automatic additional percentage as a late payment penalty. Automatic NOV's are, as a general matter, costly, cumbersome, and often result in a settlement agreement with an associated fine. Of course, a late payment system should have provisions to discourage abuse and mandate clear time limits to ensure timely compliance.

III. Part 531, 533, and 537

There is possible confusion as to the applicability of class games to be managed under the present regulations. We recommend language to be added at the beginning of Parts 531 and 533 to clarify that these parts apply to both Class II and Class III gaming. There may be other ways to amend the regulatory text in order to make clear which regulatory sections apply to a particular class of gaming, but we support the effort to remove the present textual confusion.

IV. MICS and Technical Standards

Parts 542 and 543 contain several important issues that require more detailed discussion. We address them in turn.

A. Part 542: Class III Minimum Internal Control Standards

The Agua Caliente and other tribes have always agreed that internal controls are essential to the protection of governmental revenues generated by gaming. The adoption and implementation of MICS in 1999 by the NIGC, although against the wishes of some tribes, created a regulatory scheme that attempted to work consistently with IGRA in its attempt to balance tribal, federal and state responsibilities in regulating various classes of gaming. These regulations were based on common and successful industry standards. However, tribal governments and tribal gaming regulators have the greatest interest in safeguarding revenue generated by gaming and are the most informed parties when determining the means to do so.

Part 542 remains relevant and necessary for Class III gaming, but requires updating. NIGC has a responsibility to maintain Class III MICS for situations where compacted agreements state that NIGC MICS are to be used. However, maintain and updating Part 542 does not extend authority to NIGC for tribes that have compacts or ordinances that do not designate NIGC MICS as the required standard. Removing this section creates uncertainty, and potential legal issues with States (for instance California with which we have a compact making reference to MICS), for those tribes who use Part 542 MICS as standard. Other unintended effects may be felt by Indian Country as well. For example, with no NIGC standards or checklists, the "Agreed Upon Procedures" relied upon by state and tribal regulators, as well as independent auditors, will be rendered inapplicable. The problem is that at the moment, these entities have common ground on this issue and this is preferable. Without this, compliance reviews may vary from place to place resulting in uneven oversight and asymmetric application of procedures. This only serves to provide ground for disputes among tribes and states.

We urge the NIGC to proceed with caution in any decision on the restructuring of Class III MICS. The NIGC should acknowledge that the MICS reflect existing and effective industry standards and are advisory. MICS are only given the force of law through inclusion in Tribal-State compacts or tribal ordinances enacted by Tribal Governments. That being said, NIGC has a

Page 3 of 4 – Letter re: NIGC Comments

responsibility to maintain Class III MICS for cases in which those compacted agreements require the NIGC MICS to be used as the standard.

This is a critical aspect of revising NIGC's regulations. We strongly urge the tribal advisory committee working on this issue with NIGC representatives to continue that important effort.

B. Part 543: Class II Minimum Internal Control Standards

Part 543 is an incomplete section of the NIGC regulations. As presently drafted, Part 543 requires an auditor to refer to Part 542 and sift through the text in order to identify those subsections of Part 542 applicable to a Class II compliance review. In short, the status of Class II gaming is not well organized and this impairs a tribe's ability to complete quality compliance reviews. Here, perhaps more than anywhere else, a tribal advisory committee is an essential resource for revising Part 543. We sincerely urge NIGC to move forward with revising the current regulations, or drafting new sections, that a draft work product be provided to Indian Country for informal comment prior to authorizing the draft regulation for formal public notice and comment.

C. Part 547: Minimum Technical Standards for Class II Gaming Equipment

As with NIGC MICS, minimum technical standards are, by definition, subject to alteration over time with technological developments. While we recognize that industry manufacturers of Class II equipment enjoy expertise in this area, we have great concern that this subsection of the gaming industry is ill-suited to be NIGC's primary resource for the development of MTS for Class II equipment. To obtain balance and objective standards in the development of MTS, we suggest the use of a tribal advisory committee composed of tribal representatives with Class II experience and technical knowledge. Furthermore, we urge NIGC to consult with independent testing laboratories, rather than industry insiders, in order to assist in the creation of MTS.

V. Part 556: Fingerprinting for Non-Primary Management Officials and Key Employees

For a number of years, tribes have advocated for providing tribal regulatory bodies with the authority to submit fingerprints on vendors, including company representatives, who access the gaming property. Critical to this proposal is that this be at the tribe's option rather than as a mandate from NIGC as to the individuals who will or will not be fingerprinted. A full-fledged regulation may be unnecessary; a guidance policy may be sufficient to confer appropriate authority.

VI. Part 571: Inspection and Access

The Tribe recognizes that NIGC should have access to tribal gaming records in order to fulfill its responsibilities under IGRA. Our review suggests that Section 571.6(b) addresses this issue, but we have no objection to further clarification in Part 571 generally.

Page 4 of 4 – Letter re: NIGC Comments

POTENTIAL NEW REGULATIONS

I. Tribal Advisory Committees

Tribal advisory committees have proven valuable for years by providing diverse and knowledgeable perspectives on gaming across Indian Country. Nonetheless, we do not believe that a newly promulgated regulation providing for their use is necessary. NIGC usage of these committees furthers the government-to-government relationship between Indian Country and the Federal government. We encourage NIGC to closely police the individuals on these committees to ensure that they are qualified tribal government representatives and that the committee represents a cross-section of gaming in Indian Country by soliciting representatives from large and small gaming enterprises and various geographic locales.

II. Sole Proprietary Interest

A regulatory definition and accompanying guidelines on "sole proprietary interest" is sorely needed. Such a regulation would help protect tribes while also providing guidance to developers, lenders, management contractors and others regarding compliance with this IGRA requirement. We recognize the task and challenge in crafting such a definition, but encourage the Commission to work on this regulation.

We are pleased to offer our comments on the proposed regulatory revisions and suggestions for new regulations. The dialogue between Indian Country and NIGC is productive and continues to result in improved regulation of the gaming industry while balancing the bedrock principles of tribal sovereignty. We look forward to continue this conversation in the coming months and years and appreciate your close attention to our comments.

Sincerely,



Karen A. Welmas
Secretary-Treasurer, Tribal Council
**AGUA CALIENTE BAND OF
CAHUILLA INDIANS**

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